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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRSTSESSION

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# House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 25, 2005, at 2 p.m.

# Senate

MONDAY, JANUARY 24, 2005

The Senate met at 2:01 p.m. and was called to order by the Honorable LAMAR ALEXANDER, a Senator from the State of Tennessee.

## PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord, You have been our dwelling place in all generations. You laid the Earth's foundation on the seas and built it on the ocean depths. Each day we receive the showers of Your blessings.

Thank You for listening to our prayers and for keeping us safe. Thank You for giving us hope, even when life seems covered by shadows. From our earliest moments, we have been blessed by Your marvelous deeds. So we celebrate Your goodness.

Continue to sustain our legislators. Give them wisdom and courage to do their duty. Keep their hands and hearts pure. Teach them to do the right thing, to be honest and fair. Keep them humble and help them to trust You completely now and always.

Lord, continue to protect our Nation's military. We pray in Your Holy Name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable LAMAR ALEXANDER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, January 24, 2005.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LAMAR ALEXANDER, a Senator from the State of Tennessee, to perform the duties of the Chair.

TED STEVENS,
*President pro tempore.*

Mr. ALEXANDER thereupon assumed the Chair as Acting President pro tempore.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. ROBERTS). The distinguished majority leader is recognized.

## SCHEDULE

Mr. FRIST. Mr. President, this afternoon, we will be in a period for morning business so Senators may introduce legislation and make statements. Following that 1 hour period, the Senate will proceed to executive session for the consideration of the nomination of Carlos Gutierrez to be Secretary of Commerce. Chairman STEVENS will be here to manage the hour of debate on this side of the aisle, and I understand Senator DORGAN will control the remaining 1 hour. We do not have a request for a rollcall vote on the nomination. Therefore, we will proceed to a voice vote at the expiration of that time. Consequently, we will not have any rollcall votes today.

I do want to take this opportunity to remind my colleagues that we will begin debate on the nomination of Condoleezza Rice during tomorrow's session. The order from last week provides for debate on Tuesday with closing remarks on Wednesday and a vote on that nomination on Wednesday morning.

There are several other Cabinet-level nominations that may be ready for floor action this week, including the nominations of the Secretary of Energy, the Secretary of Health and Human Services, and the Attorney General. I will be talking with the Democratic leader about the full Senate consideration of those Cabinet positions as they become available.

## RELATING TO THE DEATH OF HOWARD S. LIEBENGOOD

Mr. FRIST. Mr. President, I am now turning to a resolution for a very close friend, and then I will take a few moments to comment on this resolution, really the man behind this resolution.

I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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A resolution (S. Res. 7) relating to the death of Howard S. Liebengood, former Sergeant at Arms of the Senate.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 7) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 7

Whereas Howard S. Liebengood served as a captain in the United States Army Military Police Corps in Vietnam from 1968 to 1970, receiving the Bronze Star and the Army Commendation Medal for his exemplary service;

Whereas Howard S. Liebengood began his service to the Senate in 1973 as minority counsel to the Senate Watergate Committee;

Whereas Howard S. Liebengood served as an aide to the Senate Church Committee in 1975, as the minority staff director of the Senate Select Committee on Intelligence in 1976, and as legislative counsel to Senate Majority Leader Howard H. Baker, Jr., in 1980;

Whereas Howard S. Liebengood served as Sergeant at Arms of the Senate from 1981 to 1983;

Whereas Howard S. Liebengood served as chief of staff to Senator Fred Thompson from 2001 to 2003, and as chief of staff to Senate Majority Leader William H. Frist, M.D., from 2003 until his death in January, 2005;

Whereas Howard S. Liebengood was a caring and devoted husband, father, and colleague who served with the utmost humility and distinction and was admired and respected by all as a teacher, adviser, and friend; and

Whereas Howard S. Liebengood inspired others through his personal leadership, generosity, and great love for the United States: Now, therefore, be it

*Resolved*, That—

(1) the Senate has heard with profound sorrow and deep regret the announcement of the death of Howard S. Liebengood; and

(2) the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy of these resolutions to the family of Howard S. Liebengood.

Mr. FRIST. Mr. President, Howard Liebengood loved the Senate. He loved the purpose of this institution; he loved its tradition; and, above all, he loved its people. The Senate was his extended family, and we all are going to miss him very much.

Howard Schuler Liebengood passed away on Thursday, January 13, at his home in Vienna, VA. He was just 2 weeks shy of his retirement. He had planned to travel and cook and devote himself to his wife Dee and their three grown children, Howie, John, and Anne.

We talked in detail at breakfast about a month ago, in late December, about his excitement of being able to retire and spend time with the family.

He also told me he planned on going to the track. One of his closest friends and a real friend of this institution, Marty Gold, said Howard loved anything that ran around the track, whether it was cars or dogs or people. And every May, without exception, Howard went to the Indy 500 with his family.

Howard lived with passion. He lived with conviction. He lived with generosity. He lived with grace. He accomplished so much because he loved life so well.

Howard was born on December 29, 1942, in South Bend, IN. Franklin Delano Roosevelt was President, stamps cost 3 cents, and total Federal spending was a mere $35 billion.

Howard graduated from Plymouth High in 1960 and earned his bachelors degree in political science at Kansas State University. From there he went to Vanderbilt University Law School where he met a young man who would become his closest and lifelong friend and future U.S. Senator, Fred Thompson. Howard once described the two of them as misfits among the well-heeled southern scholars and Ivy League stars. But knowing them both, I suspect it was just Howard's characteristic midwestern modesty.

After earning his law degree from Vanderbilt, Howard served as an Army captain in the Vietnam war. His bravery and valor earned him the Bronze Star and the Army Commendation Medal.

Upon his return from Vietnam in 1970, Howard applied for and won the competition to be assistant general manager and play-by-play announcer for the Kansas City Royals AAA farm club. But it was not to be. A young wife and the prospect of a future family led him to the offices of Manier, White in Nashville, TN, where he practiced criminal and entertainment law.

Then, just as he was to become partner, he got a call. Fred was minority counsel to the newly formed Senate Watergate Committee, and he wanted Howard at his side. It was 1973, the height of Watergate. Senator Howard Baker of Tennessee was vice chair of the committee. It was an offer too good to refuse.

Howard soon found himself in the center of the Watergate whirlwind, interviewing witnesses and ultimately coauthoring the Baker report.

It was a heady experience for the young lawyer and launched him on a 30-year career in politics. And yet somehow, despite this long and intimate exposure to Washington politics, Howard never lost his optimism. He never became cynical. He always looked for the good in any situation, and he always kept his good humor. And throughout, he also had the mentorship and friendship of Senator Howard Baker, his first boss in politics.

During the course of Watergate, Senator Baker and Howard became close friends. As minority leader, Senator Baker hired Howard to be his legislative assistant, and then as majority leader he elevated Howard to Sergeant at Arms. Howard would often stay with Senator Baker when the Senator was home in Scott County in Huntsville, TN.

Senator Baker tells this delightful story which speaks to their friendship and Howard's charm and his wonderful wit:

When Howard was Sergeant at Arms in the Senate during the first Reagan inauguration in January 1981, I still have this image of Howard in striped trousers and a cut-away coat standing on a platform next to the emergency phone sweating although the temperature was below freezing. I said: ''Howard, I see you're sweating. Are you OK?'' Howard replied: ''I forgot the key to the emergency phone.''

Senator Baker asked him later:

What would you have done if that phone had rung?

And Howard replied:

I would have pulled that sucker out by the roots.

That is Howard Liebengood, and it is the Howard Liebengood we have all been pleased to know. He treated everyone, from Senators to interns, with a graciousness and genuine regard. If a constituent had a difficult request or an unusual request, Howard would say: Give them a chance. That is an idea that just may be worth considering.

When Senator HATCH injured his Achilles' tendon, Howard drove ORRIN to the Senate every day. While he was my chief of staff, Howard Liebengood regularly invited young staffers on summer weekends to travel with him to Baltimore for a day of crabs and baseball.

He was just that kind of person—always extending himself, always making others comfortable around him, always making the personal connection, especially focusing on the young people in the office. He wanted to share with them the excitement and honor of working in Government. He always let them know, interns and staff alike, that their jobs mattered, that their jobs had a purpose, that they were serving their fellow citizens and advancing the cause of democracy.

Howard also reached across the aisle. He was known as the peacemaker for his ability to bring opposing sides together. Indeed, one of his great regrets was what he saw to be the growing partisanship in politics.

He missed the days when Members could set aside their party labels and share a 6 o'clock cocktail or a Friday night dinner. When he was legislative counsel for Senator Baker, what is now just down the hall my conference room and the leader's office, it was called the ''back room.'' It featured not a conference table but a sofa, a coffee table, two wingback chairs, and over at the end a wet bar.

Howard would host visits that began late in the afternoon and could last well into the evening. The regulars included Mac Mathias, Barry Goldwater—they tell me, two fingers of bourbon, no ice—PETE DOMENICI, and Joy Baker, who would often bring along Elizabeth Taylor Warner.

Two curious facts about the jovial and mild-mannered Presbyterian. The first, Howard kept a dozen bottles of

hot sauce in his desk drawer. After the 116 Club, the Szechuan Pavilion was one of his favorite restaurants. The second involves his friend, great friend Mike ''Mad Dog'' Madigan, who served with him on the Watergate Committee.

The story goes that one time in Manhattan, NY, of all places in the apartment of Fidel Castro's mistress, in the course of casual conversation, Mike Madigan said something that upset Ms. Marita, something she took as a challenge to her own personal integrity. She pulled a Derringer from her brassiere and threatened to shoot them both. It was a tense moment. Mike tried to dive under the couch over against the wall. Fortunately, Mike and Howard got out of there unharmed and with a great story to tell.

We all greatly admired Howard. When I became majority leader, I called him on a very late cold December night and asked him to be my chief of staff, and to my great, good, wonderful fortune, he said yes, and he brought incredible insight and judgment. Through his personal leadership, integrity, and generosity, he inspired us all.

He valued character. He valued honesty. He valued grace. Above all, he valued faith. Howard was loved and respected by individuals across the Capitol complex from Members to doorkeepers to photographers to the hundreds of Senate staffers, old and young, Democrat and Republican. Howard was a remarkable person who led a remarkable life.

Howard used to sign off his e-mails with the words ''all good wishes.'' I know I speak for the entire Senate family when I say our hearts are full of good wishes for Howard and his family. We are blessed to have had him in our lives, and we will miss him dearly.

Mr. REID. Mr. President, before the distinguished Republican leader leaves the Senate floor, I wish to express to him through the Chair my appreciation for the kind and very thoughtful words about our friend Howard.

Howard Liebengood represents what the Senate is all about. Spread throughout the Senate, we have hundreds of people who work for us every day who are just like him, extremely well educated. If their goal in life was to see how much money they could make, they would not be working here. They do it because they have a sense of public service, as indicated with his record.

The Senator's kind words about Howard today are words that can be directed to each one of the people who work for us. He was what the Senate is all about. He not only should be but is a role model for what the Senate staffers, as we call them, try to be. If they completed their term of service having given up the fruits of how much money they could make outside the Senate and were thought of as Howard was thought of, I believe their lives would be complete.

I thank the leader very much. As I said, his remarks not only spoke of a good man but are representative of what the Senate is all about.

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the full time in morning business for the majority and minority be given. The standing order was that we would go to the Gutierrez nomination at 3, but I ask that that time be extended.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

## INTRODUCTION OF REPUBLICAN LEADERSHIP AMENDMENTS

Mr. FRIST. Mr. President, today we honor the tradition of defining our party's agenda for this Congress. I take this duty seriously. Because I take our times seriously.

We live during an extraordinary moment not only in the history of America, but in the history of the world. And it is my goal—and the goal of my caucus—to look to the future and seize the opportunities that such times offer.

Social Security has been one of the great triumphs in the history of our government. It has lifted millions of seniors from poverty into dignity and provided an essential safety net for disabled citizens.

But soon our Social Security system will be unable to sustain itself. A program created for security will itself become insecure.

Social Security works well for those at or near retirement. And, for these men and women, Social Security must remain the same and provide the same benefits.

But for future retirees, the future is less certain. That is, of course, if we fail to act. Then we will know the outcome: the retirement of the baby boom generation will place an unsustainable burden on younger Americans.

The President is right to call on the Congress to rise to this crisis. I believe we have an opportunity to rise above partisanship, to do what it right rather than what is expedient, and to leave a legacy of leadership for our children.

This Congress will continue to meet the challenge of our generation, to fight and win the war on terror.

I would like to thank Chairman COLLINS for her tremendous leadership last Congress. She successfully completed the first major overhaul of our intelligence services in a generation.

We will continue to look to her as she undertakes the important task of ensuring that we commit our resources where the threat is greatest.

Today, we will introduce legislation that honors our service men and women who have made the supreme sacrifice. They have given all to our Nation and the cause liberty; and we will give more to better care for the ones they loved.

I'm grateful for the hard work of many Senators in this effort, particularly that of Senators SESSIONS, HAGEL, DEWINE, ALLEN, and our two able chairmen, Senators WARNER and CRAIG.

I look forward to their continued contributions on behalf of the members of our armed services.

This bill will also enhance our efforts to secure our Nation against biological threats and gives law enforcement the tools they need to better defend us at home, both by more quickly providing cutting edge technologies and by enhancing laws to protect our citizens. I appreciate Senator SESSIONS' leadership in the area of protecting our mass transit system against terrorist attacks. Included in this leadership proposal is the Railroad Carriers and Mass Transportation Act, a bill he authored last Congress and also incorporated into the Tools to Fight Terrorism Act introduced by Senate leadership.

Our Nation's security does not rest on our military might alone. A growing economy, educational opportunities, and access to affordable health care are all essential to keep our country strong and our citizens secure.

We should begin by examining the Federal Tax Code. Our tax system should raise revenue in a simple, efficient, fair and predictable manner.

Unfortunately, this is far from today's reality.

Consider the facts: Everyday Americans spend 23 percent more time filling out tax forms today than 8 years ago. In that time, the total number of pages of Federal tax rules have grown by almost half. And one leading tax preparation firm is making 150 percent more money.

We look forward to reviewing the findings of the President's Advisory Panel on Federal Tax Reform. We will take action. We will simplify our laws, keep our commitment to a progressive Tax Code, and promote savings and growth.

Clearly, adopting a comprehensive energy policy and reforming our tort system are cornerstones of economic growth. I believe that we have a real opportunity to work across party lines on these issues.

Chairman DOMENICI has renewed his efforts to bring a bill through the Energy Committee and we look forward to results. The Senate will soon begin its debate on class action reform. It is an important place to start. Our tort system costs our economy nearly $250 billion per year. That's the equivalent of an $844 ''tort tax'' on every American. This bill will be an early success. I'm grateful for the hard work on both sides of the aisle that have gone into this important initiative.

We cannot afford to let lingering concerns about a tax increase on small businesses stall our economic growth.

The President's economic stimulus package was exactly the right medicine at the right time for a faltering economy. From day one it has led to steady growth. We need to make those tax cuts permanent so we can keep our economy growing and creating jobs.

Critical to our long-term competitiveness is an educated and skilled workforce. Chairman ENZI will introduce legislation today grounded in essential core principles.

We will improve our Federal education and training programs by setting high expectations and raising achievement for all students. We will demand accountability for results. And we will support learning opportunities for students at all stages in life.

It is time that health care followed the rest of our economy and join the Information Age of the 21st century.

Our health care system is a model of spectacular inefficiencies: high and rapidly rising health care costs, growing ranks of the uninsured, chasms in quality and health care disparities.

In order to transform this system, we must agree on a guiding principle: all Americans deserve the security of lifelong, affordable access to high-quality health care.

The focus of a 21st century health care system must be the patient. The system must also be responsive primarily to the consumer, rather than third-party payers. In a transformed system, we must reestablish the doctor-patient relationship, and utilize technology to promote efficiency and provide care.

I am pleased that we will be introducing legislation that begins to build on these principles, utilizing the work of Senator GREGG and the Republican Task Force on the Uninsured. We will address rising costs, increase coverage and expand access to care.

We are also a Nation that values community, family, and compassion. We will work to build on the success of our welfare laws which have helped over 7 million people move from dependency to the dignity of work.

But in doing so, we will recognize the need to support those who do the hard work of compassion—caring for those in need. Our tax proposals will support these private efforts while also helping those who are raising children and ending the discrimination against marriage in the law.

We will also continue our efforts to promote and defend marriage, and to support parents as they seek to guide their children in difficult times. Today, Senator ALLARD will introduce the marriage protection amendment which I hope will be sent to the States for ratification.

Last Thursday, we had the opportunity to celebrate the enduring value of a free people exercising their right to self-governance. But with each new political beginning, we have the responsibility to answer to the people we serve. I believe that we have such an opportunity, and I have great faith in my colleagues in the U.S. Senate to dutifully answer that call.

## RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

## INTRODUCING DEMOCRATIC LEADERSHIP BILLS

Mr. REID. Mr. President, in the beginning of each session of Congress, the majority and minority introduce their bills. The first 10 bills are those of the majority. That is the tradition of the Senate. The distinguished Republican leader has worked hard, as have I, putting forward the bills that represent the majority. I have worked hard putting forward the bills that represent the minority, and I with Senator DURBIN, Senator STABENOW, and Senator SCHUMER today in the Lyndon Johnson Room presented our bills to the public.

The promise of America is a simple one. It is a promise that says if one works hard and plays by the rules, they can build a stronger, brighter future for themselves and their family. This promise has lived on for generations in this great country of ours. It is one that I have lived personally.

As a result of hard work and the generosity of people who helped me with my education, I received a good education, and in the process many doors were opened. After completing my education, I was able to go into business and now have what I believe is the best job in the world—a Member of the Senate representing the people of the State of Nevada.

My story is not unique. As many know, I was born and raised in Searchlight. Searchlight represents many places throughout this country. It represents countless individuals whose lives have been blessed, as mine has. I am sorry to say that these stories about a young boy or girl from a place like Searchlight are becoming fewer and fewer. We now have crumbling schools. The average school in America is 50 years old. We have schools such as those in the southern Nevada area, the Las Vegas area, that are being built at a rapid place. As many as 18 in 1 year have to be dedicated to keep up with the growth of Las Vegas. The superintendent of public education has become a superintendent of public construction. School districts need help with their schools, in inner cities and in rural communities.

Good-paying jobs are giving way to jobs that, no matter how hard one works, just don't pay the bills. There are 45 million people without health care. That means there are too many Americans who are not getting the care they need to live healthy and prosperous lives.

This is the America we live in today, a country whose founding promise is slipping further away from reality for far too many American families, a country where a kid like me from Searchlight finds it harder to get ahead, despite the generosity of people in the community, the good will of teachers, and a work ethic, which is important.

Why do we find ourselves in this state today? Why is the promise of America, the promise that led me and others to this great Chamber, not still alive and well for all of us? In part, it is because we have a Government that simply does not live up to the values upon which the promise was made. We have leaders whose poor planning and mismanagement have sent young men and women into battle overseas, some say without the equipment and support they deserve to succeed in the battlefield.

Some way, and I certainly underscore this, there was a plan to win the war but not a plan to win the peace. We have a Government that by any measure fails to do all it can to make our country safe and secure. We have leaders who love to create crises when they do not exist, such as Social Security, which will be funded for many decades into the future, some say as far as the year 2055.

Some say there is a crisis with judges. This morning someone asked: What happens if you do to President Bush this next 4 years what you did the first 4? I say, well, he should jump with joy. That would mean 408 judges he would get approved and 20 disapproved.

The Constitution has in it a clause that deals with advise and consent. If the oath I took just a few weeks ago to uphold the Constitution means anything, certainly that part of the oath that says I must live up to the Constitution, it says the Senate of the United States has an obligation, legal in nature, to give advice and consent to the President of his nominations. I will continue to do that. I believe that is a role we have.

There are real crises. I have talked about some of them. I talked about others: education, health care, the environment that we do not talk about much anymore. Energy is a crisis we have in this country. The staggering deficit we have developed these past 4 years is a crisis. I believe there are real crises that are crippling our economy, hurting the large and small businesses, and pricing too many families out of quality health care. That is what our legislation we introduce today deals with. We have a Government that has forgotten who it is responsible to, one that has become content with feeding tens of billions to the special interests while failing in its commitment to tens of millions of seniors.

America's promise will not stay alive if America's Government betrays it, and that is why at the outset of this Congress Senate Democrats are committed to restoring the promise of America by pursuing an agenda that honors the values behind it, the values of security, opportunity, and responsibility. These values are at the core of America's promise.

The ten Democratic bills which I will introduce today deal first with America's security. For example, we need to work to increase our Special Operations Forces by 2,000 individuals. We need to expand the pace and scope of programs to eliminate and safeguard nuclear materials and enhance efforts to prevent radioactive and other deadly

materials from entering the United States. That is Nunn-Lugar. We must do more than what we have done with the Nunn-Lugar legislation.

We must increase our military. Our legislation calls for an increase by 40,000—30,000 in the Army and 10,000 in the Marines—so that we have enough troops to win the peace in Iraq and fight terrorism around the world without extending tours of duty to the breaking point.

We will create a Guard and Reserve bill of rights to protect and promote the interests of our dedicated citizen soldiers and fight for the families of those who serve to recognize the sacrifices they have made. S. 13 will fulfill our duty to America's veterans. It will ensure that all veterans get the health care and prescription drugs they deserve while also expanding the availability and accessibility of mental health care. We will ensure that no veteran is forced to choose between a retirement and disability check, and launch a 21st century GI bill that tells soldiers of today that we will help them to succeed when they return, just as we did for those great heroes who returned from World War II, Korea, and Vietnam.

We need to expand opportunities to all Americans, and economic opportunity is going to be extended through S. 14. We, for example, will end tax incentives that encourage companies to ship jobs overseas. We are going to restore overtime rights for 6 million workers who lost that guarantee last year.

S. 15 will help us with education. It must be a cornerstone of equal opportunity. Democrats will keep our promise to our children by increasing support for preschool education, fully funding No Child Left Behind and making sure it is implemented the right way. We will address the shortfall of math, science, and special education teachers by creating tuition incentives for college students to major in these fields, and we will work to make sure every American who wants it can afford 4 years of college with new tuition tax credits and relief from burdensome loans.

There are problems in rural school districts in Kansas, Nevada, Illinois, Nebraska and Utah. I have found, in my travels through rural Nevada, one of the biggest problems the school districts in rural Nevada have is school buses. That might not seem like much in the overall scheme of things, but it is rare for a bus in Nevada rural schools to be new. They buy used, old buses. Most of the buses are worn out before they get them. We could help rural America in lots of different ways, but we could help rural America so much if we provided a way where they could buy new buses. We need to do that. When school districts have these old buses, children have no choice but to ride in outdated, unsafe buses. That is why we will create a Federal program to help rural school districts purchase new buses that will get kids to school in a reliable and safe manner.

S. 16 will make sure health care is more affordable to families and businesses. We know health care costs have spiraled. That is why we will bring down the price of prescription drugs by legalizing safe importation of FDA-approved prescription drugs from industrialized countries. We will also ensure that every child in America has access to health care and that every pregnant woman in America can get the maternity care she needs and deserves. We will reduce health care costs by creating incentives to modernize health care and by offering tax credits to small businesses.

Finally, we want to build a government that meets its responsibilities both to Americans today and in the future. S. 18 will help America's seniors. Medicare should work for seniors, not the HMOs and drug companies. First we will eliminate the provision that actually prohibits Medicare from using the negotiating power of its 41 million beneficiaries to get lower prices. The Medicare bill has a provision in it that says Medicare cannot negotiate for lower prices. They have to go to Rite Aid and other places, just like the rest of us. They cannot compete with the HMOs which can buy their drugs in bulk.

We will eliminate the giveaways like the $10 billion slush funds for hospitals in the Medicare bill. We will improve the prescription drug benefit by phasing out the current donut hole where seniors pay a premium but get no credit. Seniors across the country were shocked by the record increase in Medicare Part B premiums this year. This must be addressed. We must be a government that honors its responsibilities to future generations. We have had reckless spending these last 4 years. It has turned record surpluses into record deficits and has mortgaged our children's future. It is long past time for Washington to return to the same commonsense budget that families use around the kitchen table every day, and that is why we will call for pay-as-you-go budgeting.

Our final bill, S. 20, will support women in making responsible choices about their health. The United States has the highest rate of unintended pregnancies among all industrialized nations. Half of all pregnancies in this country are unintended and nearly half of those end in abortion. By increasing access to family planning services, Democrats will improve women's health, reduce the rate of unintended pregnancies, and reduce the number of abortions, all while saving scarce public health dollars.

Security, opportunity, and responsibility—these are more than just three words or three values. They are the foundation on which America's promise is built. Senate Democrats open the 109th Congress steadfastly committed to keeping this promise alive, so that all Americans who work hard can build a stronger and brighter future for their families. While these 10 bills do not represent all the goals of the 109th Congress, they represent the start and the core of our mission.

No doubt we will tackle many other important issues before Congress closes, but we will never lose sight of the values for which we fight and the promises we must keep.

For instance, when it comes to strengthening Social Security, Democrats will keep America's promise. The program is our bargain that says those who work hard and pay their taxes have earned a secure retirement. Our values compel us to keep the promise of security to our seniors, and Senate Democrats will do this. We will not irresponsibly cut benefits or jeopardize the opportunity of future generations with $2 trillion in new debt. This is keeping America's promise, and that is what Senate Democrats will do.

In closing, I would like to say a few words to my colleagues across the aisle. We hope and believe many Republicans share our view that we must not allow partisanship to stand in the way of America's promise, or let politics get in the way of keeping alive the American dream. That is our pledge. We will work with the majority in meeting the demands of America.

I recognize the first 30 minutes of morning business time was that of the majority. How much time did I use?

The PRESIDING OFFICER. The distinguished Senator used 14½ minutes.

Mr. REID. I apologize to my friends on the other side of the aisle. Ten minutes of that will be leader time. The rest Senator DURBIN will use for whatever he feels appropriate when our time comes.

The PRESIDING OFFICER. The distinguished Senator from Illinois.

## ORDER OF PROCEDURE

Mr. DURBIN. Mr. President, it is my understanding there are two or three Senators on the floor who would like to pay tribute to Mr. Liebengood, as Senator FRIST did. I will ask unanimous consent they be recognized, if we can get an idea how much time they will use, and then if we could return to the scheduled morning business with the remaining time on the Democrat side and then the balance on the Republican side.

Mr. HAGEL. I will require no more than 3 minutes.

Mr. HATCH. Mr. President, I think I can do mine in 5 minutes, maybe less.

Mr. ALEXANDER. Less than 5 minutes.

Ms. COLLINS. Mr. President, I had requested 10 minutes to introduce a bill at the conclusion of the tributes.

Mr. REID. Mr. President, I apologize. I didn't know people were here to speak. If I had, I would certainly have withheld. There is more than ample time. There is 30 minutes in morning business. They will have whatever time they need. There is lots of time.

Mr. DURBIN. Mr. President, I would be happy to renew my request to give, let's say, 15 minutes for tributes to Mr. Liebengood at this point.

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

The Senator from Nebraska, the distinguished champion of the Plains, is now recognized.

## TRIBUTE TO HOWARD LIEBENGOOD

Mr. HAGEL. Mr. President, I rise, as was noted, to recognize and pay tribute to and remember our dear friend Howard Liebengood. I thought the majority leader's comments concerning Howard Liebengood could have been recited by any and all who knew him. My friendship with Howard Liebengood goes back almost 30 years. When I first became acquainted with Howard and his wife Dee, we would bet on the Kansas State-Nebraska football game every year. I know the Presiding Officer has a passing interest in that game. Howard, each year, would come back for more. These were the days when Kansas State had not defeated Nebraska for many years. But one of the extraordinary parts of this extraordinary man was an optimism, not only about Kansas State football but about life. All that he touched, all he represented, and all who knew him were uplifted by this gentleman, this man who always put his friends first.

I recall when Howard and Dee's children were young, I would occasionally go to their home in Vienna for a little chili cookoff. It was not a big group; it was just us. Howard always had the remarkable ability to reach beyond his professional capacity. After all, we are all judged and will be judged by that dynamic at the end of our lives. It will not be for whatever professional accomplishments we have but it will be for what we have done for others and how we are remembered by others, as was noted by the majority leader in his remarks.

So, today, as I and others rise on behalf of Howard Liebengood, we celebrate his life and his family and all the light that he brought to so many of us for so long. This dear, dear man, we will miss greatly. But he does leave the world better than he found it.

The PRESIDING OFFICER. The distinguished Senator from Utah is recognized.

Mr. HATCH. Mr. President, I have to say that Howard Liebengood was one of my dear friends and I think he was a dear friend to virtually everybody in the Senate on both sides of the aisle. What a good man.

What can I say about Howard Liebengood? That he was a loving, caring family man who placed his lovely wife, Deanna, and their wonderful children, Howie, John, and Ann, above all else? That he was the consummate Capitol insider, who managed to retain humility and kindness while rising to the pinnacle of Washington's power structure? That he was an accomplished lawyer, businessman, and military hero who never forgot his small-town roots in this often heartless big town? That he was a man of faith, whose church was a source of strength in the hardest of times?

I can say all of these things—and more.

I have been proud and humbled to call Howard Liebengood a friend. He was a trusted adviser to me and so many other Senators. He was my neighbor in Virginia, and we often drove to work together. When I had my Achilles' tendon rupture—completely severed my tendon—Howard and I rode together every day. Those were some of the most wonderful times I've had.

We shared some wonderful times; I always looked forward to his keen observations and his wry good wit and very strong intelligence.

I knew what many in this body knew about Howard, that we could always count on him to listen, and care, and act—not in his own self-interest, but for the greater good.

Howard was so successful in our world, yet he was never driven by money, fame or desire.

His many accomplishments—the Bronze Star, his work in the Senate on the Watergate Committee, as our Sergeant at Arms, as Chief of Staff to two of our greatest Senators—tell volumes about Howard, but they do not reveal the inner peace and calm that made him such a wonderful, wonderful part of this institution, a tribute to all that is good in public service.

What more can you ask in a man?

Nothing.

Howard did it all.

Howard had it all.

His loss is so great. Our loss is so great. This body will mourn his loss for so many years to come.

I know all here today join in sending both our deepest sympathies to the Liebengood family, and our profound admiration for Howard S. Liebengood—husband, father and trusted public servant. I knew him personally very well. He was kind. He was considerate. He was helpful. He was always down the middle. He was someone to rely on.

Let us celebrate his life today and all that was so good in this man, even as we mourn Howard S. Liebengood's tragic passing at too early a time.

The PRESIDING OFFICER. The distinguished Senator from Tennessee is recognized.

Mr. ALEXANDER. Thank you, Mr. President.

Mr. President, last week Howard Liebengood's best friend, former Senator Fred Thompson, spoke eloquently about his life with Howard over the last 30 years since their time at Vanderbilt Law School. Marty Gold, whom all of us know, spoke about Howard Liebengood in a little different way. The majority leader spoke about him today in still a different way from the experience he had with him in the last few years and especially the last 2 as his chief of staff. Senator HAGEL and Senator HATCH had something to say, and many others will. So the question might be, What could I add to these eloquent words? What I can add today are some of Howard's own words.

Howard spent the last 2 years doing something that is very special in the Senate. He and my chief of staff Tom Ingram had lunch every week, and their stated objective, among all the other things, was to make sure the Frist staff and the Alexander staff didn't compete with each other but worked together to serve the people of Tennessee.

That may sound to people outside the Senate like the way it always is, but that is not always easy to do. But I think it is fair to say—and a lot of this credit goes to the majority leader because of his attitude and his generous spirit and his unselfishness—our staff worked beautifully together for 2 years. We haven't competed with each other. That is because of the spirit of Howard Liebengood.

As a result, we invited him last September to our staff retreat. We wanted many of the staff members—some of whom are the age of his children or even younger—to hear from him how he views this Senate which was his home really for 30 years, why he loves it so much, and why he conducted himself the way he did in a world that is supposed to be cynical or cutthroat and competitive, where you take yours and the other guy gets his. That wasn't Howard Liebengood at all.

I have a copy of the notes Howard used for that evening. He went on for about an hour, and the staff members told me they wished he had gone on for 2 or 3 hours. He told stories about law school. He told stories about Fred Thompson, the Intelligence Committee, and about Howard Baker—many of the incidents which Senator FRIST talked about. But when he came to the end of his remarks, he said this. I believe perhaps the most important thing I can contribute to this discussion honoring our friend Howard is his own words about why he came and why he stayed in the Senate. He concluded his remarks to our staff last October saying this: ''I came for a year.''

This is when BILL FRIST asked him to come back.

''And I stayed two.''

He said, ''It is hard for me to leave the labor of love that is for me the U.S. Senate, the institution herself, in every way. From the people to the protocol and the opportunity to serve the people of Tennessee, I have relished every moment. How blessed I have been,'' Howard Liebengood told these young staff members, ''throughout my life to have these exciting assignments, these remarkable colleagues, spectacular leaders, and challenging work—never a dull moment. I am forever grateful to Fred Thompson for bringing me here and to Howard Baker for keeping me here and being my personal inspiration, to the incomparable BILL

FRIST, whom I admire and enjoy working with, and to my other friends with whom I have served. And finally I thank each of you for having me with you tonight.''

The parting thoughts Howard Liebengood said to my staff last September were these: ''Always be true to yourself. Trust your best instincts. Serve humbly and unselfishly. Distinguished Senator for whom you work and Tennessee at every turn. Relish your time here. Take pride in your work, but never be haughty. Look out for your colleagues at every turn. And walk with the Lord.''

He concluded: ''With that formula my experience suggests that both Washington and life will treat you very well. Thank you for having me with you this evening.''

I think all of us would say today that Howard treated Washington and life very well, and we are grateful that he came our way.

Thank you, Mr. President.

Mr. DURBIN. Mr. President, are there further tributes to Mr. Liebengood?

Mr. McCONNELL. Mr. President, I hope to say a few words about Howard Liebengood.

The PRESIDING OFFICER. The distinguished Senator from Kentucky is recognized.

Mr. McCONNELL. Mr. President, I listened carefully to Senator ALEXANDER's observations about our good friend, Howard Liebengood. I first met Howard as he was leaving the Senate. I came here the year Senator Baker retired, and Howard was on the way out. I wasn't sure that I would get to know him because everybody even before I got here—it seemed like everybody I ran into—knew Howard Liebengood. He was part of this institution. He was on the way out as Senator Baker left.

In thinking about the last 20 years—that was 20 years ago—Howard Liebengood really never left the Senate. He was always in this town available as a resource to all of us. I called upon him frequently over the entire period when he was technically not working at the Senate but was in town and providing his good advice to anyone who would ask.

I say to my friend, the junior Senator from Tennessee, and to the majority leader, you were lucky that Howard Liebengood was from Tennessee. I wish he had been from Kentucky. He was a wonderful man and a great part of this institution that we will not soon forget.

I yield the floor.

Mr. DODD. Mr. President, I rise to speak in memory of Howard Liebengood, who passed away on January 13. The majority and minority leaders and other Members of this body have already spoken in Howard's memory. In addition to associating myself with their remarks, I would like to offer a few brief words of reflection on behalf of myself and my wife Jackie, who knew Howard well through her work for Senator Jake Garn of Utah.

As someone who essentially grew up in this institution, I have always had a great deal of respect and affection for the United States Senate. While some today may dismiss the notion as quaint, I continue to regard the Senate as a family—one where personal friendships can transcend ideological beliefs, and one that in its finest moments can rise above party differences to truly make a difference in the lives of the people whom we serve. It is in that spirit that I speak today in memory of Howard—a vital and well-respected member of this family for over 3 decades.

Howard served here in a number of capacities—as minority counsel to the Watergate Committee in the 1970's, where he worked closely with Senator Howard Baker; as Sergeant at Arms from 1981 to 1983; and finally, as chief of staff to Senator Fred Thompson and majority leader BILL FRIST. He also maintained his relationship with the Senate for many years working in Government relations for a variety of clients.

I came to know Howard in 1981 when I entered this body as a freshman Senator, and he began his term as Sergeant at Arms. I gained an immediate and lasting appreciation for Howard—not only as Sergeant at Arms, but as a human being.

The Sergeant at Arms in the Senate is a position that encompasses enormous responsibilities—from security, to printing and graphics, to technology, to recording, to financial operations. To put it quite simply, the day-to-day business here in the United States Senate depends on the Office of the Sergeant at Arms, and on the service of people like Howard.

Howard Liebengood was a man who loved this institution and who loved our country—and that love was reflected in the way he approached his work. Howard was a good and decent man whose humor, calm, and patience were well-known to all of us who were fortunate to know him. He was an individual who worked well with Senators and staff from both parties. Howard always impressed me as someone who cared more about the Senate, and the role it plays in our democracy, than he did about advancing any particular party's agenda. In all the positions he occupied in the Senate, he always cared deeply about the things that unite us as Americans, rather than those that divide us along partisan political lines. He understood that the strength of the Senate as an institution and its significance in shaping our history reside in the ability of its Members to reconcile differences for the good of our Nation.

This institution and our Nation are indebted to Howard for his years of service. I offer my deepest sympathies to Howard's wife Dee and their three children.

Mr. COCHRAN. Mr. President, I am pleased to join the distinguished majority leader, Mr. FRIST, as a cosponsor of his resolution honoring the memory of Howard Liebengood.

Howard was a good friend of mine and a very trustworthy officer of the U.S. Senate. I first go to know him when he worked as a member of the staff of the Senator from Tennessee, Mr. Baker.

He later served as Sergeant at Arms and Doorkeeper when Senator Baker was the Republican leader.

It was my pleasure to know Howard's family as well. His wife Deanna was a very important asset and an admired and respected member of the Senate family.

We will miss Howard's ready smile and his keen insight on the issues facing our country. He was truly a wonderful person and a loyal friend.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding that the tributes to Mr. Liebengood have been taken from the morning business time allotted to the Republican side.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. How much time is remaining on each side in morning business?

The PRESIDING OFFICER. There is 17 minutes on the majority side and 25 minutes on the minority side.

Mr. DURBIN. I ask unanimous consent that Senator COLLINS be recognized on the Republican morning business side, and I will follow her with the remaining time on the Democratic side.

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

The distinguished Senator from Maine is recognized.

Ms. COLLINS. Thank you, Mr. President. I thank my colleague from Illinois for his courtesy.

(The remarks of Ms. COLLINS pertaining to the submission of S. Res. 8 are printed in today's RECORD under ''Submitted Resolutions.'')

Mr. DURBIN. Mr. President, I didn't know Mr. Liebengood, but I listened closely to the tributes made today. He clearly was an extraordinary person who touched the hearts of many in the United States on both sides of the aisle. There are so many like him who give a great contribution to this institution. I hope when the time comes they will receive the same memorial and tributes as Mr. Liebengood received today.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Illinois.

Mr. DURBIN. It is my understanding on the Democratic side we have 25 minutes remaining in morning business; on the Republican side, how much time remains?

The PRESIDING OFFICER. There is 5 minutes remaining on the Republican side.

SCHEDULE OF THE 109TH CONGRESS

Mr. DURBIN. Madam President, this is a critical day in the schedule calendar of the Senate. For those who follow the ebb and flow of business in the Senate, this is the kickoff, the tip-off, the first pitch. This is the week when we start rolling up our sleeves to get down to business.

Traditionally, the leaders on both sides, Republican and Democrat, announce their priorities, what they would like to see as the legislative accomplishments of this session. I am certain the list announced today by Senator FRIST and Senator REID are not exhaustive. There are many issues that were not included on either list that will certainly be discussed.

However, I think it is interesting what we find when we compare the two lists. On the Republican side, the No. 1 priority, the highest legislative priority from Senator FRIST, is what is termed the Social Security Solvency and Protection Act.

On the Democratic side, we have a different approach. Our first priority is the title of ''putting America's security first, standing with our troops.''

Both of these legislative proposals address important issues. No one argues that the Social Security system should not be carefully watched and that we should not address the law and change it from time to time. However, it is interesting that both President Bush and the Republican leaders in the Senate have decided the highest priority for this session is Social Security.

The reason why I find it interesting is that they prefaced this decision by saying we are facing a crisis in Social Security. Some use those terms. The President himself has called it a problem. Some have called it a challenge. But whatever your characterization, it is clear that the White House believes this is the issue that should come first of all issues that Congress might consider.

If we did nothing to Social Security, if we made no change whatsoever in the law—didn't change a comma, a semicolon, put a period at the end of the sentence, nothing in the law—Social Security would continue to pay out to over 47 million Americans every payment with a cost of living adjustment for 37 years from today. There is not another program in the Government that you can say the same thing about. There is no other program that you can say with any certainty is funded to be in existence 37 years from today.

Most other programs depend on the Appropriations Committee and the will of Congress and the leadership of the President for funding. Social Security, left untouched, is on track for 37 years of solvency. Why? Because in the early 1980s, leaders in Congress took a look at the Social Security system and said: We have a problem. The problem is, returning GIs from World War II, anxious to start their families, had a lot of babies in a hurry, the so-called baby boom generation. Those kids, first born after 1945, will reach retirement age and start showing up and asking for their Social Security checks. By our projection, we will not have enough money.

So in the mid-1980s, President Ronald Reagan, a leading Republican, came up to Capitol Hill, met with the House Democratic Speaker, ''Tip'' O'Neill, the leading Democrat of the day, and said: Can we come together and agree on a plan that will make sure Social Security is going to be able to handle the baby boomers. They sat down and went into a lengthy negotiation, a commission, debate, a study, and came up with a proposal. The net result of that proposal was to change the Social Security law in the early 1980s to make certain that Social Security would have a bright future.

In 1983, we passed this law which bought 53 years of solvency for the Social Security system. So we can say for more than half a century Social Security will be running in the black and not in the red.

What changes did we make? Some involve benefits, some taxes. Some were controversial; some were not.

When it is all said and done, we did the right thing. We took a program that was about 50 years old and gave it over 50 more years of life by reaching a bipartisan decision that would give to Social Security that bright future. That is what happened in the mid-1980s.

Now comes the President and his Republican friends in Congress saying: Stop; we have a crisis on our hands in Social Security. If we do not do something, and do it today, if we do not make dramatic changes in Social Security, it will not be there to pay the workers of tomorrow.

That overlooks the obvious. The Social Security Board takes a close look at the system and they tell us what we did in the mid-1980s still works today. We have at least 37 more years of solvency in Social Security. So there is no immediate crisis.

Is there a challenge? Yes, because in 2042, we have to change the law so that it brings in more money or in some way is handled in a different fashion so more people are covered. So 37 years from now, we have a challenge.

Can we do things today to address that challenge? You bet we can. We can make modest and commonsense changes in Social Security that will give it 20, 30 more years of life. That is a responsible thing to do.

Listen to what the White House is proposing that we do with Social Security. It is not a question of a modest commonsense change. It is a dramatic and some would say radical change in Social Security. What the White House is proposing is that we partially privatize Social Security. In other words, the workers who are paying into Social Security, instead of paying 6.2 percent of their earnings, would pay less—perhaps 4 percent of their earnings and then take the other 2 percent and put it into privatized accounts—into the stock market, mutual funds, something of that nature. The argument from the President's supporters is that this would mean they have ownership of their future because they are investing their own money.

There are several things on which the President has not given the details. By most calculations, taking money out of Social Security for privatization, partial or otherwise, means cutting the benefits of Social Security retirees. How can you take the money out of the system that we planned on using to pay retirees for the next 37 years without cutting those benefits? And, if you do not cut the benefits, how do you make up the difference? Some estimate the privatization of Social Security will cost us $2 trillion in the first 10 years.

Questions have been asked. I was at a meeting where questions were asked of the President: How will we pay for the $2 trillion? The argument is, we will add it to the national debt, the largest increase in the national debt in the history of the United States to privatize Social Security. Is that what we are bargaining for?

A lot of people have said if you increase the national debt, it means the United States has to borrow more money. Where do we borrow money? We borrow money from Japan and China and Korea, countries that not only lend us money for our debt but then expect us to buy more of their products in return.

So when you look at the imports coming into the United States from all over the world, they are coming in largely from countries that are buying our debt. So $2 trillion more in debt for future generations, $2 trillion more in foreign products coming into the United States. Lord only knows what it means to the future of our economy and jobs going out of the United States.

As you can see, this is a complicated issue and it is an issue that will be the subject of a long debate.

This is what I think. If privatizing Social Security means cutting benefits for the retirees in the future, if it means adding $2 trillion to the national debt to be paid for by future generations, it is not a good bargain. But it is the No. 1 priority of the Republicans in the Senate.

In fairness to the Republican leadership and to the President, we want to see the proposal. We want to see what the President is actually asking for. There have been a lot of press conferences. The President has ads on television now. He has been visiting different cities talking about privatization of Social Security. But we need to see the law.

What we think, though, is if you want a real crisis in America you can find it, a crisis that deserves our immediate attention. Allow me to start with

health care. In the last few years—in fact, in the last 4 years—we have seen a dramatic increase in the number of uninsured Americans. Since President Bush took office, we have increased the number of uninsured Americans, those without health insurance, from 40 to 45 million. And the cost of health care has skyrocketed in America.

What is being done by this administration, by this Congress, to deal with the skyrocketing cost of health care? Virtually nothing. Why? Because in order to tackle this issue, you have to acknowledge the obvious. The market forces are at work, and the market forces are killing us.

The cost of health insurance continues to go up every year; the coverage goes down. Fewer and fewer people can afford it. Businesses are seeing these costs skyrocket, and they cannot be profitable because of these costs or they have to cut off health insurance. That is the reality.

The business leaders I speak to in Illinois, large and small, all tell me the cost of health insurance is the No. 1 crisis they are facing. Why isn't that on the list of the Republican leadership, to deal with the cost of health insurance and this health care crisis?

We believe on the Democratic side, and have a legislative proposal, to give tax credits to small businesses that do the right thing, that protect their employees with health insurance. That, to me, is a good tax reform. It accomplishes exactly what we want. It strengthens small business, the No. 1 generator of jobs in America, and helps them when they do the right and responsible thing by covering their employees. There are a lot of tax cuts people are talking about. You have heard a lot of talk on this floor about them. But this is one that makes eminent sense.

We also need to do something with the related issue of the cost of prescription drugs. A lot of people, including the Governor of my State, have proposed that we import drugs from Canada. Why in the world would this great country of ours be dependent on a smaller country, an important but smaller country, Canada, for our prescription drugs?

It is because, frankly, we are not importing prescription drugs from Canada. We are importing political leadership.

The Canadian Government had the political will and courage to stand up to American drug companies and tell them they could not continue to dramatically increase the cost of drugs for sale to Canadians every single year. The American drug companies said: All right, then we won't. But this Government and this Congress will not stand up to those same drug companies. As a result, costs skyrocket in America, and they are half that cost in Canada.

We believe until this Government and this administration have the political will to represent the American consumers and bring prices down, we have no choice but to turn to Canada and other sources of reimported, safe American drugs. We support that.

We also believe we need to monitor drugs more carefully. How many times have we heard the news in the last several weeks about the Food and Drug Administration discovering that a drug that had been for sale in the United States for a long period of time is unsafe, taken from the market? You have heard it, as I have, time and again. We make certain that drug approvals in this country are going to be handled in a way that will give consumers confidence in what they are buying.

The second issue is the one of education. Many of us voted for No Child Left Behind, the President's premier education program, expecting that once we identified the problems in American schools, we would provide the resources to deal with them. It did not happen. President Bush and the leadership in Congress refused to fund, to the authorized amount, No Child Left Behind, which meant that schools that were falling behind did not have money for smaller class sizes, for after-school programs, summer programs, and tutoring. As a result, having identified the problems, we walked away from them.

We believe on the Democratic side that funding education across America is our highest priority. I just heard the Senator from Maine talk about Pell grants. I could not agree with her more. Pell grants are the way a lot of kids have a chance to get a college education. You know the story. Kids work hard in school. They graduate from college with $10,000, $20,000, $30,000, $40,000, $50,000, $60,000, $70,000 or $80,000 of debt, and these kids turn to the marketplace and say: I have to take the best paying job, if I can find one.

Pell grants mean students do not have to borrow as much money. The new rules from the Bush administration, just released, means fewer Pell grants will be available. In Illinois, 48,000 students will see their Pell grants cut because of the Bush administration proposals. And 1,450 will lose them entirely. That is not the way to encourage young people to pursue the education of their dreams, to prepare themselves for the 21st century.

We also believe, and Senator SCHUMER has been a leader on this issue, that families ought to have the tax deductibility of college education expenses. You can deduct the interest on your mortgage. Why? Because we want to encourage home ownership. Why wouldn't we say to families, you can deduct college education expenses so as to encourage your son or daughter to achieve their dreams with higher education? That is another type of tax reform which I think is very positive.

When it comes to economic opportunity, we believe we need to have a Federal minimum wage increase. The majority of workers on minimum wage are women, and the majority of those are women raising small families in a household that may or may not have a husband present. They are making great sacrifices, sometimes holding down two jobs. And for over 7 years, this administration has resisted, first in Congress, now in the Presidency, increasing the minimum wage. Try to live on the minimum wage as you know it today. It is virtually impossible. We think work deserves our dignified respect and deserves a dignified wage. We favor increasing the minimum wage.

We also want to deal with the exporting of American jobs overseas. Lou Dobbs talks about this all the time. You know what is happening. Good-paying manufacturing jobs are leaving America. Why are they going overseas? Well, sadly, our Tax Code rewards companies that send jobs overseas. That is wrong.

Secondly, we are not calling in the trade police on the countries that are violating trade practices and trade treaties. So when China manipulates its currency so it puts American businesses out of business and workers on the street, we do not hold them accountable.

The Democrats believe that should be a legislative priority. If we are going to have good jobs for our workers and those coming out of college, we have to stand up and fight for the jobs that are leaving America. That is a critical element.

Let me add to that list. I said at a press conference today, and I believe it, the political tsunami that is about to hit us in the United States relates to pensions and health care for retirees. Think about how many people in America worked a lifetime believing if they paid out of every paycheck a certain amount of money, that when they retired they would have a private pension plan taking care of them—thousands and thousands of Americans.

What is happening today? Those companies are going bankrupt. Those companies are in a position where they are trying to restructure and walk away from their pension requirements, walk away from health care retirements. The system we have set up in this country is not adequate to the task. So if we want to make certain these Americans have the retirement they planned on, we need real leadership here in Congress.

The last issue I will mention today has to do with reforming voting in America. I think the last election was better than the one before, not in the outcome—I saw that differently—but in the way it was handled. Yet in the State of Ohio, in my State of Illinois, in States around the Nation, voters walked to the polling place and many of them ran into obstacles they should not run into. We ought to make voting easier in America.

When an American citizen does the right thing and goes out to vote, we ought to say they are going to have a consistent law, a consistent standard applied to them, whether they live in Ohio, Illinois, Florida, Nevada, or the

State of Washington. I think that is something we can do and should do.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. Six minutes.

Mr. DURBIN. I thank the Chair.

Madam President, I would like to close on this note: There is a lot of discussion here, starting with the President's inaugural, about the whole concept of an ownership society. I think this is going to be the driving philosophy and the driving political force behind the Republican agenda. The concept is alluring because the concept says: Wouldn't you want to control your own future? Wouldn't you like to own your future as opposed to depending on the Government? You cannot be certain that Congress and the Government will come through for you. So wouldn't you rather own your own future?

Boy, that has a lot of appeal, particularly to young people who feel invincible, that just given a chance: Let me take the money, let me invest for my future, let me make these decisions. That is not a bad quality. It is an independence that we encourage in individuals, and it is certainly one that I support. But we should not overlook the obvious.

At the heart of the ownership society is the basic belief that we should just remember that when it comes to America, we are all in this alone. I do not think that is true. I think history tells us that standing alone there are some things we can do but other things we cannot do.

If you want to be successful in America, you need good health. Can you control your own fate when it comes to health care? Only if the system treats you fairly. If you happen to be somebody with a preexisting condition and no insurance company will offer you coverage, you are not likely to be treated fairly. If you happen to be one who comes from a family with some history of mental illness, you will find rank discrimination by hospitalization insurance companies right now.

The point I am making is this: We have decided that to make certain people have a chance in America to succeed when it comes to health care, there will be rules of the game, there will be laws in States, and laws in the Federal Government and agencies to enforce them. Ownership? Yes. To have ownership of your future, you need good health care. To have good health care, you need to have a government standing behind you and protecting your right to fair treatment when it comes to health care.

How about education? Do you want to go it alone with the ownership society? Well, you may need a Pell grant to get through school. I borrowed money from the National Defense Education Act to get through college and law school. Students find, over and over again, were it not for Government programs, they might not be able to go to school. You want to own your future? Then you need to have leadership at the Federal, State, and local level to give you the chance to borrow the money.

What about your pension that you spend a lifetime paying into, believing you own that? That is not Government. I own that. And then the company disappears or walks away from its obligation to you. What fighting chance do you have? None, unless there is a law that protects you and an agency that will enforce that law.

So when you hear this alluring prospect of an ownership society, understand we value individual freedom on both sides of the aisle, but we also understand that in many instances the strength of our Nation is when we stand together—for fairness when it comes to health care, for opportunity when it comes to education, to have protection when it comes to your pension and your future.

We need a balance. Walking away from Government, as an evil entity, is ignoring the fact that Government, in many instances, is just the American family at large. As my wife and I care for our children, we care for others in this country and those who are shortchanged by this system and who are not protected. Even if it does not affect me directly and personally, it affects this country, and it affects my future.

So I hope we can find some balance. I hope, when it is all said and done, we do not get so caught up in this alluring notion of the ownership society that we forget, as we are learning with our military, we have learned in our history, there are times when we need to stand together as a nation for fairness and for justice. We say here is security, opportunity, and making certain people have responsibility in their actions.

Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Alaska is recognized.

Mr. STEVENS. Madam President, our time is almost up.

I am delighted to have heard the comments of the Senator from Illinois. I remember so well when we faced the problem of dealing with Federal employees back in the 1980s. We determined that a thrift plan was necessary. We encouraged members of the Federal employee workforce to set aside a portion of their income. For every $2 they set aside, the Federal Government agreed to match it with $1.

I think this thrift plan has proved to be a decisive factor in maintaining the employment of key employees because it gave them a chance to reach out and be part of the general economy, to invest in the issues that were covered by the thrift plan management group. I do believe it has been a successful venture.

I hope the exploration we make of the President's suggestion leads to a similar type of circumstance, to a similar development of the opportunity for everyone covered by Social Security to similarly participate in funds that are part of the general stock market, part of the general investments of the United States. So many investors now in our country participate in that way.

## ORDER OF BUSINESS

Mr. STEVENS. Madam President, if there is no further business to come on this side—and I do not think there is—I yield back the remainder of our time and ask for the regular order.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Madam President, I yield back the remaining time on our side.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## EXECUTIVE SESSION

### NOMINATION OF CARLOS M. GUTIERREZ TO BE SECRETARY OF COMMERCE

The PRESIDING OFFICER. Under the previous order, the hour of 3 o'clock having arrived, the Senate will proceed to executive session for consideration of Executive Calendar No. 1, which the clerk will report.

The legislative clerk read the nomination of Carlos M. Gutierrez, of Michigan, to be Secretary of Commerce.

The PRESIDING OFFICER. Under the previous order, there will be 2 hours of debate on the nomination, with 1 hour of debate under the control of the Senator from Alaska, and 1 hour of debate under the control of the Senator from North Dakota.

The Senator from Alaska.

Mr. STEVENS. Madam President, it is my intention to make a statement presenting the nominee's qualifications and the consideration the Commerce Committee gave to this nomination, to be followed by time that I will yield to the Senator from Hawaii, Mr. INOUYE. I hope that will be acceptable to Senator DORGAN. His time would start following Senator INOUYE's time, who I understand is on the way to the Chamber.

This was the first nomination that came before the Commerce Committee after I became chairman. President Bush nominated Mr. Carlos Gutierrez to be Secretary of Commerce on November 29, 2004. Mr. Gutierrez is the chairman and chief executive officer of the Kellogg Company, a major food products company based in Battle Creek, MI. The incredible story of how he got there, rising through the ranks, is a testament to the American spirit.

Shortly after Fidel Castro assumed power in Cuba during the Communist revolution, Carlos Gutierrez and his

family fled their native country. They arrived almost penniless in Florida and, after several years, eventually settled in Mexico City. There at the age of 20, Carlos Gutierrez took a job selling cereal out of the back of a van to small grocery stores.

With a lot of hard work, 10 years later, he was general manager of Kellogg's Mexico division. Fifteen years after that, he was running the whole company. It is a great American success story by any measure.

Mr. Gutierrez's nomination comes before the Senate at a time of significant change in the American economy. The shock of September 11, 2001, a series of corporate scandals, and the spending pressure of the war on terror, including the Iraq conflict, have taken their toll.

However, the President's economic stimulus program, centered around tax relief, is helping our economy turn the corner. The economy has created more than 2.4 million new jobs since August of 2003—15 straight months of job gains. The unemployment rate is at 5.4 percent, down from 6.3 percent last June, and is below the average of the 1970s, 1980s, and 1990s. After-tax income has risen more than 10 percent since the end of 2000, and household wealth is now at an all-time high. Even the stock market has shown strong gains in recent months.

Secretaries of Commerce spend much of their time promoting American business at home and abroad. If confirmed, Mr. Gutierrez will have an impressive record of growth at his disposal.

There is much more to the Department of Commerce than representing America's economic interests. Most of the Department's budget is devoted to the National Oceanic and Atmospheric Administration. NOAA's role in predicting tsunamis was not well known outside of the Pacific coastal States before last month's devastating tsunami in Asia. The administration recently announced a strong proposal to improve detection and response to tsunami events along the U.S. coast. NOAA will be the lead in this critical endeavor.

Mr. Gutierrez has probably already learned more about fisheries than he ever expected. If confirmed, he will learn much more. The recent report of the U.S. Commission on Ocean Policy reaffirms the important role that domestic fisheries play in our society. Fisheries create jobs in rural communities and provide valuable protein in the world's food supply. The report of that commission highlighted the need to manage all fisheries in a sustainable, regional manner. And that is exactly what has taken place in the State that the occupant of the Chair and I have the honor to represent. Our State, with half the coastline of the United States, has led in developing new policies to protect and preserve the reproductive capability of the fisheries off our shore.

I commend the President for his Executive order creating a Committee on Ocean Policy within the White House. Those of us on the Commerce Committee look forward to working with the President and Mr. Gutierrez to ensure that our Nation's fisheries are managed sustainably, responsibly, and regionally.

On January 5, Senator INOUYE and I held a hearing in the Commerce Committee on this nomination. Mr. Gutierrez answered a variety of questions at the hearing and has since responded to many more written questions. The next day, the committee voted unanimously to report this nomination to the full Senate. I am here today to recommend the Senate's quick confirmation of this nomination.

I thank Mr. Gutierrez for his willingness to serve our Nation and the Department of Commerce, and I join in congratulating the President on this fine nomination.

Mr. Gutierrez has my strong support, and I do urge the Senate to vote to confirm this nomination as quickly as possible.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. INOUYE. Madam President, I ask unanimous consent to speak for 4 minutes.

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

Mr. INOUYE. Madam President, I rise in support of the confirmation of Mr. Carlos Gutierrez to serve as our Nation's Secretary of Commerce. As Secretary of the Department of Commerce, Mr. Gutierrez will take over the helm of a very diverse department, for example, responsible for counting fish as well as people, predicting the weather, developing and promoting standards, technology, and promoting fair trade. This is a very difficult and complex appointment, but I believe Mr. GUTIERREZ's impressive background and experience will serve him well in this position.

He was born in Cuba. Mr. Gutierrez left Havana in 1960, shortly after Fidel Castro took power. Although he has no college degree, through hard work and perseverance, he rose from delivering corn flakes to small stores in Mexico City to the moment when he took over Kellogg's cereal and convenience food empire.

While at Kellogg, he revitalized the company and put it on a new path of success. Mr. Gutierrez will face a variety of demanding challenges during his tenure. But few are greater than addressing the administration's current record on trade. Just this month, our trade deficit hit an astounding and recordbreaking $60.3 billion, and I am certain that all of us will agree that this is entirely unacceptable. I would like to see the new Secretary lead the Department in an innovative and comprehensive effort to reverse the current trend. I can assure Mr. Gutierrez that this committee will be a committed partner in such an effort.

I urge my colleagues to support the confirmation of Mr. Carlos Gutierrez to serve as Secretary of Commerce.

I yield the floor.

Mr. STEVENS. Madam President, I yield such time to the Senator from Montana as he may desire to use.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I thank the chairman of the Commerce Committee. I rise in strong support of Carlos Gutierrez as the next Secretary of Commerce. I applaud the President for this choice for many reasons. Not only is he a classic American success story, as we have heard from Senators Inouye and Stevens, but he is an example for all the opportunities that are afforded to Americans.

I am especially happy to see the President chose someone from a manufacturing background. He also has a background on the ground, so to speak. It is something to manufacture a product; it is also something to sell the product because we live in an economic system where nothing happens until a sale is made. Mr. Gutierrez understands both ends of that equation.

For a long time, and since I have been here, this is the first Secretary of Commerce who has an agribusiness background. Everything the Kellogg Company does starts in the ground. I am especially happy about that. I would hope we could work together. I have always said there is nothing wrong on the farm except we just don't get as much of the consumer dollar as we used to. We are going to work on that kind of situation.

The Commerce Committee oversees some of the most important and controversial issues that challenge this country and my State of Montana. With his commitment—I have yet to meet the man, but we have had an extended telephone call—to work with Congress on these issues, his quick response to the questions I sent to him, and the things he is going to be doing at Commerce, will put him in a position to assist many sectors of our economy. I would like to take a few moments and highlight some of them and where these issues will be discussed prominently in the upcoming session.

Let's start with one that affects my State, the timber industry and softwood lumber. Small mill operators in Montana rely on effective enforcement of U.S. trade laws, particularly against unfair trade acts, such as we have seen coming out of Canada. It is important that the Commerce Department ensures full enforcement of the trade laws in the softwood lumber sector, including selection of accurate subsidy measurement benchmarks. The 911 implementation was critical legislation. The enhanced 911 bill that

passed the 108th Congress is now law. The law authorizes $1.25 billion in grants to build out lifesaving emergency location capabilities across the country. I can remember passing the 911 bill some years ago. I said then it is probably the best step that we have taken in public safety in a long time. These grants will be administered by a joint program office run by the Department of Commerce and the Department of Transportation. Basically, what it is, on your cell phone, you dial 911 to get emergency. Many years ago, that call did not know where to go. It could have gone anywhere. Today, it goes to the nearest first responder or communications center, no matter where you are in the country. They can also locate you.

ICANN reform. I am concerned about the organization that manages the Internet critical domain system. ICANN is falling victim to a little bit of a mission creep, turning into a mini-international organization. ICANN should retain its focus on technical coordination, which makes me all the more concerned that the Department of Commerce plans to abandon all oversight of ICANN next year. I urge the Secretary to review that issue closely and get back to Congress.

Our Nation's spectrum policy remains outdated, and I look forward to working with the Secretary in reforming that to keep pace with the communications revolution. Broadband expensing; the Hollings manufacturing extension partnership program; it is important that these programs move forward, with a good deal of interest coming from his Department.

Again, I want to reiterate my support for Mr. Gutierrez's nomination. I look forward to working with him on many of the challenges that my State and this country face under a vast umbrella called the Department of Commerce. That is what makes our committee probably one of the most exciting committees of any that operates in the Senate. I heartily support his nomination. He should be confirmed.

Mr. President, again, I applaud the President for his choice. Mr. Gutierrez certainly has a classic American success story and can be looked at as an example of how great our country really is and the opportunities it presents.

I am especially happy to see the President has chosen someone with a manufacturing background. I believe Mr. Gutierrez's tenure at the Kellogg Company will bring an important insight to the Department in an area that certainly needs attention.

The Department of Commerce oversees some of the most important and controversial issues that challenge my State of Montana. I appreciate Mr. Gutierrez's commitment to working with Congress on these issues, and his quick response to my questions following his hearing in the Senate Commerce Committee.

Mr. Gutierrez will soon be in the position to assist many important sectors of our economy. I would like to take a few moments to discuss some of the challenges, priorities and issues faced in my State and many others.

As you know, the U.S. timber industry jobs and operations, including small mill operators in Montana, rely on effective enforcement of U.S. trade laws, particularly against unfair Canadian lumber imports. In evaluating the extent of Canadian timber subsidies, for example, it is imperative that the Commerce Department ascertain the true market value of Canadian timber in comparison to timber pricing data that reflects full value. It is important the Department ensures full enforcement of the trade laws in the softwood lumber sector, including selection of accurate subsidy-measurement benchmarks. Mr. Gutierrez has indicated his support of full enforcement of trade laws in the softwood lumber sector and I applaud that support.

Mr. President, during my time as the Chairman of the Communications Subcommittee, I made it a priority to move forward and implement the deployment of universal broadband. Along with my colleague Senator JAY ROCKEFELLER we have pushed for legislation that would allow for broadband expensing. As you may know, broadband expensing would allow companies to accelerate depreciation of capital-intensive broadband equipment. I am hopeful the Department will provide assistance in passing this legislation as part of the President's vast broadband vision.

I also would urge the Secretary to devote his personal attention to an important issue regarding the future of the Internet. I am referring to the security of the Domain Name System, which is what ensures that each website address in the Internet resolves to a unique website reliably and securely. It is vital for the future of e-commerce, and those parts of the economy that increasingly depend on it, that this process work flawlessly. During the Clinton administration, a private non-profit company known as the Internet Corporation for Assigned Names and Numbers, or ICANN, was established to oversee the real technical challenges associated with managing the Domain Name System during a time of explosive growth and political challenges.

However, I am concerned, and I know some of my colleagues are as well, that ICANN may fall victim to ''mission creep'' in this case, the tendency for it to turn into a mini-international organization, and all the political baggage that comes with that. If so, ICANN's actions could potentially go well beyond the narrow technical mandate that was envisioned for it at its creation. ICANN currently is subject to an agreement with the Commerce Department, and I am concerned that not enough high-level attention in the Department gets paid to this issue especially since, as I understand it, the Department of Commerce plans to abandon any and all oversight role over ICANN some time next year. I hope the Secretary will review this issue carefully and with all due attention to the national interest and to the interests of Internet stakeholders everywhere.

The U.S. Government has played a crucial and positive role in the creation of the Internet and in Internet governance, and I do not think that such a decision as this should be taken without thorough review and understanding of its implications. I hope that Secretary Gutierrez will take the initiative to understand this vital issue and consult with Congress closely on it in the coming years.

Finally, I would like to voice my support for the Hollings Manufacturing Extension Partnership which is administered at the Department of Commerce. Montana is a rural State but we have needs and opportunities that the Hollings Manufacturing Extension Partnership has addressed. In recent years, I have grown concerned for the programs advancement, but I am hopeful Mr. Gutierrez, with his manufacturing background, will see the important role the program plays in small States. It is important the Department ensures small manufacturers have access to technical and information resources to allow them to remain competitive.

Again, I would like to reiterate my support of Mr. Gutierrez' nomination and I look forward to working with him on many of the challenges my State and the country are faced with under the vast umbrella of the Department of Commerce.

I yield the floor and thank the chairman of the Commerce Committee for giving me this time.

Mr. STEVENS. Mr. President, we have no further speakers on this side. I reserve the remainder of our time.

The PRESIDING OFFICER (Mr. VITTER). The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, it is my intention to support the nomination of Mr. Gutierrez to be the Secretary of Commerce, an important position in this administration and for our country's economic well-being. However, before I do, I want to call the attention of the Senate to some important issues.

I come to the floor to speak at some length about a very serious problem: the burgeoning U.S. trade deficit. This is a deficit that fundamentally weakens this country, a trade deficit that last month alone was $60 billion, a trade deficit that will be something over $600 billion for the year 2004, when we finally get the year-end numbers. Despite this growing crisis in international trade, the Congress, the President, and virtually all of the official Government, seems to be willing to snore through all of this and pretend it does not exist.

I think it is fitting that we discuss this at some length at a time when we are putting a new Commerce Secretary in place.

Before I do that, let me talk for a moment about Social Security. In recent days there has been a great deal of discussion on that issue. The President indicated that this would be one of the first items we will be confronted with. He proposes to create private accounts in the Social Security system, because he says there is a crisis in Social Security. Well, there is not a crisis in Social Security. Let me make it clear. There is no crisis in Social Security. If we have the same economic growth rates in the next 75 years that we had in the past 75 years, Social Security will be just fine.

The only way there is a crisis in Social Security—or you can at least create the impression that there is a crisis—is if you attempt to project growth rates that are dramatically lower than that which we have experienced. If you are going to project lower economic growth rates—1.8 percent, for example—over the coming years, then you cannot predict that somehow investing money in the stock market through private accounts is going to solve any kind of problem.

It is interesting to me that the ethic and value system in America has been that if you are going to provide for your future, you save for retirement. The President is suggesting that we should borrow $1 trillion to $3 trillion and dump it in the stock market and hope things will be all right. Even as we do that, the amendment leaked from the White House says we will cut Social Security benefits by changing the adjustment on wages and prices. The construct is this: Claim there is a crisis where there is not, and borrow $1 trillion to $3 trillion and put it into the stock market at the same time you cut Social Security benefits.

In my judgment, that is a bad policy, one we ought to resist. It is important for people to understand the Social Security system is not an investment program; it has never been that. It was created in the 1930s and signed into law by Franklin Delano Roosevelt to help the elderly escape the plague of a poverty-ridden old age. When he signed that bill, 50 percent of America's senior citizens were living in poverty. Now it is less than 10 percent. But it is not now and has never been an investment program. It is a core insurance retirement program. It is the foundation of retirement security. It is always there, not subject to risk. It is core retirement insurance. In fact, if you look at your paycheck, it says the money that comes out of your paycheck for this program is FICA. The ''i'' in the FICA is for insurance.

The President wants to confuse us by talking about investments. We have a Social Security program that is a core retirement insurance program. It has worked well for over 70 years. It lifted the hopes and lives of so many tens of millions of senior citizens out of poverty.

We have also, under the rubric of retirement incentives, created 401(k) programs and IRA programs and pension incentives, all of which represent investment accounts. I support those. But that is different than the core insurance program called Social Security. In my judgment, we ought to aspire in this Congress to be working toward Social Security-plus, not Social Security-minus. Those who say the way to build retirement security is to injure the foundation, or begin to take away the foundation that is Social Security insurance, do no favor to senior citizens. The way for us to enhance and embrace and strengthen retirement security is to build on the first, second, and third floors, not destroy the foundation.

Once again, there is no crisis in Social Security. Let me be the first to say that we are living longer, healthier lives, and so the problems that might occur 20, 40, 60 years from now in Social Security are born of success. We are living longer, healthier lives. And if you are a pessimist and believe we will have only 1.8 percent economic growth rates, which is what the basis is for suggesting there is a huge problem in Social Security—if you are a pessimist, then you can suggest there need to be adjustments in Social Security. But that cannot be a pretext for taking apart the Social Security system. That is what some wish to do. They never liked it, don't like it now, and want to take it apart. How? They want to create private investment accounts inside the Social Security system, which is a big wet kiss to Wall Street to move money that is borrowed to Wall Street and hope that somehow the social program will be solvent.

We have already had substantial experience in the last several years with economic projections by the people telling us this will work. They inherited the largest budget surplus in the history of this country and we now have the largest budget deficit in history. They didn't see it coming. They said, by the way, let's count these 10 years of surplus before they exist and give them back in tax cuts. Some of us said maybe we ought to be more conservative. These surpluses don't yet exist. The President said never mind, Katy bar the door, give all these moneys back even though they have not been realized; give them back in tax cuts.

The fact is we turned the largest budget surplus into the largest budget deficit in history. The same people who predicted success for economic failure are the people telling us we ought to take apart the Social Security program under the guise of there being a crisis.

Let me make one additional point that I think is very important. Those who tell us that we will have only 1.8 percent economic growth for the next 75 years, and therefore we have a financing problem with Social Security, also say that private accounts in Social Security invested in the stock market will yield 7 percent. Therefore, it will fix the problem. Double-entry bookkeeping doesn't mean you can pretend. You cannot say on the one hand we are going to have slow economic growth, and therefore a crisis in Social Security, and on the other hand, during periods of slow economic growth we will have 7 percent annual return on private accounts. It doesn't work that way. Third-grade math will tell you that is fundamentally wrong.

My hope is we will have a thoughtful, interesting debate about retirement security and about Social Security. I hope at the end of that debate, we will all agree that we should do nothing to undermine Social Security. If we believe that there is nothing more important than our children and taking care of them, and nothing more important than taking care of our parents when they are elderly, we ought to protect the social safety net that promotes those values.

Social Security has lifted so many in this country out of poverty. It has worked for 70 years and it will work for the next 70 years and well beyond. I for one am not interested in taking apart that which works and which makes this a better place to live. After all, those who gave us what we now have in this country, who went before us and helped build this country, built our communities, factories, and our schools, and helped increase the standard of living, expanded opportunities for our country—those are the people from whom we have inherited this great life.

If we have decided somehow that we don't have the wherewithal to continue to make this Social Security system work for them, to keep it a promise they can count on, then there is something wrong with the value system of this Congress. I don't believe that to be the case. I think at the end of the day we will all agree Social Security is a value that is important, one we will strengthen and keep.

Enhancing retirement security is important as well and, at the end of the day, we ought to have what is called Social Security-plus. We can do Social Security, keep it strong in the long term, and build further incentives for IRAs, 401(k)s, and pension programs. That ought to be our mission statement.

Let me turn back now to the issue of international trade. We have before us the nominee for the U.S. Department of Commerce. That is one of the agencies in our country that deals with trade issues.

Mr. Gutierrez, President Bush's selection to head the Department, is someone whom I will support today. But I don't want this moment to pass without all of us having to confront something that is very uncomfortable for this country, and that is we have a trade policy that is weakening America and that is in fact a ''crisis.'' I described where the crisis doesn't exist, in Social Security; but there is a bona fide crisis in international trade.

Last month, we heard a report that we had a $60 billion trade deficit—just

last month alone, $60 billion. We are told that we should expect, when all of last year's numbers are in, that our trade deficit will top $600 billion. Add to that the budget deficit of over $400 billion, and we have a combined indebtedness of over $1 trillion in this past year alone—$1 trillion. Talk about being irresponsible with our kids' future. This is it. Yet, do you hear anybody talking about the urgency of this? Not a word. Not a whisper. It is like shouting into a strong wind to talk about trade.

Well, let's talk about some of the issues related to this soaring trade deficit. I am going to go through a series of examples.

The January 10 edition of Time Magazine had an interesting article in it. It says:

> Chinese pirate companies have long been accused of illegally copying easy stuff like shoe polish and digital movies. Now General Motors says a Chinese firm knocked off an entire vehicle—and Americans could soon start buying its cars.

So let's talk about that a bit. It is reported that a Chinese firm, called Chery, has stolen production line blueprints for a GM compact car called the Chevrolet Spark. It is a car that General Motors spent hundreds of billions of dollars to develop and the copy car is called QQ. It looks like an identical twin to the Spark. The Chinese company is now offering it for sale in China for $3,600, a third less than the General Motors car.

Chery, the automobile company in China, has now announced plans to sell five different models, including a sport utility vehicle, in the U.S. It teamed up, apparently, with Malcolm Bricklin, who brought the Subaru to America in the 1960s. Their plan is to import up to a quarter of a million Cherys a year starting in 2007. The Chinese want to send us a quarter million Chinese cars in a year.

Well, what to make of that? Let me describe a trade agreement that our country made with China a while back. We had a bilateral trade agreement with China. This is a country that had a large surplus with us. Our negotiators negotiated a deal with China. Inexplicably, they agreed to this. They negotiated a deal where the Chinese can impose a 25 percent tariff on any United States cars we ship to China.

But on any Chinese cars sent to the United States, we impose only a 2.5-percent tariff. So our negotiators said to a country with which we have a giant trade deficit: We will agree with you that you can impose a tariff on bilateral automobile trade that is 10 times higher than that we will agree to impose: 2.5 percent on Chinese cars coming into our country, 25 percent on U.S. cars that we try to sell in China.

You ask yourself: Who on Earth would have done that? I don't have the foggiest idea. Our trade negotiators did it. They apparently wear blue suits, they have tiny little glasses, they are supposed to think, probably have advanced degrees. And yet they close a door somewhere in a private room, someplace in secret, and reach a deal that says to the Chinese: on bilateral automobile trade, you go ahead and impose a tariff 10 times the tariff we will impose on automobiles between China and the United States.

Guess what. We sell very few cars in China. We cannot get them in, and the Chinese, having apparently stolen the designs on a new compact car from General Motors, are set to send us a quarter of a million cars.

Should we perhaps find out who negotiates this sort of incompetence so we make sure they never again negotiate on behalf of our country because this is not some theory?

This is about jobs. When you do this, it means you are reducing America's job base and enhancing the job base in other countries.

On a related note, in a recent year, we saw 690,000 Korean automobiles come to the United States to be sold in the United States. Guess how many American cars we sold in Korea? We sold 3,800. So Korea sent us 690,000, and we sold them 3,800.

There was a time during this period when Korean consumers seemed to want to buy a pickup truck called the Dodge Dakota. Several dozen orders for Dodge Dakota trucks were coming into Dodge dealers in Korea. Guess what. The Korean government decided to announce that the Dodge Dakota wasn't safe, because it was capable of having a topper installed in the back, and that wasn't customary in Korea. So they did a big splashy announcement, and before you knew it, all the orders were cancelled. Korean consumers got the message.

So in Korea they want to sell their cars in the American marketplace, but they do not want our cars sold in Korea. Will we say to the Koreans or the Chinese, for that matter, that either your market is open to our products, or you are going to have to see your products in Zambia or Nigeria? I don't think so because our country does not have the nerve, strength, will, or backbone to stand up for America's economic interests, for American workers, American businesses, and American jobs.

I want just one Member of Congress, in the House or Senate, to justify this to me—just one. Or to justify the circumstances of mutual automobile trade with China by which we agreed with China that we will allow them to impose a tariff that is 10 times ours on bilateral automobile trade. Just one person I would like to stand up and say: Yes, that makes sense. We know it doesn't make sense. We know it undercuts American workers. It moves American jobs overseas, and yet no one seems to care very much about it.

Here is another item in the news. There is a new report that talks about the export of jobs from this country to India. AMR Research estimates that the Indian information technology labor force will be larger than 3 million by 2010, and half the workers will be performing jobs for U.S. companies.

Let's talk for a moment about that: these information technology jobs that are being outsourced to India are good jobs. But there are some who think that this outsourcing is a good thing. In fact, the President's economic report to Congress said that, for example, having Indian radiologists reading x rays of U.S. patients would be a good thing.

What will happen to the 1.5 million Americans who will lose their jobs in information technology services to the country of India?

Well, one thing they will not be doing is producing merchandise for export to India. In 2003, we had a trade deficit with India. That same year the average duty, the average tariff on goods that we were to sell to India was 30 percent. According to the U.S. trade ambassador's office, India's economy is one of the most closed in the world and, thus, India's tariffs remain among the highest in the world.

Now the trade ambassador's office says the Indian economy has the most potential for U.S. exports. I expect that is true, because India has 1 billion people. One out of six consumers on the planet lives in India. It is the second most populous nation in the world. Yet where does it list on the U.S. export markets? Second, 5th, 10th, 15th, 20th? No, 24th.

In fact, we export nearly twice as much to Peru as we export to India. And yet we see all of these reports now about American jobs being sent to India. Apparently, the only thing we can send to India are jobs, not goods. India has a 105-percent tariff on cars and motorcycles—in fact, we cannot get motorcycles into India—40 percent on oranges, over 100 percent on raisins, 30 percent on soybeans, 100 percent on durum wheat.

You know, you can't have balanced trade these days, even if you want it.

A family in Illinois this year decided to do something different for Christmas. They decided they were going to ban China from under their Christmas tree. The mother decided that she was going to buy U.S.-made Christmas gifts. Peggy and Dave Smedley were going to buy American for Christmas.

Of course, that meant no iPods, no digital cameras, no tabletop football games. And in the end, it was nearly impossible for them to find the Christmas gifts they wanted for their children. They found a Monopoly board game that appeared to be made in the U.S. but they discovered the dice actually came from China. Their son wanted American-made boots, and Peggy Smedley looked in 30 stores for boots that were made in America before giving up. The Smedley kids were concerned they might not get any presents at all for Christmas because of their mom and dad deciding they wanted to buy American.

The 13-year-old Smedley son said he did not know what to expect because ''I

have never bought American before,'' which I suppose is an innocent comment from a 13-year-old kid about the world in which we live.

Levis used to be all American. They are gone. In fact, I am told that the Levis Company does not make any Levis anymore. The Levis Company makes no Levis. All the Levis are made under contract by contractors.

The Christian Science Monitor reported the other day something else that I thought was kind of interesting. One would have thought when they walked around with a pair of cowboy boots that they were walking in an all-American pair of shoes, but last month I noticed in the Christian Science Monitor even the cowboy boots now sport ''made in China.'' Tony Lamas, top of the line cowboy boots, inside the label it may read ''made in China.'' Thirty-five to 40 percent of these cowboy boots have now been outsourced.

I have spoken often of Fig Newton cookies. It used to be that Fig Newton was the all-American cookie. Well, next time somebody says, let us have some Mexican food, just say, give me a Fig Newton, from Monterey, Mexico. By the way, Kraft Foods moved the production of Fig Newton cookies to Monterey, Mexico. So eat a Fig Newton and you are eating Mexican food.

Fruit of the Loom used to be all-American underwear but not any longer. They are gone. Levis are gone. Huffy Bicycles are gone. Schwinn Bicycles are gone. Little Red Wagon Radio Flier is gone. They were all American, all made by Americans, all represented jobs for American families, and they are all gone.

Why is all of this happening? Well, what has happened is multinational corporations have discovered there are somewhere around a billion people available on this globe who work for a very small amount of money. There is someone in Indonesia today who is making a pair of shoes. There is 24 cents direct labor in that pair of shoes that will be sold in Pittsburgh, Fargo, or Los Angeles for $80 a pair, and that woman named Shadisha is going to be paid 24 to 30 cents an hour.

There is someone in China today who is making Huffy bicycles. That man or woman took the job of someone in Ohio who was making $11 an hour, plus benefits. They got fired. They lost their jobs because the Huffy bicycles were moved to China and now workers in China are paid 33 cents an hour. They work 7 days a week, 12 to 14 hours a day making Huffy bicycles.

The Little Red Wagon Radio Flier Wagon that has been made in American for over a century is gone. It is because corporations have discovered there are a billion people who will work for very little money. In some cases, they employ 12-year-olds. They work 12 hours a day. They pay them 12 cents an hour. If my colleagues do not believe it, I can show them.

The question is, What does all that mean to our country? What does it mean to the world's strongest economy? What does it mean when one hollows out the manufacturing base of a country such as the United States? What does it mean when we say to American workers that there is a new day and a new competition, when we say to the American workers, yes, for a century they fought for rights, some lost their lives in the streets of this country fighting for the right to organize; they fought for the right to work in a safe workplace; the American people fought for the right to understand that corporations and factories would not pump effluents and poisons into the air and water; we fought for child labor laws so 12-year-olds would not be sent down into the mines or into the factories? What does it mean when we are told it is a new day and none of those things matter because those who produce can produce elsewhere where no restrictions like that apply?

A kid can be hired and he can be worked 7 days a week and paid pennies. And it is said to the American worker, you must compete with that, and if you cannot compete, we are going to outsource, and if you do not like outsourcing, tough luck.

I am just wondering how all of this adds up. This country has been a wonderful country because going all the way back to when Henry Ford made the Model T he understood that production needs customers. Even as he produced, he was hiring workers and saying: I want to give workers a decent income with which they can purchase that which we are producing. He understood he was employing his own customers.

Now we have a different set of circumstances in our country. Now we have products made by child labor, in countries that pollute their environment, and we are asked to compete with that. After 9/11, when there was a surge of demand for American flags, do you know where they came from? From overseas. The import of American flags jumped to 113 million American flags in a year. And I bet you that many of those flags were made in conditions that would gravely offend the principles that the flag represents.

I will put up a chart that shows the growth of the trade deficits over recent years, because it describes what this is all about. Year after year, we see these trade deficits growing and growing. It is as if it does not matter. Nobody here cares. Nobody here has lost their job because of these numbers. There is not one politician in America who has lost their job to outsourcing. There is not one journalist who has lost their job to outsourcing of which I am aware. So it is as if it does not exist. It is just the other people who lose their jobs. It is people who take a shower after work because they sweat all day at work working long and hard on the factory floor and they are told somehow they cannot make it.

I have talked about Huffy bicycles. I received a letter from the Huffy folks that they were upset about the fact. They were a little huffy, as the saying would go, about my discussion.

In Ohio, workers used to make Huffy bicycles. In fact, Huffy bicycles had a little decal of the American flag.

I do not know any of those folks but my guess is that they loved their jobs. They made a great bicycle. They had 20 percent of the bicycle market in America. People could buy them at Sears, Wal-Mart, Kmart. I am sure that one day when they had to go home and tell their spouse, honey, I have lost my job, that it was a painful day. They had to tell their spouse and their families: I lost this job not because I was a bad worker—I worked for 20 years for this company; I did a good job; I produced a good product—but I lost my job because my company discovered they could hire somebody for 33 cents an hour to build that bicycle.

Incidentally, that bicycle took the American flag off the front decal and replaced it with a decal of the globe once they moved production to China.

What does all of that mean? What does it mean for our country? We are running giant trade deficits with virtually everyone in the world: China, huge trade deficits. This map shows the world, and it shows in red the countries with which we run trade deficits. It is unbelievable. Here is the United States. Of course we can't run a deficit with ourselves. We are running a surplus with Australia down here. We will probably fix that soon, as soon as the new trade agreement with Australia kicks in, because in almost every case, every trade agreement we have done turned out badly for this country because we don't have the backbone to stand up for the interests of our producers.

Australia, Egypt, Belarus—hey, look, we have a bright spot over here in Belarus—these are among the very few countries with whom we have a deficit. With almost the entire world we are running very large trade deficits; virtually the entire world.

How long will that last? Mexico is a good example. We had a trade surplus with Mexico—a small one, but a trade surplus. Then we did what was called the North American Free Trade Agreement, and this chart shows what happened. Right here is the trade surplus. Then we did a North American Free Trade Agreement. We had a bunch of these economists, who cannot tell their home address and can't remember their phone numbers, give us all kind of highfalutin' predictions about what is going to happen. They said this is going to be good for America; the only thing that will come into this country from Mexico with this trade agreement is the product of low-skilled, low-wage jobs. Guess what. The three largest imports into America are automobiles, automobile parts, and electronics, all the product of high-skilled jobs, exactly the opposite of what these so-called economic experts told us.

In the meantime, what happened with our trade with Mexico? We have a

giant trade deficit, serious and growing.

Canada is another example. With respect to Canada, which was part of NAFTA as well, the trade deficit was a modest trade deficit when we started. Now it has grown into a very substantial trade deficit.

The trade deficit with China is a dramatic trade deficit and it is growing much worse. I just described part of the problem with China. You can see what is happening here to this country.

You can make a case, if you are an economist, that the budget deficit is money we owe to ourselves. You can make that case. You can't make that case with the trade deficit. The trade deficit is a deficit we owe to others in other parts of the world and will be paid inevitably with a lower standing of living in this country. It will. You cannot make any other case. That is why I come to the floor to say this is very serious and very troublesome.

I have not mentioned the Japanese. The Japanese are also a good example because every year, for well over a decade, we have had a large and abiding trade deficit with Japan. Japan, as you know, has managed trade. The result of managed trade with Japan is that the Japanese continue to keep certain of our products out, yet they want to ship all of their products to the United States.

I recall we did a beef agreement with Japan. About 15 years ago this country did a beef agreement with Japan. At the end of the beef agreement you would have thought we won the Olympics. Our trade negotiators were ecstatic, big celebration, jubilation, front page of the Washington Post, good for us. Guess what. Fifteen years after a beef agreement with Japan, a country with which we have a very large trade deficit—we still have a 50-percent tariff on beef going into Japan.

That would by any definition be a failure, but not with our country, because we have such low expectations of ourselves and such low expectations of our trade negotiators being willing to stand up for the economic interests of this country.

The list is almost endless. Wheat to China. I have spoken at great length about wheat to China, the promises of the Chinese to allow 8.5 million metric tons of wheat into China and, once again, promises that were not kept.

The list is virtually endless.

We have all these trade negotiators who go out and negotiate agreements. As I said, they wear blue suits and small glasses. My preference would be to put a uniform on them that says ''USA'' on the front, because I think they forget for whom they work half the time. But nonetheless they negotiate these agreements.

Even though in my judgment these agreements have been incompetently negotiated, they are supposed to enforce the agreements. But let me tell you what is happening in the Department.

We had roughly a $130 billion deficit with China previously. It is probably $160 to $170 billion just in the last year. Yet we have only 19 people in the Department whose job it is to enforce trade agreements with China.

We have a $66 billion trade deficit with Japan. There are only 10 people in the Commerce Department working on opening up trade markets in Japan.

We have a $13 billion trade deficit with Korea. There are 2¾ people—I don't know who the three-quarters of a person is—working to open up the Korean market.

Our deficit with the European Union is $77 billion. There are only 15 people working to open up the European markets. It is unbelievable.

As I have said, we fought for a century about the basic conditions of production and the basic rights of workers. We now accept into this country the products of working people who are told they will be fired if they try to start a labor union—just fired.

We accept products into this country that are produced by kids. We had a hearing in the Congress some while ago that was heartbreaking. It described children who, in a country far away from here, were making carpets and rugs. They were locked in buildings making these carpets and rugs. It described the conditions in which the employer took gunpowder and put it on the fingertips of these children and lit the gunpowder to produce scarring, so these young children, using needles to sew these carpets, when they stuck their fingers would not be injured. The scarring would allow these children to be more productive.

Is there an admission price to the American marketplace? Have we decided the 1 billion-plus people around the world under virtually any conditions of production are acceptable for multinational corporations to seek out and to employ to produce products that will be shipped into our marketplace? Is that what we want? Do we believe that is in the long-term economic interests of this country? Do we understand that it will injure this country's long-term economy? It will mean that we will hollow out not only the manufacturing sector but also the middle class in this country, because the jobs they used to expect, the manufacturing jobs that would pay well, with benefits, are not there. They have been outsourced for a quarter an hour or 50 cents an hour.

Those who talk about these issues are often called protectionists; xenophobic isolationist stooges who just don't get it.

The fact is, I am interested in protecting the economic interests of this country. No, I am not interested in protecting Americans from fair competition. I think competition represents something that is important to our producers as well because it makes them better producers. But fair competition is critical. I don't believe producers or workers in this country can or should be linked to competition with those in other parts of the world who can produce in circumstances where they pollute the air and water, hire children, pay pennies, and work in unsafe plants. That is why on trade agreements we have fought on the floor of the Senate to add provisions dealing with environment and labor, and we have been rebuffed at every circumstance and at every turn. We are seeing the results of that now—day after day after day.

I want to talk just for a moment about something else that Mr. Gutierrez will inherit at the Commerce Department. I know it is not quite the important issue that China, the European Union, Mexico, Canada, and Korea are with respect to trade, but I want to talk for a moment about Cuba.

Cuba is 90 miles off our shores. It is a Communist country. The fact is, we do business with Communist countries. We sell and buy from China, a Communist country. We do the same with Vietnam. We do that because our country's official policy is engagement through trade and travel. That is the way to move these countries in the right direction. We believe that very strongly. Republicans and Democrats claim that to be the case.

It seems to be different, however, with Cuba. Although we do business with Communist China and Communist Vietnam, Cuba seems somehow to be different.

Then Senator John Ashcroft and I offered an amendment on the floor of the Senate which became law. It became law after 40 years of an embargo in which we couldn't sell a thing to Cuba. Senator Ashcroft and I said it is immoral to use food and medicine as a weapon; that we ought to be able to sell food into the Cuban marketplace. So we got it passed. The provision was that the Cubans had to buy food with cash. But, nonetheless, we got it passed.

The Cubans have purchased nearly $1 billion worth of agricultural products from American farmers. But some in this administration have never liked that, and they are doing everything they can to derail and try to stop the sale of agricultural products into Cuba. We have had farm fairs and agricultural fairs in Cuba. The Farm Bureau, the Farmers Union, and American farmers and ranchers have gone to Cuba. Cuba has bought nearly $1 billion worth of agricultural products from this country.

Let me tell you what has happened. At an organization called OFAC, the Office of Foreign Assets Control, they have been doing everything conceivable to stop people from traveling to Cuba—yes, even to travel to sell agricultural products—and to stop the sale of agricultural products into Cuba.

I want to give an example of the absurdity of this. This is a young woman, Joni Scott, who is looking at a Bible. She is a wonderful young woman, a Christian woman, who went to Cuba to

distribute free Bibles. Guess what happened to this young American woman who went to Cuba to distribute free Bibles? Our Treasury Department tracked her down and tried to slap her with a $10,000 fine. What was her transgression? Trying to distribute free Bibles in Cuba.

Or, I could show you a picture of Joan Sloat who joined a Canadian bicycle tour. What was her transgression? This 76-year-old grandmother rode a bicycle for 10 days in Cuba. They wanted to attach her Social Security through our own Treasury Department. The Office of Foreign Assets Control tracked her down and levied a big fine. What they are doing is unbelievable.

The Office of Foreign Assets Control in Treasury is supposed to be tracking the funding for terrorists. But let me describe the way they are using their assets. Twenty-one people down at the Office of Foreign Assets Control are tracking American citizens who are suspected of taking a vacation in Cuba. They are under suspicion of taking a vacation in Cuba—21 people. They have four people tracking Osama bin Laden's financial network. It is unbelievably dumb—the allocation of resources in this manner.

Why do I raise this? Because in the last 2 months or so the administration has decided they want to shut down the agricultural sales that do exist and can exist legally by reinterpreting when payment must be made and trying to create a circumstance that will wave off those who want to sell into Cuba.

Mr. Gutierrez and I had a discussion about that when he came to see me. He is probably going to have to follow the administration line. It is that our farmers ought to be penalized and ought to be prevented from selling into the Cuban marketplace. The European farmers can sell there. The Canadian farmers can sell there. We have a natural advantage to sell into that marketplace because it is closest to us. But this administration wants American farmers and ranchers to pay the cost of their foreign policy.

One day about 2 years ago, as a result of the legislation which I got passed, 22 train car loads of dried peas left North Dakota, the first shipment in 42 years into the Cuban marketplace. I am proud of that.

I think the administration ought to be ashamed at what they are doing. They are saying that trade and travel is the road to enlightenment and the road to democratic reform in China and in Vietnam, but it is not in Cuba.

It has nothing to do with common sense. It has to do with politics. The administration knows it, and they are doing everything they can to have American farmers and ranchers—for that matter, people such as Joni Scott or Joan Sloat—paying the price of that burden. It makes no sense at all.

My hope is that as we proceed, some small modicum of commonsense might infiltrate the basic trade policies that are debated both in this Congress and also in the administration.

It is not the case, for instance, that outsourcing of American jobs strengthens this country. The President's chief economic adviser said outsourcing is good. I guess it's good as long as he doesn't lose his job. The fact is, neither he nor people like him ever lose their jobs in these kinds of constructs. They never lose their jobs.

This is about working families, the kind of people who helped build this country of ours, the kind of people who value work. They are the ones who lose their jobs. They are the victims of unfair trade.

My hope is just once—perhaps just once—there would be some kind of fire alarm with a $60 billion-a-month trade deficit. But I hear nothing. There is this vast silence. I hear nothing about that being a crisis. All we hear is Social Security is in crisis, which, of course, is not the case.

My hope is that perhaps we can find a way in the coming months, we can wake up to the fact that there is a crisis in trade, and perhaps have the President call an emergency meeting of policymakers and decide what we do about this. But there is this vast silence about it. Nobody wants to talk about it. Again, I suspect it is because nobody here is losing their jobs. But this country will not long remain a world economic power if it doesn't put its fundamentals in order.

There is a wonderful book called ''The Lexis and the Olive Tree'' written by Tom Friedman. In it, he makes the point that just because there is a run on a bank, it is not about whether the bank is solvent or has a problem, it is about whether people perceive it to be solvent. He makes the point that market traders always perceive strengths and weakness. And when they move against your country and against your currency, beware.

This country cannot long exist with a $1 trillion annual shortfall. In both budget deficits and trade deficits, the fundamentals are out of line—completely out of order—and everyone here should know it. Yet we are waltzing around here acting as if nothing is happening. That doesn't serve this country's interest. We know better. The American people know better. Our trade policies are in serious trouble and deserve our full attention.

On behalf of American workers, on behalf of American businesses, and on behalf of the future of this great country, we owe it to our kids, we owe it to our future to address this important issue.

Ms. CANTWELL. Mr. President, I wanted to let my colleagues know briefly of the reasons why I support the nomination of Carlos M. Gutierrez to be Secretary of Commerce. The Senate will vote on this nomination later today. I had the opportunity to sit down and speak with Mr. Gutierrez at length. While he has limited experience with matters handled and regulated by the Commerce Department that are important to Washington, such as fisheries, aerospace, and telecommunication, I was impressed by his general business acumen and management skills. I also found him willing to be personally engaged and to engage others on issues outside of his area of expertise. I appreciate his willingness to serve, and I look forward to working with him in the future.

Mrs. FEINSTEIN. Mr. President, I want to share my views on the nomination of Carlos Gutierrez to become United States Secretary of Commerce.

Mr. Gutierrez's rise in the ranks at Kellogg Company—from selling cereal out of a truck in Mexico City 30 years ago, to serving as the company's CEO—is truly a remarkable achievement. Such business expertise will be pivotal for Mr. Gutierrez as Secretary of Commerce. In part, for this reason, I am confident that Mr. Gutierrez is a qualified candidate for this office.

Nonetheless, I believe that it is important to take note of the breadth of agencies and issues that the Secretary of Commerce oversees.

Advancing technology, trade, and business development are just a few of the important responsibilities that the Secretary of Commerce must assume. Particularly, in my home State of California, the Secretary has enormous influence.

The Secretary is responsible for the National Oceanic and Atmospheric Administration, NOAA, which is critical to our ability to make use of oceanic and atmospheric research. For instance, NOAA operates the National Tsunami Mitigation Program, which NOAA created in 1997 and maintains in the Pacific Ocean today.

The Secretary of Commerce also oversees the International Trade Administration—ITA. In agriculture, manufacturing and numerous other sectors, trade plays a vital role in the daily lives of Californians. According to the ITA's latest data, 55,421 companies exported goods from California in 2002. Of these companies, the overwhelming majority were small or midsized enterprises with fewer than 500 employees.

I believe that strengthening our relationships with trading partners is fundamental to the continued growth of California businesses. With the Secretary's leadership, fair and balanced trade policies will help California's markets increase our export capacity even further.

I applaud the nominee's openness in his previous statements on the need for reforming specific trade policies that need improving. I hope that Mr. Gutierrez will be a force for leveling the playing field for trade in the future.

Although his role representing Kellogg Company was decidedly narrower than that of Commerce Secretary, I expect that Mr. Gutierrez will weigh every position and consequence when considering trade policy. The people of California and the United States depend on it.

Much of the Commerce Secretary's time must be spent encouraging business development. Too many jobs go overseas and I believe that a robust policy to vigorously promote job growth should be a top priority for the Secretary.

Since 2001, over 2.7 million manufacturing jobs have been lost. We have also sustained net job losses in the private sector since 2001 and household median income continues to lag. We can and must do better.

Through agencies like the Economic Development Agency—EDA, the Commerce Secretary can be a real catalyst for economic growth. By funding public works projects and innovative enterprises the EDA brings opportunity to the communities that need it most.

I hope that as Commerce Secretary, Mr. Gutierrez will aggressively protect American jobs and encourage job creation, making full use of resources like the EDA.

The responsibilities of the Secretary of Commerce are complex and far-reaching, and this will certainly be a challenging position for Mr. Gutierrez.

There is a great deal of work to be done, and I look forward to a productive working relationship with Mr. Gutierrez.

Mr. CONRAD. Mr. President, today I want to share a few thoughts on the nomination of Carlos Gutierrez to be Secretary of Commerce.

The Commerce Department has responsibility for a broad range of important issues. Managing this diverse portfolio would be difficult in the best of circumstances. But there are a number of special challenges that make the job facing Mr. Gutierrez even tougher.

Let me start with trade. A couple of days ago, the Commerce Department reported that our trade deficit for November exceeded $60 billion. Twelve years ago, our trade deficit for the entire year was just $40 billion. Now, it is on track to exceed $600 billion. This course is unsustainable. If we do not start taking steps now to address this imbalance, we could face a collapse in the value of the dollar that would spark inflation, roil our markets, and dampen our economic prospects for years to come.

I hope Mr. Gutierrez will take this issue very seriously. We need to make it clear to our trading partners that it is no longer acceptable for them to devalue their currencies to gain a competitive advantage over American producers. We need to strictly enforce our laws against unfair trade practices. We need to insist that our trading partners comply with the trade agreements they have signed with this country. And we need to forcefully advocate for global trade rules that will unequivocally benefit U.S. businesses, farmers, and workers.

I want to touch on one issue in particular. During Mr. Gutierrez's tenure as CEO, Kellogg lobbied to increase sugar imports into this country. Sugar is a vital industry in my part of the country. The sugar industry pumps $2 billion a year into the economy of the Red River Valley in North Dakota and Minnesota. So it concerns me greatly when anyone suggests we should dismantle our successful sugar program to take in more foreign sugar. I had the opportunity to visit with Mr. Gutierrez a few days ago, and he has assured me he understands that as Secretary of Commerce he would be representing all U.S. businesses, including the U.S. sugar industry, and not just the interests of sugar consuming companies.

We also face big challenges on a host of domestic issues within the jurisdiction of the Commerce Department. For example, over the next 2 years, the Congress will be revisiting the 1996 Telecommunications Act. In the 8 short years since that act was passed, we have had a revolution in communications technology that will require us to rethink many of the rules we adopted then. As we do so, it is critically important that rural areas not be left behind. I have always been a strong supporter of the Universal Service Fund and the assistance it provides to North Dakota. I remain dedicated to making sure rural areas have access to innovative and affordable telecommunications technology, and look forward to working with Mr. Gutierrez on initiatives to close the technological gap between urban and rural areas.

Carlos Gutierrez brings an impressive business background to this set of challenges. Born in Cuba, raised in Florida, Mr. Gutierrez started his career working for Kellogg in Mexico. From that start, he was steadily promoted until he became chairman and chief executive officer. As CEO, he has been credited with turning Kellogg around. It is my hope that he will have the same success in turning around our trade policy and bring the same energy to tackling the domestic challenges under his purview.

Mr. LEVIN. Mr. President, I heartily support the nomination of Mr. Gutierrez to be Secretary of Commerce. In nominating Kellogg's CEO Carlos Gutierrez to be the next Secretary of Commerce, President Bush selected a Michigander who has a wealth of business experience both in the U.S. and abroad which gives him a unique understanding of our country's role and challenges in the global marketplace. He also has a proven track record of wise budget management.

Mr. Gutierrez represents the quintessential American dream, emigrating to this country with his parents at the age of 7 from Cuba and working his way up the ranks of the Kellogg Company, starting with selling Kellogg cereal from a van, stocking the shelves of his customers, to becoming the highly respected President and CEO of a top American Fortune 500 Company. His story is as American as Corn Flakes and baseball. He is a passionate fan of both.

Mr. Gutierrez's home is in Battle Creek, MI, a medium-sized, midwestern city in America's heartland. Mr. Gutierrez has a firm grounding in many of the values and strengths that make this country great. He also has a firm grasp of some of the challenges facing American manufacturers.

The U.S. has battled for decades to open foreign markets to U.S. goods. Carlos Gutierrez knows the ropes of those markets and can provide this Nation with that invaluable experience. I have confidence that he will recommend firm action both to pry open foreign markets now closed or partially closed to American goods as well as to reinvigorate America's manufacturing base.

The leadership that Mr. Gutierrez used to turn around Kellogg's financial standing is desperately needed in this country, which has seen high unemployment, record trade deficits, and an unprecedented loss of manufacturing jobs. Mr. Gutierrez will need every bit of his experience to meet the challenges of this new job.

We are facing a manufacturing jobs crisis in our country. The U.S. lost a record number of manufacturing jobs during President Bush's first term, 149,000 of which were in Michigan. Michigan's unemployment rate stands at 7 percent, the third worst State in the Nation.

Unfortunately, this crisis has been worsened by the administration's failure to fund many of the programs that could strengthen the manufacturing sector. The Commerce Department's Manufacturing Extension Partnership program, for example, which helps small and medium-sized manufacturing companies remain competitive and has led to $8.7 billion in sales and helped create over 100,000 manufacturing jobs in the past four years, faced an 88 percent cut in the President's 2004 fiscal year budget request and a 63 percent cut in the 2005 fiscal year request.

The President also proposed eliminating the Commerce Department's Advanced Technology Program, which encourages public-private cooperation and focuses on improving the competitiveness of American companies in the global marketplace. Manufacturing jobs pay high wages, provide health benefits and offer retirement security. We cannot afford to lose these good jobs or let them leave our country. I am hopeful that as Secretary of Commerce, Carlos Gutierrez will prove to be a strong advocate for these programs.

In addition to rebuilding our base of manufacturing jobs, we need to devise a trade policy that focuses on opening foreign markets rather than employing policies that encourage jobs to move overseas or tolerating foreign barriers to our goods and expanding trade deficits.

During his time at Kellogg, Mr. Gutierrez managed several of the company's international divisions, including serving as the general manager of Kellogg of Mexico, the president and CEO of Kellogg Canada, Inc., and the

president of Kellogg Asia-Pacific. These experiences provide him with the expertise needed to address our soaring trade deficit and create a climate where U.S. products have the same access to foreign markets as we give in this county to foreign products.

The U.S. trade deficit has soared to record levels in the past 4 years. We have a failed trade policy as a nation because we have not insisted that our trading partners grant us true reciprocity and we have not forcefully implemented our trade laws.

The U.S. needs to fight much harder to open foreign markets to U.S. goods. In 2003, we had a $124 billion trade deficit with China, and it is expected to exceed $150 billion in 2004; we have a large and persistent automotive deficit with Japan; and we have tolerated currency manipulation by several of our trading partners who have rigged their currency values, making their exports artificially cheap and thus giving their companies a huge trade advantage and devastating U.S. workers, farmers and businesses.

We can reduce this trade deficit by insisting on a level playing field with our trading partners; by closing tax loopholes that provide incentives to businesses to move jobs overseas; and by supporting efforts to ensure that China complies with commitments it has made to the World Trade Organization.

We also need to adequately fund the Trade Adjustment Assistance program, which provides relief for small and medium-sized manufacturing and agricultural companies that experience loss of jobs and sales because of foreign imports. These are all areas that would come under Mr. Gutierrez's jurisdiction as Secretary of Commerce.

The nomination of Mr. Gutierrez is part of an overhaul of President Bush's economic team. I am hopeful that this reorganization also represents a new direction for the country, and that we are able to rebuild our manufacturing sector and reverse our trade deficit. Mr. Gutierrez's background at Kellogg has given him the experience to take the important steps that are necessary to begin to do that.

Mr. LEAHY. Mr. President, I am pleased today to express my support for the nomination of Carlos Gutierrez to be the next Secretary of Commerce. Mr. Gutierrez's personal history is remarkable. Born in Havana, Cuba, Mr. Gutierrez came to the United States at the age of six. He learned to speak English from a hotel bellhop and at the age of 20, he began working for the Kellogg Company as a truck driver in Mexico City. A little less than 25 years later, Mr. Gutierrez was in charge of the entire company as the chief executive officer and chairman of the board. As CEO, he quickly turned the battered and declining Kellogg into a strong, stable and increasingly profitable company.

While the next Secretary of Commerce will face serious challenges in coming years from a surging trade deficit to a depleted domestic manufacturing base to a weakened dollar—I am confident that Mr. Gutierrez is more than capable to do his agency's part in taking on these challenges. I believe that Mr. Gutierrez will bring the same type of leadership and determination to the Department of Commerce that he has shown throughout his career in the private sector.

I commend the President for making this nomination. Although Mr. Gutierrez and I may not agree on all economic issues, there is every indication that he will serve our country effectively and fairly as the Secretary of Commerce. I am proud to support his nomination.

Mr. DOMENICI. Mr. President, I rise today in strong support of the nomination of Carlos Gutierrez to be Secretary of Commerce. Mr. Gutierrez has set a great example for all Americans and has proved himself a true leader and visionary in the world of business. It is for this reason I fully support his nomination and I have no doubt he will be a truly superb Secretary of Commerce.

Carlos Gutierrez's story is truly inspiring and sets a wonderful example for all Americans. Born in Cuba, Carlos, along with his family fled to the United States in 1960 to escape the dictatorship of Fidel Castro. Eventually, the Gutierrez family chose to live in Mexico and settled in Mexico City.

At the age of 20, Carlos Gutierrez's journey through the world of business began when he took a job driving a truck for the Kellogg cereal company in Mexico City. Within 10 years, Mr. Gutierrez proved himself an invaluable asset to the company and was promoted to general manager of Kellogg's entire operation in Mexico. Only 15 years later, Mr. Gutierrez achieved the unthinkable and began running the operations for the entire company. This is truly a prime example of the American dream and definitively demonstrates Carlos Gutierrez's considerable talent for business.

I am also pleased by this nomination because of the diversity it adds to President Bush's Cabinet. This President has demonstrated a commitment to selecting Americans from all walks of life and ethnic backgrounds to serve him, and I believe that the selection of Carlos Gutierrez is a clear sign of the contributions that Hispanic Americans are making to our Nation.

I believe as Secretary of Commerce, Carlos Gutierrez will continue to display the values and leadership which have been prevalent throughout his career. I have no doubt that as Secretary of Commerce Mr. Gutierrez will be able to meet any challenge facing this country in the future.

Mr. HATCH. Mr. President, I rise to express my support for Mr. Carlos Gutierrez as our new Secretary of Commerce.

Considering the global nature of the marketplace, Carlos Gutierrez is an outstanding choice for Secretary of Commerce. Without a doubt, Mr. Gutierrez possesses the necessary skills to assume this important position. His skillful leadership has brought strong growth and success to one of the world's most notable companies. Because of his many years with the Kellogg Company, Mr. Gutierrez understands how to create jobs and foster greater opportunity for all Americans. I believe that Mr. Gutierrez will do an excellent job in creating conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship.

Consumer demand, rising sales, and increased profits are creating confidence in the growing economy. For example, in my home State, the Utah Department of Workforce Services confirms that Utah added 32,200 new jobs in 12 months ending on October 31, 2004, and the Salt Lake City-Ogden metro area topped the list of U.S. cities in the growth rate of women-owned businesses. According to the Department of Labor, Utah ranks third in terms of the largest one-year percentage gains in non-farm employment. And, just recently, Forbes magazine named Headwaters, Inc., a Utah-based alternative energy technology company, as second of the top 200 best small companies in the United States. These are just a few of many indicators proving that President Bush's policies are succeeding in creating jobs and expanding the economy.

I look forward to working with Mr. Gutierrez, as he is undoubtedly qualified and prepared to take the helm of the Commerce Department. Of course, Mr. Gutierrez has many challenges ahead of him, but I am confident that he will serve our country with dedication and distinction.

Mr. FRIST. Fortune magazine describes him as possessing ''disarming charisma, steely resolve, and an utter lack of pretension.'' The President of the United States hails him as a ''great American success story.''

It is my pleasure to support the nomination of Carlos Gutierrez, chairman and CEO of the Kellogg Company, to become America's next Secretary of Commerce.

Mr. Gutierrez is a true testament to the American Dream. From humble beginnings as a Cuban refugee, he has become one of the most respected and admired businessmen in America.

Mr. Gutierrez and his family fled Cuba when he was just 6 years old. His father ran a successful pineapple company in Havana. Then one day, there was a knock at the door. Fidel Castro's regime had named the elder Gutierrez an enemy of the state. Mr. Gutierrez's father was briefly imprisoned. The business was confiscated. Mr. Gutierrez recalls that, ''We were on a plane right after that.''

The family landed in Miami Beach in 1960. It was there that 6 year old Carlos learned English from hotel bellhops.

The family eventually settled in Mexico City, and at the age of 20, Mr.

Gutierrez took a job driving a Kellogg van selling frosted flakes to small grocery stores.

Ten years later, he became general manager of Kellogg's Mexico operations. Within 3 years, he turned the Mexico plant from the company's least productive to most productive.

After stints in Asia and Canada, Mr. Gutierrez returned to the United States in 1990, and in 1999 became Chairman and CEO of the Kellogg Company.

In 5 short years, Mr. Gutierrez has steered the cereal maker into the number one spot in the U.S. cereal market. Under his leadership Kellogg has become a food industry powerhouse with industry leading sales growth.

Those who have studied his business techniques say that Mr. Gutierrez is successful because he is able to focus in on the key issues and convey his vision to everyone—from the assembly line worker to members of the board. He believes that every American should have the opportunity to succeed.

He also believes that America is, and should be, the best place in the world to do business.

Former Governor John Engler of Michigan, who has worked with Mr. Gutierrez, rightly points out that Mr. Gutierrez would be ''the most international leader that Commerce has ever had.''

Mr. Gutierrez says that one of his proudest accomplishments was helping his son and his wife become American citizens. From one American citizen to another, I can assure him the pride is mutual.

From his remarkable biography, to his meteoric success, Mr. Gutierrez is an inspiration to all. He took the American dream and ran with it—and, I should note, without ever having finished college.

I am confident that his accumulated wisdom, knowledge and skills will make Mr. Gutierrez an effective Commerce Secretary and eloquent advocate of our economic policies and ideals.

I urge my colleagues to support the nomination of this extraordinary American.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. STEVENS. How much time is remaining?

The PRESIDING OFFICER. The Senator from Alaska has 45 minutes remaining.

Mr. STEVENS. Has the minority no time remaining?

The PRESIDING OFFICER. Three and a half minutes remaining for the minority side.

Mr. STEVENS. Is it possible to get permission to yield back the balance of the minority's time?

The PRESIDING OFFICER. The Senator may ask consent to do so.

Mr. STEVENS. I ask unanimous consent all time be yielded back.

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

Mr. STEVENS. I ask the Chair to put the issue before the Senate.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Carlos M. Gutierrez to be Secretary of Commerce.

The nomination was confirmed.

Mr. STEVENS. I ask that the President be immediately notified of the confirmation of this nominee.

## LEGISLATIVE SESSION

## MORNING BUSINESS

Mr. STEVENS. I ask unanimous consent there now be a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ALLARD. Mr. President, I would like to exercise my right under morning business to make a comment on the Marriage Protection Amendment.

Does my colleague from Montana have a question?

Mr. BAUCUS. No. If the Senator will yield, I ask him how much time he might use?

Mr. ALLARD. Less than 10 minutes.

Mr. BAUCUS. I thank the Senator.

The PRESIDING OFFICER. The Senator from Colorado.

(The remarks of Mr. ALLARD pertaining to the submission of S.J. Res. 1 are printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Montana is recognized.

## CONGRATULATING SENATOR VITTER

Mr. BAUCUS. Mr. President, first, I congratulate the present occupant of the chair on his election to serve the State of Louisiana in the Senate. I look forward to working with him, as all my colleagues do, and wish him luck while he is in the Senate. I know the people of Louisiana will be well served.

## TRIBUTE TO ZAK ANDERSEN

Mr. BAUCUS. Mr. President, I also rise—in fact, it is the primary reason I am here—to recognize and thank a remarkable individual, a member of my team who has served our State of Montana in the Senate for more than 9 years, Zak Andersen.

Zak is leaving the post as my chief of staff to go to work for a government affairs firm that represents folks in Montana and the Northwest, The Gallatin Group.

Zak is a huge fan of that American icon Bruce Springsteen, who once said: ''The door's open but the ride ain't free.'' The same could be said of Zak's last 9 years.

A graduate of the University of Montana, Zak first started working for me during my 1996 reelection campaign as a door-to-door canvasser. As a sign of things to come, he was quickly bumped up to field coordinator.

After the people of Montana, in 1996, decided to return us to represent them in the Senate, Zak came to work here in my Washington office, where he quickly moved from legislative correspondent, to assistant to the chief of staff, to legislative assistant, to legislative director, and finally chief of staff.

Zak also played a pivotal role in my 2002 reelection campaign, where again the people of Montana decided to return us, at that time with more than 60 percent of the vote.

Zak, of course, is a Montanan. He has an uncanny ability to read, follow, and know Montanans' real values—our hopes, our wishes, our fears, and our desires. And he uses that almost constantly to help our State.

Zak worked his way from field staff to chief of staff in 9 years' time. He likes to joke that he ''went from garbage band to broadband'' in less than a decade. That he did. In the process, he racked up a list of achievements too long to do justice here, but I will name just a few. Recognizing the need for action on improving our State's economic well-being, Zak spearheaded my economic development efforts and helped me organize the first ever Montana economic development summit in 2000. That meeting drew more than 1,000 people to Great Falls. That might not sound like a lot of folks back here, but in Montana it is. After that, he helped organize two more economic summits, both of which were huge successes and helped the people in our State get more good high-paying jobs.

Zak also helped me bring new businesses to Montana, companies like National Electric Warranty. He helped Montana businesses grow and expand, businesses like Zoot Enterprises and Summit Design. He should know that his efforts are not lost on the people who found good-paying jobs because of his work. Zak led the appropriations efforts in our office, during which time we got important Montana economic development projects funded, projects such as the Mariah II wind tunnel in Butte; the Fort Peck Interpretive Center, MonTec in Missoula and Tech Ranch in Bozeman.

Recognizing that methamphetamines have become a scourge in our close-knit Montana communities, Zak helped me wage a 2-year campaign—and boy it was tough; we worked very hard to get that done—to help me get five of our counties with the worst meth problems included in what is called the high density drug trafficking area, otherwise known as HIDTA. That is one of our great accomplishments, something of which I am proud, to help fight the scourge of methamphetamines. That has helped law enforcement officials in our State crack down on meth.

Zak also helped me work in this Chamber to pass big ticket legislative items such as tax cuts, Medicare improvements, and new Healthy Forest legislation. These are just a few of Zak's outright achievements. But it is the intangible abilities that I will remember most in Zak. I dare say most in our office will remember those best, too.

In particular is his amazing ability to quickly analyze an issue and break it down into pros and cons, both from the standpoint of policy and of politics. There are a lot of quick minds on Capitol Hill but Zak, to me, stands out as one of the very best, one of the brightest. Undoubtedly, that quickness of mind contributes to his sense of humor: a bit dark, extremely dry, ever present. Zak's sense of humor is rare. It is remarkable. He has used it to build bridges with the Montana delegation, to keep my office train on the tracks during some of the more bumpy times, and to mentor younger staffers as they learn the ways of working in this remarkable place.

We will also remember him for his elaborate practical jokes that often involve the whole office. But beyond that, we will remember Zak for his uncanny ability to get things done and his relentless commitment to Montana. His no-nonsense style, his can-do attitude helped me and others accomplish great things for our State and most especially for our people.

A humble guy from Helena, Zak embodies Montana—a very bright, talented, committed guy, hard working, genuine, and astute, and ever mindful of the fact that he is very lucky to be from and advocate for the greatest State in the Union. He is extremely loyal.

Zak loves his microbrews, Mr. Bruce Springsteen, a gin-clear trout stream, the Oakland Raiders, record stores, and University of Montana football. Most of all, he loves his native State of Montana.

Fittingly, one of his favorite authors is Cormac McCarthy. Many of the McCarthy books are about the American West and therefore not for the faint of heart. But they are also very real, sparsely punctuated, light on frills, heavy on matters of depth and critical thought—in other words, a lot like Zak.

As the pages of his life open to endless opportunity, we will all remember Zak: His remarkable abilities, his devotion to the State he loves; and his commitment to excellence in all that he does.

We will miss you, Zak. We will miss you in our office, but we are going to find you very quickly. You are still part of our team. And I thank you, Zak, so very much. Montana thanks you and a grateful nation thanks you for your service.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Alabama.

(The remarks of Mr. SESSIONS and Mr. WARNER and Mr. ALLEN pertaining to the introduction of S. 77 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Hawaii is recognized.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 13 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Massachusetts.

## DEMOCRATIC PRIORITIES AND VALUES

Mr. KENNEDY. Mr. President, today Senate Democrats introduced 10 bills that illustrate the priorities and values we intend to fight for in the coming months to meet our commitments to the American people. It is an agenda for a future of security, opportunity, and responsibility. The contrast with the Bush administration and the Republican leadership in Congress could not be greater. They say they are for ownership, but their vision means an America divided. In a society based on ownership, we are divided by winners and losers, rich and poor, a shrinking middle class, owners and those who cannot afford to own.

Republicans see the forces of globalization as a chance for greater profits at the expense of job and wage security for American families. Democrats are for opportunity for all. Our vision is for an America united to provide opportunity for all Americans and to fulfill the American dream.

We embrace the challenges of globalization not by lowering our wages but raising our skills to equip every American to compete for good jobs in the local economy.

I will mention three areas in which Democrats have introduced bills today that reflect our values and priorities. First, health care. It is an honor to join our Democratic leader and so many of our colleagues in introducing the Affordable Health Care Act in meeting our responsibility to the Medicare Beneficiaries Act. This Affordable Health Care Act states our strong commitment as Democrats to end the crisis in health care that affects every family. It is a downpayment on our commitment to quality, affordable health care for every American and we will not rest until that goal is achieved.

The worsening crisis in health care is caused by skyrocketing costs, declining insurance coverage, and less security for every family. Businesses, especially small businesses, find it increasingly difficult to provide decent coverage for their employees. Rising health care costs threaten the competitiveness of all American businesses. Even people who have health insurance today cannot count on it being there for them tomorrow. No American family is more than one pink slip or one employer decision away from being uninsured.

In the face of this massive crisis in health care, the administration and Congress have been missing in action for too long. The legislation we are offering today will not solve all of these problems, but it is a good start and we are committed to finishing the job. It will guarantee coverage for every child. It will lower prescription drug costs by allowing importation of safe drugs from abroad. It will improve the quality of health systems while reducing costs at the same time by adopting a modern information technology in health care.

Affordable health care is a high priority for every family and it should be an equally high priority for this Congress. We face a crisis and it is time to act. Senate Democrats are committed to guaranteeing the basic right to health care for all Americans and when we say ''all,'' we mean all.

The legislation we are introducing today cuts the special interest deals out of the Medicare Program, addresses the troubling gaps in the Medicare drug benefit. Medicare is a solid commitment to our senior citizens, not a piggy bank for special interests, and it is time to fulfill that commitment.

Second is education. Our Nation's future depends on ensuring equal educational opportunities for all children. We must keep the promise to leave no child behind. For Democrats, this is not just a slogan. For us, it is a moral commitment. This year alone, the Bush administration underfunded No Child Left Behind by $9.8 billion, leaving 4 million children behind. In contrast, we propose fully funding No Child Left Behind and also keeping our promises to disabled children by fully funding the Individuals With Disability Education Act.

We also recognize that what we do for children's early education and development does more to ensure their success later in school and later in life

than any other investment. Democrats are committed to making this investment by expanding Head Start, early Head Start, and childcare funding. At the same time, we propose improving the quality of these programs by requiring improved standards for teachers and seeing that they are supported, trained, and adequately compensated to do the job.

We also must do more to ensure that America is globally competitive by raising our skills. To be globally competitive, we must also inspire a renaissance in math and science education in America so that all Americans are prepared for the jobs of tomorrow. Today, Democrats are taking an essential first step in winning the global and math/science arms race by making college tuition free for any young person willing to work as a math, science, or special education teacher. We must make the United States first in the world rather than 29th in math and science.

Finally, when it comes to jobs, the Fair Wage, Competition and Investment Act will help restore the faith of Americans that if they work hard and play by the rules they can live the American dream.

The bill raises the minimum wage to $7.25 an hour to improve the quality of life for 7.5 million workers. Despite Democratic efforts to raise it, the minimum wage has been stuck at $5.15 an hour for 7 long years.

And the bill will restore overtime protections for the more than 6 million Americans denied overtime pay and the guarantee of the 40-hour workweek by the Republican overtime rule. It will also expand overtime protections to cover additional workers.

The Democratic bill eliminates tax breaks for companies that ship good American jobs overseas. It requires companies that send jobs to other countries to provide advance warning to workers and communities.

The bill makes significant investments in American roads and waterways, broadband technology, and research and development to increase our competitiveness, improve the quality of our lives, and create new jobs to help make up for those lost under Republican leadership.

These are the kinds of initiatives that Democrats will fight for this year—initiatives that will expand opportunity, provide a secure future for our families, and improve the quality of life for all Americans.

## THE PRESIDENT'S NOMINEES

Mr. KENNEDY. Mr. President, Jay Bybee, William Haynes, Condoleezza Rice, Alberto R. Gonzales—these four persons have three things in common. They were all high officials in President Bush's first administration. They were all key participants in the shameful decision by the administration to authorize the torture of detainees at Guantanamo and in Iraq and they have all been nominated by President Bush for higher office.

Jay Bybee, head of the Justice Department's Office of Legal Counsel, was nominated for a lifetime appellate court judgeship in the spring of 2002, before he wrote the now notorious legal memorandum redefining torture so narrowly that virtually the only victims who could complain would be dead victims. Mr. Bybee even went so far as to state that the President could simply decree that any action taken as the Commander in Chief was immune from challenge. Most people who later read that memo immediately rejected its conclusions. But not the White House.

Instead, when the Bybee nomination was not acted on by the Senate in the 107th Congress, President Bush renominated him for the same judgeship in the 108th Congress. Although we asked for Bybee's OLC writings we received nothing, thus the Senate knew nothing about the Bybee memorandum on torture, and his nomination was confirmed.

William Haynes was, and still is, General Counsel to the Secretary of Defense. As such, he had a personal role in deciding how far Defense Officials could go in interrogating detainees. But he had a problem. High-level military officers and top State Department lawyers were experienced in these issues and the treaties that governed them, and they were adamantly opposed to the extreme change in policy that he and the Secretary and the White House were seeking.

So he formed a ''working group'' of lawyers that excluded these dissenters. That working group's report adopted verbatim some of the most outrageous parts of the Bybee memorandum. In one memo, for example, Mr. Haynes told Secretary Rumsfeld that waterboarding, forced nudity, the use of dogs to create stress, threats to kill the detainee's family, and other extreme tactics not only do not violate the Uniform Code of Military Justice, but are ''humane.''

After he did that, the White House also nominated him to a lifetime judgeship on a Federal court of appeals. Fortunately, by the time the Judiciary Committee was ready to vote on his nomination in late 2003, we had become aware of some of his other controversial legal views, and the Senate did not confirm him. President Bush has chosen to renominate him, however, so the Senate will have another chance to review his role in support of torture.

Condoleezza Rice has been nominated to be Secretary of State, and we will consider her nomination later this week. As national security adviser she was clearly involved in the prisoner abuse issues, but because of the nature of her position, we know less about her role. Two of the members of the Foreign Relations Committee have voted against her nomination, and we will hear their full report in the coming debate.

White House Counsel Alberto Gonzales, as the President's chief in-house lawyer, was at the heart of the debate, inside the administration, on prisoner detention and interrogation. Although he says he can't remember it very well, he apparently was the person the CIA contacted when they wanted to use extreme interrogation methods on those whom our troops and intelligence agents detained in Afghanistan and Iraq and elsewhere. He was the one who went to Mr. Bybee at the Department of Justice to obtain the notorious Bybee memorandum justifying the use of torture. He keeps saying he doesn't recall, but his office obviously helped Mr. Bybee develop the memorandum.

When Mr. Gonzales received the memorandum, he disseminated it far and wide in the military and elsewhere, although he can't remember how. For almost 2 years, Mr. Gonzales allowed this policy guideline to stand throughout the Government as the administration's formal policy on prisoner abuse. For almost 2 years it remained in effect, producing a system of detention and interrogation that the International Committee of the Red Cross, the FBI, the Defense Intelligence Agency itself found abhorrent to the rule of law. When the Bybee memorandum finally became public last summer, Mr. Gonzales attempted to distance himself and the President from it, but he didn't quite withdraw it.

Suddenly last month, the night before New Year's Eve, so late that most newspapers could not get the story in the next day's paper, Mr. Gonzales and his Justice Department and White House colleagues decided that the memo was so clearly erroneous and its standards so extreme, that it should be withdrawn altogether and replaced by a gentler version.

Members of the Senate have asked repeatedly for the relevant documents on all this. But we have not received a single one of the documents we need.

Four Senate committees have now considered some part of this issue. The Foreign Relations Committee had a brief opportunity to question Ms. Rice last week, but apparently not enough information on her involvement was available to assess her responsibility. The Intelligence Committee is still waiting to hear from the CIA on its role in the prisoner abuses, but as far as I know nothing has been forthcoming. Despite the initiatives and hard work of the chairman, the ranking member and many other members of the Armed Services Committee, Secretary Rumsfeld and his deputies have managed to stonewall and slow-walk us right through the election, and have used a series of separate investigations to propagate the original message that it was just a few bad apples on the night shift who committed the abuses.

We now are told that there was confusion and lack of clarity in the rules on interrogation without any indication of who was ultimately responsible, and without any accountability by those we know were involved, such as Mr. Haynes and Mr. Gonzales.

That leaves the Judiciary Committee, which is now considering Mr. Gonzales's nomination to be Attorney General. What standard should we apply to him? We know that rejection of a cabinet nominee is rare. In all of U.S. history, although hundreds of nominees have been stopped in committee or withdrawn by the President, only 9 of over 700 cabinet nominees have actually been rejected by the Senate. Two of them have been nominees for Attorney General. President Calvin Coolidge's nominee for Attorney General was rejected not once but twice and both times by a Senate of his own party.

Mr. Gonzales's case is a rare case in which a nominee may have been directly responsible for policies and resulting practices that have been counter-productive, contrary to international standards and practices, harmful to our troops' safety, legally erroneous, and plainly inconsistent with the rule of law and the basic values which this administration prides itself on defending.

President Bush's Inaugural Address resounded with those values last week. ''From the day of our Founding,'' he said:

> we have proclaimed that every man and woman on this earth has rights, and dignity, and matchless value, because they bear the image of the Maker of Heaven and earth.

The choice before every ruler and every nation, he said, is:

> the moral choice between oppression, which is always wrong, and freedom which is eternally right.
>
> America's belief in human dignity will guide our policies,

he said.

> Americans move forward in every generation by reaffirming all that is good and true that came before—ideals of justice and conduct that are the same yesterday, today, and forever.

Those are lofty values, and all of us agree with them wholeheartedly. But they were abandoned by the White House in its decision on the use of torture, and our credibility in the world as a leader on human rights and respect for the rule of law has been severely wounded. The cruelest dictators can now cite America's actions in their own defense.

How can we be true to our own oath to defend the Constitution, if we confirm as the highest legal officer in the land a person who may well have encouraged our basic values to be so grossly violated?

So far, Mr. Gonzales has not been responsive to our questions in the Judiciary Committee about his role. He still has time to clear the air, and I urge him to do so.

The position of Attorney General and the issues involved in this nomination go to the heart of our Nation's commitment to the rule of law. A nominee whose record raises serious doubts about his own commitment to the basic principle should not be confirmed as Attorney General of the United States.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

## NOMINATIONS

Mr. CORNYN. Mr. President, I didn't intend to speak this afternoon, but after listening to the comments of the Senator from Massachusetts regarding four individuals, three of whose nominations are pending before this body, I believe a brief statement and indeed a brief correction of the RECORD are necessary.

I am well aware that in politics a charge unanswered is often a charge believed. Indeed, I think the practice is not too rare that some believe if you make the same erroneous charge over and over and over and over again despite the facts that eventually your opponent will tire and fail to correct the RECORD. I don't want to be guilty of that because I believe not only do the American people need to know the truth and not be misled, the nominees whose integrity has been impugned during this all too painful and sometimes even cruel process deserve better.

Obviously, the Senate in providing its advice and consent on the President's nominations should ask hard questions, and we should press for answers to those questions. But there does come a point where the process no longer becomes one that can be described as a search for the truth but, rather, becomes akin to harassment, and, unfortunately, I think that line has been approached.

Let me explain what I am talking about. The Senator from Massachusetts talked specifically about four individuals—Mr. Bybee, who is now a circuit court judge; Mr. Haynes, who is the general counsel for the Department of Defense; Condoleezza Rice who, as the Chair knows, we all know, has been nominated by the President to be Secretary of State, and whose confirmation we will debate tomorrow, and, finally, the name of Alberto Gonzales, currently White House counsel, having been nominated to serve as Attorney General. Those are the four individuals who are the object of his comments.

I want to be fair to the Senator from Massachusetts. Sometimes when I was listening to him I thought my hearing was betraying me. I was not quite sure what I heard was, in fact, what he was saying because it was so far from what I believe the facts to be. I believe, and the RECORD will correct me if I am wrong, he used words tantamount to authorize the use of torture. He did, and I wrote this down, speak of a ''formal policy of prisoner abuse''—of course, all of which pertains to the allegations, indeed, the proof in some circumstances, of prisoner abuse at places like Abu Ghraib.

To conflate the acts of a few criminals with the acts of distinguished public servants who have disavowed any policy, any approval, of abuse or the use of torture as a policy of this Government, to conflate and somehow confuse and gloss over them and to suggest that indeed these individuals did somehow by their acts or inactions authorize the use of torture or condone, encourage, or create a perception that torture was okay, is just false. It is a story, but it is a false story. The American people should not be confused because the facts clearly point to the contrary.

We do know that the Department of Defense, pursuant to the investigation called for by Secretary Rumsfeld, has conducted eight investigations, three of which have not yet concluded, of the Abu Ghraib prison scandal. So far, the conclusion has been, as well as that of the independent investigations like that of former Defense Secretary Schlesinger, that the acts at Abu Ghraib are the acts of a criminal few on the night shift, not a matter of public policy of this Government or of the Department of Defense or any branch or agency of the Government.

Indeed, recently we saw the American system of justice mete out that justice in convicting one soldier, Graner, of abusing prisoners at Abu Ghraib and meting out a 10-year prison sentence in that connection.

It is not true, and the American people should not be misled or perhaps be given information that has no justification in the Record. It is unproven, these allegations. They are unjustified. Frankly, I don't believe it does this body honor to propagate these false allegations.

Everyone has a right to their opinion. I know some of the speakers who are so concerned from time to time about what happened at Abu Ghraib, as we all are, disapprove of this Nation's policy in the first place in going to war in Iraq and removing Saddam Hussein. Somehow, and this is unthinkable to me, they actually think that the world would be a better place with Saddam still in power. I disagree. Not only is the world a better place with Saddam in a prison cell awaiting trial, but the American people are safer and the people of Iraq now have the hope of a free, fair election in the next week or so leading, we all hope, to a free and democratic Iraq.

While everyone has a right to their opinion, no one has a right to distort the facts. Unfortunately, when it comes to the involvement of these four individuals—Mr. Bybee, now Judge Bybee, confirmed by this Senate not too long ago by a vote of nearly 80 Senators; Mr. Haynes, who is the general counsel for the Department of Defense; and as I mentioned, Condoleezza Rice

and Alberto Gonzales—the allegation that somehow they have been involved in a Government policy of condoning torture or authorizing prisoner abuse is just false. It is important to stand up and say so.

Our disagreements about policy, indeed, the foreign policy of this Government, whether it be authorizing the use of force or whatever the issue may be, cannot be used as an excuse to make such scurrilous allegations against public servants who I believe are trying to do their best. If, in fact, somehow this administration and these individuals who are engaged in important public policy decisions did not care one whit about what the law is, what the definition of torture is, and how we can avoid somehow engaging in this sort of illegal and heinous act against any human being, why would they research the law? Why would they write lengthy legal memoranda? Why would they have debates among themselves about what the law is and what Congress proscribed—indeed, what our international treaty obligations proscribe in this area. They would not. You would not be so scrupulous and so careful about what the law provides if you did not care about following the law. That has been what these individuals and this administration and this Government have tried to do under very difficult circumstances.

In conclusion, I hope our disagreements about some aspects of our Nation's foreign policy, our policy in Iraq, should not be license to distort the facts and impugn the character of these nominees. Three are nominees, one already has been confirmed. We know Mr. Haynes has been renominated by the President to serve as a circuit judge. We know Condoleezza Rice's nomination to be Secretary of State will be debated tomorrow in the Senate.

Finally, I expect on Wednesday Judge Alberto Gonzales will be voted out of the Judiciary Committee and that nomination will soon come to the Senate.

It appears the opponents of this administration and its policies will pass no opportunity to continue to repeat false charges which cannot be borne out by the facts and which I think need to be corrected.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

(The remarks of Mr. STEVENS pertaining to the introduction of S. 49 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## PRIORITIES OF THE DEMOCRATIC CAUCUS

Ms. STABENOW. Mr. President, I rise to speak to the American people about the values and priorities of the Senate Democratic caucus. Today Senate Democrats introduced 10 ambitious leadership bills that will make our country more secure, expand opportunity for all, and honor our responsibility to future and past generations.

The Democratic agenda stands in stark contrast to the priorities advanced by Republicans. Democrats understand that putting America's security first means providing troops and their families with the resources they have told us they need to protect our freedom. Where Republican mismanagement has put our country's security at risk, Democrats will stand with our troops and step up efforts against terrorists by targeting and shutting down the institutions that create them. Where Republicans have stood with big corporations and put the needs of the special interests ahead of the American people, Democrats will work to expand opportunity for families by bringing down health care costs, strengthening education, and creating good-paying jobs.

Democrats will promote fiscal responsibility in Washington with a return to commonsense budgeting. But our most urgent priority is to protect our Nation's security. That is why we will stand up for our troops. We believe that putting America's security first means standing up for our troops and their families. We will work to increase our military end strength by up to 40,000 by 2007, and we will create a Guard and Reserve bill of rights to protect and promote the interests of our dedicated citizen soldiers. That includes making sure our troops have the body armor and equipment they need and that their families receive health care and their pay on time while their loved ones are serving abroad. This bill would increase survivor benefits from $12,000 to $100,000 for their families, if, God forbid, a loved one loses his or her life while serving our country.

We will also target the terrorists more effectively. We will keep America secure by stepping up the fight against the radical terrorists. We will work to increase our special operations forces by 2,000 to attack the terrorists where they are and to protect our freedoms here at home.

Democrats are also united to ensure that the world's most dangerous weapons stay out of the hands of terrorists. We will expand the pace and scope of programs to eliminate and safeguard nuclear materials, enhance efforts to keep these and other deadly materials out of the hands of terrorists, and assist State and local governments in equipping and training those responsible for dealing with the effects of terrorist attacks involving weapons of mass destruction.

When our veterans come home, we will not abandon them. We will keep our promise to them. We now have a new generation of veterans returning from Iraq and Afghanistan. We will ensure that all veterans get the health care they deserve. We will make sure that no veteran is forced to choose between a retirement and a disability check.

We will also make the same commitment to the soldiers of today that was made to past veterans with a 21st century GI bill. We understand that one of the most effective ways to increase opportunities for our families is a high quality, good-paying job. The promise of America is that if you work hard and play by the rules, you should have a real opportunity to provide for yourself and your family. For too many Americans, this promise is out of reach today. We must ensure that it is within their grasp.

We must expand economic opportunity for all Americans by protecting American workers and ensuring that we are creating good jobs for today and for the future. Our plan creates new jobs with an expansion of infrastructure programs, encourages innovation, and ensures fair wages. It also eliminates tax incentives for companies that move jobs overseas. It ensures that we enforce our trade policies.

The Stabenow-Corzine bill ensures fair wages for our American workers. It restores overtime wages to 6 million workers and increases the Federal minimum wage over the next 2 years so that we can ensure a livable wage for every American worker. These are the people who serve our food and stock the shelves of our local grocery stores, care for our children and our elderly parents, and it is incredibly important that we honor, respect, and support them and the dignity of work.

It also provides relief to multi-employer pension plans to make them more solvent. These plans are used predominantly by small businesses to provide pension benefits to an estimated 9.7 million American workers. The Stabenow-Corzine bill creates good jobs for today and new jobs for the future, with an expansion of infrastructure programs and the encouragement of innovation.

Across America, thousands of infrastructure projects, from our smallest rural communities, to our biggest cities, await the Capitol to move forward. Making these investments in our roads, bridges, and buses, will enable our quality of life to improve and protect public health and safety. These investments will also create a huge boost to

our economy. For each $1 billion in investment, we create 47,000 good-paying American jobs.

We also need to make investments in technology. Too many communities, mostly in rural and economically disadvantaged areas, lack access to broadband Internet service. More and more, Internet access is a critical part of our economy and our schools. This bill expands broadband access to those underserved areas by allowing broadband service providers to immediately deduct one-half of the cost of their investment in equipment to provide broadband access to rural and underserved areas. This is not just the right thing to do, it is the smart thing to do. We are a nation of innovators, of ideas. The key to our economic strength is our leadership in science and technology.

The U.S. is losing ground today to our foreign competitors. Research and development helps create higher quality jobs, better and safer products and higher productivity among American businesses.

It makes permanent a tax credit for entities that increase their research activities, which is so critical; and it makes credit available for collaborative partnerships, for research done by a group of businesses or other entities. We also want to ensure that we continue to lead and educate future leaders in science and technology.

Our bill also supports increases in federally funded research at the National Science Foundation, the Office of Science at the Department of Energy, the National Institutes of Health, and the National Institute of Science and Technology, as well as investments in math and science and technology programs at our secondary education institutions.

The Stabenow-Corzine bill eliminates tax incentives for companies that move jobs overseas—a critically important feature today for workers in every State, and I would certainly say in my State of Michigan, where we make things. We make things and grow things and do it well, and we don't want to see incentives in our Tax Code for companies to move jobs overseas.

We must eliminate tax incentives that actually give companies a tax incentive to move production facilities and jobs overseas. It doesn't make sense to reward a company for moving jobs overseas and, in effect, for pushing the promise of America farther away, farther out of reach.

Let me give you an example. In Greenville, MI—I have spoken about Greenville many times on the floor—is Electrolux. In Greenville, MI, they had three different shifts going and added over $100 million in new investments in equipment at the Greenville Electrolux plant. They are efficient, effective, and they are doing the job. They are selling refrigerators. Electrolux decided they could make a bigger profit if they moved the plant to Mexico and paid $1.57 an hour and no health benefits. We are losing 2,700 jobs as a result of that and we, unfortunately, have incentives in the law today that encourage that to happen. That is wrong.

We need to tackle the issues of health care, and we are doing that in our legislation, with a lower cost for prescription drugs and a lower cost of health care for our businesses. Ultimately, we cannot compete and have a middle class in this country if we are telling everyone they need to work for $1.57 an hour in order to have a job and we will create incentives for their businesses to move to another country. Our bill would require companies to immediately pay tax on the profits they earn abroad for products that are imported back to the United States. We think that is fair.

The Stabenow-Corzine bill ensures that America has a trade policy that addresses our now record trade deficit by enforcing our trade agreements, maintaining a level playing field, and helping workers who have lost their jobs due to unfair labor practices of other nations. We are determined to pursue a trade policy that protects American workers and addresses our record trade deficit.

This bill requires the administration to identify the most important export markets that remain closed to U.S. products and provides the tools needed to open them. As I have said so many times, if we create a level playing field—all we ask for are the same rules. If we have the same rules for our businesses and our workers that we see in other countries, we will compete and we will win. But it is our job to make sure that happens. That is why this legislation also creates the office of chief enforcement investigator/negotiator, whose sole responsibility will be to police our trading partners' performance of their obligations.

This bill will force China to stop manipulating its currency and force China to choose between revaluing its currency to its market value or face a tough tariff on all Chinese imports to the United States, equal to the unfair trade advantage China currently enjoys.

Let me give you an example of what I think is important. There are many in Michigan, but let me share this. I met with a group of people from Rexair Company in Cadillac, MI, a couple of weeks ago. They produce vacuum cleaners. The company's vice president claimed that the Chinese-made motors for the vacuum cleaners are cheaper because of currency manipulation. The motor is $28.80 in the United States and $21.30 in China. The company would prefer to use U.S.-made motors, but they have to go with the lower cost alternative in order to be competitive. There is no reason for that difference, except for currency manipulation.

When jobs are moved overseas it doesn't just hurt individuals, it hurts families, communities like Greenville, MI, and it hurts all of us. Trade adjustment assistance has helped thousands of manufacturing workers get retraining, keep their health insurance, and make a new start. This bill will expand TAA to cover service workers who lose their jobs when companies move jobs overseas. It will also provide health coverage for unemployed workers who are in training programs so that they can complete their training and help rebuild communities affected by outsourcing or exporting jobs, by coordinating Federal, State, and local resources to develop a new plan and a new future for the people who live there. We have a ceiling of a national debt, but we don't have a ceiling on the U.S. foreign debt, or the annual trade deficits that feed it. That is wrong. It is irresponsible, particularly if you consider that America is now the world's largest debtor nation.

We will have serious consequences if our trade deficits continue. In the 109th Congress we are going to change that and put America on the path of a more responsible approach. Our bill will require the administration to convene an emergency interagency meeting and provide Congress with a trade deficit reduction plan, to lower debt levels below the statutory ceiling, whenever the overall foreign debt reaches 25 percent of our GDP or when the annual trade deficit reaches 5 percent of GDP.

Another component of expanding opportunity for everybody is to provide our children with the best education possible. We talk a lot about that. We have an opportunity in the 109th Congress to put in place those opportunities and mean it for our children.

That is why we are going to keep our promise to our children by increasing support for preschool education, fully funding No Child Left Behind, and improving its implementation.

We are committed to finally meeting the Federal commitment to children with disabilities. How long have we talked about that on the Senate floor?

We will also address the shortfall of math, science, and special education teachers by creating tuition incentives for college students to major in these critical fields. We will help expand educational opportunities for college by providing relief from skyrocketing college tuition, increasing the size and access to Pell grants, and supporting proven programs that encourage more young people to attend and succeed in college.

We will also work to make health care more affordable. Spiraling health care costs are putting the opportunity of America at risk, making it harder for families to buy health insurance and placing a difficult burden on our small and large businesses, our manufacturers, certainly.

We will address these concerns by making prescription drugs more affordable. How often have I spoken about this on the Senate floor? We will make prescription drugs more affordable through the legalization of prescription drug reimportation—in other words, allowing the pharmacists in America, in

Michigan, to do business with pharmacists across the border in Canada and in other places where we know it can be done safely.

In our legislation, we will be making sure prescription drugs are safe by ensuring that drugs are monitored after they are approved for use. We will ensure all children and pregnant women will have health care. We understand how critical it is that we protect Medicaid and work with the States across this country to make sure that health care is available through Medicaid.

We will also reduce the growing cost of health care to small businesses by offering tax credits, while also modernizing health care to cut costs for patients and businesses.

While we are lowering health care costs, we are going to revamp the last Congress' Medicare bill—if we have the opportunity to do so, that is certainly our wish as Democrats—and take the special interests out of the Medicare bill by repealing the provision that makes no sense at all that prevents Medicare from negotiating the best possible price for our seniors.

While we will eliminate the slush fund for HMOs, we will also improve the prescription drug benefit by phasing out the current coverage gap where seniors pay a premium but do not get a benefit.

I am told that if, in fact, we negotiated in Medicare the same price cuts that we do through the VA for the veterans, we would not have a gap in the Medicare prescription drug law at all. There would not be a gap in benefit. We need to make that change so our seniors have the very best possible Medicare prescription drug benefit.

We as Democrats will work to lower Part B premiums so premium increases are not as steep as the one that took effect in January. We will address incentives that encourage employers to drop retiree benefits and ensure that our seniors will not be forced into HMOs while other seniors transition into a new benefit.

In the United States, the foundation of our incredible democracy is the fundamental right to vote. That is another important part of the legislative package we have put forward today. It does not matter if one is rich or poor, black, brown or white, all Americans have the right to one vote. It is the great equalizer. When one is voting and walks out of the voting booth, each one of us walks out as an equal. Unfortunately, we have had major problems in our voting systems in the last few elections, as we all know. We have determined, as Democrats, to reform the voting system in this country to create Federal standards for our elections and to be able to add verification, accountability, and accuracy to this system. Together we should be moving as quickly as possible to do this.

Our legislation increases access to the polls with election day registration, shorter lines, early voting. The bill also aims to modernize our election equipment and increase impartiality and provides the resources to our States to implement the bill.

While our agenda is ambitious, we have a plan to pay for every single initiative we are proposing at the beginning of this session, our vision of keeping America's promise.

Unfortunately, in the past 4 years, colleagues on the other side of the aisle and the administration have turned a large surplus, in fact the largest surplus in the history of the country, into the largest debt. We know that fiscal mismanagement today only leads to greater problems for our children and our grandchildren. It is our responsibility to address the fiscal irresponsibility of the current administration by imposing discipline today and we invite our colleagues on the other side of the aisle to make that a new priority, a fresh priority, in this new Congress. We are united to strengthen our budgeting rules that require the Government to live within its means.

The bottom line is that we today, the first day, we can introduce bills in the new session, have come together as Democrats to put forward our vision of keeping the promise of America. It is rooted in security. We must be safe. Our families must be safe. We must make sure we are providing all that we must for our troops and those who have served us and are now our veterans.

We are also committed to creating opportunity for everyone who works hard and plays by the rules, cares about their children, to create opportunity to be successful. We want everyone to dream big dreams and be able to reach for the stars and touch them and be successful within the American dream.

We also understand that when we create opportunity, with that comes responsibility. We each have responsibility to step up and work hard, but we also know we have responsibility for each other. We have responsibilities as parents to our children to create the security they need, the opportunity they need, and to instill responsibility in them, and that as a community we have responsibility one to another, just as we do for our family, and our country has a responsibility to make sure those opportunities are present.

This is an important day. It is the beginning of the new session, a new opportunity. We stand ready to work with the administration and our colleagues on the other side of the aisle to truly keep the promise of America, not just for some but for everyone in our country who is working hard every day and counting on us to make sure that dream is available and that promise is kept for them and their families.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

## PRESCRIPTION DRUGS

Mr. DURBIN. Mr. President, many people recall that over a year ago there was a debate on the Senate floor about the cost of prescription drugs. It was a lengthy debate, and it involved a lot of concern about the fact that a lot of senior citizens find the life-protecting drugs they are taking to be too expensive.

We have known for a long time that Medicare, a very valuable Federal Government program, has been more than miraculous in its results. When it was instituted during the term of President Lyndon Johnson, there was hope it would help seniors pay for their medical bills and improve the quality of their lives. It has done that and more. It has become an extremely valuable program because seniors have used Medicare for access to doctors and hospitals, and the proof is in longevity. Seniors are living longer. They are getting better medical care. It was truly one of the best Government programs ever created, but there was a gap in those programs. It didn't cover prescription drugs for those who were not in the hospital. So seniors found that new drugs that kept them healthy and out of the hospital were too expensive. Some couldn't take the drugs because they couldn't afford them. Others had to make terrible life choices between their lifesaving drugs and basic necessities of life.

For a long time we have talked about establishing under Medicare a prescription drug program that would help these seniors—and disabled people, who also qualify under Medicare. The debate got started, and it looked promising. There was the belief that we were finally moving to a goal that we have talked about for a long time. Unfortunately, during the course of the debate there were political forces at work in Washington. That is not unusual. The largest political force at work was the pharmaceutical drug industry. They understood that if we gave to Medicare the power to bargain for senior citizens in America, that power would force the drug companies to reduce their cost, so the pharmaceutical companies, one of the most powerful lobbying organizations in Washington, successfully lobbied the Bush administration and supporters of the bill to prohibit Medicare from creating a drug benefit program under Medicare which would hold the drug companies accountable for cost increases.

They got the best of both worlds. They not only could continue to sell expensive drugs to seniors, there is no pressure on them to reduce the cost. Drug companies are very profitable, and they understood that with this change in the law, they would continue to make enormous sums of money off of seniors and the Government for a long time to come.

Some of us who voted against the program as presented by the President suggested that, unless there was some cost containment here, this program would break the bank; it would cost too much; drug prices would go up, and

the Federal Government could not appropriate money fast enough to take care of it.

Then they started describing the prescription drug program, and it quickly reached the point that even a Harvard trained lawyer couldn't understand what it was all about. I have sat down with seniors in Illinois and tried to explain to them what this prescription drug plan was all about, and after a while they threw up their hands and said: Senator, wasn't there an easier way to do this? And the honest answer was: Yes, but we didn't choose that easier way.

Because of some budgetary considerations and political considerations, we created an extremely complicated program for senior citizens. That program ultimately did not reach a point where seniors approved of it. In fact, most of the seniors in Illinois who I talked to are not only skeptical of this program, they are critical of it. They are not sure it would really help them.

The administration—the President—was very smart. He decided to postpone the startup of this program until after the last election. He knew, and I am sure we all do now, that when this program starts a lot of seniors are going to see just how bad it is, how complicated it is, how uncertain it is, and because of those uncertainties many of them will be critical of the Congress that enacted the law and the President who presented it to us for enactment.

So at this point we have a problem before us, a program that is about to go into effect which has uncertain monthly premiums, has a so-called donut hole, which means it covers drugs up to a certain point in their cost and then leaves the individual senior citizens on their own for a period of time as they spend the money out of pocket and then comes back to cover them again. It also has some curious provisions where seniors cannot buy supplemental insurance to make up the deficiencies in the prescription drug bill. They are banned, prohibited. It also expressly says Medicare cannot create its own prescription drug company and bargain for senior citizens—once again to protect the profitability of pharmaceutical companies.

As bad as this bill was, we were waiting for the regulations written by the Bush administration which would spell out the details of how this process will work. Last Friday the Bush administration released 1,500 pages of new rules and regulations related to the new Medicare prescription drug program—1,500 pages. I can remember when President Reagan showed up for the State of the Union Address with a huge copy of a bill we had just passed, an appropriations bill, slamming it on the desk saying what an embarrassment it was to the American people that we would have a bill of such complexity and magnitude. Here we have the regulations for the prescription drug bill, an already complicated bill, 1,500 pages in length. When you look at the details of this prescription drug benefit, you understand why many senior citizens are skeptical.

Sally Mitchell is a 66-year-old widow who lives in Aurora, IL, and takes three prescription medications every day. She told the Chicago Tribune that she:

> wished Medicare would come up with something that would be easier for people to understand and use.

That is not an unreasonable request from Mrs. Mitchell. In her words, she went on to say:

> If it's too much work and too much stress, at my age it's not worth it for me to just save a couple of dollars.

That is what many senior citizens have found. As this administration came forward with discount cards and prescription drug benefits, a lot of them have said it is not going to work.

When you take a hard look at the philosophy driving this complicated bill, protecting this private interest group, you get further insight into the concept of the ownership society. This is the new concept. This is the brave new world we are hearing about, which says that basically the Government should not be making certain that there is competition for these drug companies. Let them own their products. Let them sell their products. The Government should not be standing in the shoes of the senior citizens who need these prescription drugs, understanding the complexity of the system and the cost of the system. No, no, the Government should step aside. Let the seniors own the program.

I believe a lot of seniors are going to disown the program. The President tells us that turning America into ''an ownership society'' will solve our retirement security problems. Just privatize part of Social Security and give Medicare beneficiaries a voucher so they can buy private prescription drug coverage and the problems are solved.

But I think seniors see through this. They understand that what they are hearing from the administration about Social Security and Medicare does not give them peace of mind. If there are challenges in Social Security, they are in the distant future, as I said in an earlier floor statement: 37 years from now. If we are to make changes, they should be changes that don't cut the benefits for Social Security retirees and beneficiaries. They should not create an additional national debt of $2 trillion or more, but that is the projection coming out of the President's suggestions.

We will wait for the details. In fairness to the President, he should present this to us in its entirety. It is an interesting theory to think that we can start privatizing Medicare, Social Security, Medicare prescription drug programs, but here is the reality: 1,500 pages of regulatory gobbledygook, big guaranteed profits for the pharmaceutical industry and the HMOs and insurance companies, and precious little savings for people like Sally Mitchell of Aurora, IL.

Why is this all so complicated and so costly? Because when the Medicare prescription drug benefit was designed, it was with the pharmaceutical companies and the HMOs in mind, not the seniors of America. Instead of simply offering a prescription drug benefit through Medicare and negotiating bulk prices, we divided the country into 34 pharmaceutical regions. This is a map that shows these regions. We are going to have to spend $300 million to explain to seniors what region they live in and who is going to offer prescription drug coverage in each of these regions.

Do you remember when there was a discussion about the Clinton proposal for dealing with the cost of health care? Senator DOLE and others came to the Senate floor with this flowchart which showed a spaghetti mess of lines going every single direction. That applies as well to this prescription drug benefit from the Bush administration. Each of the 34 regions on the map that I just showed you will have at least 2 private options for prescription drugs, either a prescription drug plan or an HMO. If there are two plans in each region, it means instead of the Secretary of Health and Human Services negotiating on behalf of 41 million seniors for lower drug prices, pharmaceutical companies will be negotiating with 68 private companies on behalf of seniors.

Think about your negotiating power at the table when you divide the number of seniors by 68 instead of having Medicare bargaining on behalf of all 40 million-plus seniors. Simple economics tells you, you lose your negotiating power when the number of people you are representing goes down, as the power of the pharmaceutical companies goes up.

What is worse is that private plans can change their drug formularies after seniors sign up, but the seniors are locked into it. That is right. If you decide you need to sign up for a prescription drug plan the President is proposing, and one of these companies decides it is going to stop carrying the drug that the doctor told you that you needed, you are still stuck with that prescription drug program you signed up for. So if you do your research and decide on a plan in your area because it offers a low price for a drug you are taking, you are locked into that plan, but it can drop coverage of your drug during the year.

The regulations released on Friday also govern bidding by HMOs wanting to contract with Medicare. The HMOs are divided into 26 regions. Although most seniors are happy to receive their benefits directly through Medicare, we will spend $14 billion over the next 10 years to expand coverage by HMOs. The Republicans who passed this argued that the HMOs and private insurance companies could do things more effectively and efficiently.

Yet we have built into this proposal a Federal subsidy of millions, if not billions, of dollars to the HMOs to reward them for competing. Something is

wrong with this picture. If they are supposed to be so efficient, why do they make it a Federal subsidy? The sponsor of the bill couldn't explain it. The private plans are 7 to 9 percent more expensive than Medicare fees for service and less efficient. And we are going to subsidize it so they can compete with whatever Medicare has to offer?

PacifiCare CEO Howard Phanstiel told Bloomberg News over the weekend: ''We are encouraged that CMS continues to demonstrate its commitment to be a good business partner with the private sector.'' But isn't it Government agencies' first obligation to seniors and the citizens of this country rather than to the businesses that will profit from this new arrangement?

Let us take a look at Mr. Phanstiel and his colleagues in the HMO industry. He made more than $3 million in the year 2003, the year we passed the Medicare bill. As a result of this bill, many companies and many others like it will probably make even more because Mr. Phanstiel's company will have access to some 700,000 Medicare beneficiaries in addition to the ones he currently serves.

When you look at compensation, the CEO of Aetna, $8.9 million; Larry Glassock's compensation, $6.8 million. Here is one CEO who earned $21.6 million. Look at what these HMO CEOs are making. And now we are not going to cut into their profits but increase them.

When Mr. Phanstiel sent this nice thank-you note to CMS, a Federal agency, and said they are continuing to demonstrate their commitment to be a good business partner, it means even more money and profits for the HMOs at the expense of senior citizens.

When it comes to pharmaceutical companies, this chart tells you what happened to the Fortune 500 companies in America. This is the analysis of the 2002 profits. Look, if you will, at the return on revenues. The No. 1 industry, pharmaceuticals; return on assets, No. 1 industry, pharmaceuticals.

When you turn on the television and you can't escape another ad for the ''little purple pill,'' let me tell you that company is spending more money on advertising than it is on research to find new drugs. They are trying to create an appetite and desire among American consumers to buy drugs they don't need; too expensive drugs, I might add. In this situation, you are going to find pharmaceutical companies doing even much better because the Medicare prescription drug plan says they don't have to compete.

Is the idea of asking drug companies to reduce their costs to help people under Federal programs a radical, Socialist, Communist, collectivistic idea? I don't think so. Go to the Veterans' Administration. That is exactly what they do. They call in the drug companies and say: We have a lot of veterans in America who are going to VA hospitals to pick up their drugs through a program we are offering. If you want to sell drugs to them, you have to give us your best price. And the American drug companies line up and reduce their costs for VA. They don't scream and they don't holler and squirm away. They like to deal. And the VA serves the veterans. Why is it we can't do the same thing for Medicare? It is just that simple.

The fact that we didn't is the reason the administration last Friday had to put 1,500 pages of regulations together on an already complicated bill to try to explain the Medicare prescription drug benefit that is, frankly, not what it should be. We started off understanding the need. We passed a bill that didn't meet that need. Now, in the name of the ownership society, we are saying to people: You own the right to be virtually defenseless in bargaining with pharmaceutical companies and HMOs.

Is that what we are here for—to make certain their profitability goes through the roof at the expense of seniors who can't afford lifesaving drugs? I don't think so.

The time will come—and I hope soon—when we will have reforms of this Medicare prescription drug program. When we do, let us keep our first obligation to our seniors.

I yield the floor.

## HONORING OUR ARMED FORCES

### SERGEANT THOMAS EUGENE HOUSER

Mr. GRASSLEY. Mr. President, I rise in remembrance of a brave Iowan who has left his countrymen to join the ranks of those who have paid the highest price in the defense of freedom. Sergeant Thomas Eugene Houser was a native of Council Bluffs, IA and was killed on January 3, 2005, in action against enemy forces in the Al Anbar Province of Iraq. He was twenty-two years old.

An active young man, SGT Houser participated in football, wrestling, and track while attending St. Albert's Catholic High School and is remembered by his family and friends as a compassionate soul who, as his mother says, could ''talk to anyone.'' As a boy, he dreamed of following in the tradition of military service set by his father and grandfather, a dream which he fulfilled courageously as a member of the 1st Marine Division.

I ask my colleagues to join me and all Iowans in remembering SGT Houser. My prayers go out to his family and friends who feel his loss so deeply. Such men as Thomas Houser inspire us to hold in ever higher esteem the ideals of freedom and service. His valor shall certainly not be forgotten.

### PRIVATE FIRST CLASS GUNNAR BECKER

Mr. JOHNSON. Mr. President, I rise to pay tribute to PFC Gunnar Becker, a member of the United States Army, who died on January 13, 2005, while serving in Operation Iraqi Freedom.

PFC Becker was a member of the 63rd Armored Regiment, 1st Infantry Division.

Answering America's call to the military, PFC Becker joined the U.S. Army shortly after graduating from Artesian-Letcher High School in 2003. His friends remember him as a good-natured, outgoing person with boundless enthusiasm and confidence to match. Kelvin Peterson, a good friend remembers him as always being able to put a smile on people's faces. Kelvin said, ''He knew how to make a person laugh and have a good time, because that's what he was all about, having a good time.''

PFC Becker served our country and, as a hero, died as a proud member of our Armed Forces. He served as a model of the loyalty and dedication that comes with preservation of freedom. The thoughts and prayers of my family, as well as our Nation's, are with his family during this time of mourning. As well, our thoughts continue to be with all those families who have children, spouses, parents, and other loved ones serving overseas.

PFC Becker lived life to the fullest and was committed to his family, his Nation, and his community. It was his incredible dedication to helping others that will serve as his greatest legacy. Our Nation is a far better place because of PFC Becker's contributions, and, while his family, friends, and Nation will miss him very much, the best way to honor his life is to remember his commitment to service and his family.

I join with all South Dakotans in expressing my sympathies to the friends and the family of PFC Becker. I know that he will always be missed, but his service to our Nation will never be forgotten.

### SPECIALISTS JIMMY BUIE, JOSHUA MARCUM AND JEREMY MCHALFFEY

Mrs. LINCOLN. Mr. President. I rise today to honor the lives of three brave Arkansans and to pay tribute to the sacrifice they made on behalf of our freedom. Jimmy Buie, Joshua Marcum, and Jeremy McHalffey were all beloved by their families, admired by their friends, and respected within their communities. Today, they are remembered as heroes by the grateful Nation for whom they gave their lives.

SPCs Buie, Marcum, and McHalffey were proud members of the Arkansas National Guard's 39th Infantry Brigade. Together, they served with the 2nd platoon of Bravo Company, 3rd Battalion of the 39th, a close-knit group who quickly earned a reputation for dependability and whose soldiers were known to do absolutely anything for each other. This was especially true for SPC Marcum, SPC McHalffey, and SPC Buie, who were all roommates at their company's base at Camp Gunslinger, just north of Baghdad.

It was obvious to those who served with them that in addition to being outstanding soldiers, these three men were so much more. While the easy-going SPC Buie and SPC Marcum could always be counted on to brighten a mood with their humor and infectious smiles, the hard-charging SPC

McHalffey often motivated his colleagues with his determination and focus. While the three had differing approaches to their service, they were united in the belief that they were doing what was right; helping rebuild the lives of a people they had never met and bringing stability to a nation they had never known.

SPC Buie joined the military upon his graduation from high school in 1980. Later, while working for a dental products manufacturer, he met a woman named Lisa who would become the love of his life. The two were inseparable, and the natural chemistry between them soon led to marriage. SPC Buie quickly took to Lisa's two sons and found great pleasure in spending time with them, whether they were building a go-cart or playing catch.

In his hometown of Batesville, SPC Buie worked as a mechanic at Mark Martin Ford Mercury, where he rightfully earned the reputation of a quiet, hard-working guy who always got the job done. He joined the National Guard in August of 2004 and was deployed to Iraq after spending a month of training at Fort Hood, Texas. While serving in Iraq, he spoke with Lisa every Sunday evening. During these conversations, he always remained upbeat and spoke of the joy he found in improving the lives of Iraqis, particularly the local farmers, whom he pitied for their poor living conditions. These words and actions spoke volumes of SPC Buie, a humble man who found comfort in knowing folks were praying for him back in Arkansas, and who used that inspiration to improve the lives of those around him.

SPC Marcum was from the small northern Arkansas town of Evening Shade, where he lived with his wife, Lisa, and their five children. Friends and family describe him as one of the nicest people you could ever meet, a unique individual who disliked cursing, avoided arguments, and had a special calming effect on those around him. He was also the type of person who found pleasure in bringing joy to others; a gift of his that was attributable to his sense of humor and his loving heart.

While serving in Iraq, SPC Marcum, who had always wanted to be a soldier, was remembered by his comrades as a quiet guy who naturally went out of his way to lend a helping hand to those in need. He kept in frequent contact with his wife throughout his deployment and sought to comfort her by keeping her up to date on his welfare and relaying his positive experiences along the way. With his time in Iraq nearing its end, he was looking forward to returning to his friends and family back in Arkansas and often spoke of taking a float trip down the Spring River soon after.

SPC McHalffey was born in the small northeastern Arkansas town of Paragould but later moved to Springfield, MO, where he graduated from high school in 1995. Throughout his life, he had a love for the outdoors and if you ever needed to find him during hunting season, he was most likely in the woods with his father, looking for turkey or deer. At the age of 18, he joined the United States Marine Corps, and would proudly serve for 4 years. Upon his return to Springfield, he worked for the Greene County Sheriff's Office and later for Showcase Building Supply. In 2002, he met a dispatcher named Lacy Tindele at a firefighters' training camp. The couple quickly fell in love and their engagement soon followed.

SPC McHalffey's deep love for his country is what originally motivated him to enlist in the Marine Corps and it is also what later motivated him to serve in Iraq. As his brother Mike reflected, ''He was the type of guy to volunteer. If something needed to be done, Jeremy would jump in.'' SPC McHalffey initially wanted to re-enlist in the Marines but was told the process could take months. As a result, he and Lacy chose to move to Little Rock, to continue his career in law enforcement and to join the Arkansas National Guard, because he was told it had a significantly shorter waiting time. The couple chose the nearby community of Mabelvale, where SPC McHalffey commuted to his new job as a detention deputy at the Pulaski County Jail until his deployment. Lacy spent much of her time planning the couple's small wedding, which was to take place upon her fiancee's return from Iraq in a few months.

The lives of these three Arkansas soldiers was forever intertwined when, tragically, they were killed on January 4 when their humvee was struck by a roadside bomb. Their vehicle, which was traveling as part of a convoy, was leaving an Iraqi National Guard bunker in the al-Shaab district of Baghdad. The loss of these heroes will be felt by not only their comrades in Iraq, but by the many friends and loved ones they have left behind.

At the memorial service of SPC Marcum, Linda Beckham reflected on her brother; ''He wanted to honor his country. It was his dream and he fulfilled it.'' These words ring true not only for SPC Marcum, but also for SPC McHalffey and SPC Buie. The courageous and selfless way in which they served in uniform brings honor to our Nation. The impassioned and generous way in which they led their lives, brings honor to us all.

On behalf of a grateful Nation, my thoughts and prayers go out to the family and friends of Jimmy Buie, Joshua Marcum, and Jeremy McHalffey. Although they may no longer be with us, we must find some solace knowing that they died for a cause in which they believed. Their legacy and their spirit will forever live on in our hearts.

ARMY PRIVATE CORY R. DEPEW

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Beech Grove. Army PVT Cory R. Depew, 21 years old, died on January 4 when the Stryker military vehicle he was riding in was struck by rocket-propelled grenades just west of Mosul, Iraq. With his entire life before him, Cory risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

After graduating from high school, Cory went on to pursue a dream he had been working toward since he was in the eighth grade. In September of 2003, Cory made his dream a reality by enlisting in the United States Army. Cory's mother, Sheryl Ann, recalled her son's determined spirit when speaking to the Indianapolis Star saying, ''He was going to the military, he wanted to serve his country. . . . He was a hero. He gave his life for this country.''

Cory was the 44th Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. He was assigned to the 2nd Squadron, 14th Calvary Regiment, 1st Brigade, 25th Infantry Division, based in Fort Lewis, Washington. This brave young soldier leaves behind his mother, Sheryl Ann May; his son, Brendan Favre; his brothers, Wyatt and Elliot; and his grandfather, Austin Hall.

Today, I join Cory's family, his friends and the entire Beech Grove community in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Cory, a memory that will burn brightly during these continuing days of conflict and grief.

Cory was known for his dedication to family and his love of country. When reflecting on Cory's life, his mother told the Indianapolis Star that her son's best attributes had been on display while he was home on a two-week leave only a few months ago, ''his 'wise guy' sense of humor, his love of children, his hard work.'' During his short break, Cory spent time playing with his son, Branden and volunteered to help build a new garden at his church, a place where his mother and many others now go to find solace. Today and always, Cory will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Cory's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was

nearly 150 years ago, as I am certain that the impact of Cory's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Cory R. Depew in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Cory's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Cory.

LANCE CORPORAL ERIC HILLENBURG

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Hendricks County. LCpl Eric Hillenburg, twenty-one years old, died on December 23 during a patrol when he was struck by small-arms fire in Fallujah. With his entire life before him, Eric risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

After graduating from Chapel Hill Christian School with honors, Eric went on to become a Marine, a dream he first set his sight on at the young age of 14. According to family and friends, Eric followed a long-standing tradition of service as his family has proudly served our country in every conflict since the Civil War. When reflecting upon the loss of his son to members of his congregation at Hope Baptist Church, Rev. Hillenburg expressed his deep sense of pride and patriotism saying, ''When I see that flag flying from now on, it will mean more to me than ever before. . . . When I see a young man in uniform, he will be my son.'' According to the Indianapolis Star, the congregation stood and applauded these heartfelt remarks. I stand here today to express the same sentiments of gratitude for Eric's sacrifices and for those made by the entire Hillenburg family on behalf of our country.

Eric was the 43rd Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. He was assigned to the 3rd Battalion, 5th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, California. This brave young soldier leaves behind his mother, Pamela; his father, Jerry; his sister, Erin; and his brother, Evin.

Today, I join Eric's family, his friends and the entire Indianapolis community in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Eric, a memory that will burn brightly during these continuing days of conflict and grief.

Eric was known for his dedication to family and his love of country. Today and always, Eric will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

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May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Eric.

## CANADIAN SOFTWOOD LUMBER DISPUTE

Mr. CRAIG. Mr. President, I rise today to discuss the latest developments regarding the Canadian softwood lumber dispute. With yet another curious and ultimately inconsequential lumber unfair trade determination due today at the behest of a NAFTA dispute panel, it is important to place this matter in proper perspective.

Would the distinguished Senator from Montana and my colleague from Idaho engage in a colloquy with me concerning the Canadian softwood lumber dispute?

Mr. BAUCUS. I would be pleased to engage in such a colloquy.

Mr. CRAPO. I would also like to join my colleagues in a colloquy on this matter.

Mr. CRAIG. The Commerce Department has found repeatedly that Canadian lumber is subsidized and dumped. World Trade Organization and NAFTA dispute settlement panels have definitively rejected Canada's long-time arguments that its underpricing of timber cannot be deemed a subsidy. The panels have also upheld findings that Canadian lumber is unfairly dumped in the U.S. market. The International Trade Commission has found repeatedly that the unfair imports threaten our industry with harm.

President Bush was well prepared to answer the Canadian Prime Minister when they last met. The President told the Prime Minister that the problem of subsidies and dumping is caused by Canada, and the solution lies with Canada, unless Canada wants the solution to be permanent duties to offset the subsidies and the dumping. In over two decades, Canadian officials have not gotten the message, at least not in a way that takes, that this problem will not be resolved by Canada's investing hundreds of millions of dollars in legal fees on more than 30 Washington law firms to circumvent U.S. laws in countless appeals to the WTO, to NAFTA panels and to the U.S. courts—several more were filed just this month. And it will not be solved by the cottage industry that has grown up in Canada to mount PR campaigns in the United States.

The U.S. timber industry vigorously supports the administration's view that the unfair Canadian lumber problem could most appropriately and productively be resolved through negotiations—although perhaps there just ought to be permanent duties in place. But the U.S. timber industry is taking the statesmanlike high road, and I support it. Some vested interests in Canada do not see this, and prefer endless litigation, probably based on misguided advice that this will be productive from those who have made a living defending Canadian subsidies.

Mr. CRAPO. Specifically, the problem remains that the market is grossly distorted by Canadian unfair trade practices. Absent termination of or an offset to the unfair practices, the U.S. timber industry will be severely impacted by subsidized and dumped Canadian imports. We in the Congress have been assured that those responsible in the administration will not allow this further injury to our industry occur.

A solution can be either border measures imposed by the United States or Canadian border measures agreed to with the United States pending adequate Canadian timber policy reforms.

The Bush administration has concluded that the November 2004 determination of the International Trade Commission that Canadian imports threaten the U.S. industry with injury—the ''Section 129'' determination—represents an independent basis authorizing and necessitating retention of the countervailing and antidumping duty orders. The United States has faith in winning the NAFTA Extraordinary Challenge Committee proceeding on the injury issue, but even a negative outcome before the committee would not be the end of the matter.

The Bush administration has concluded that duty deposits, amounting to approximately $3 billion and growing daily, cannot and will not be returned absent a negotiated settlement

between the Canadian and U.S. Governments. The panels can provide prospective but not retroactive relief. In any event, these funds are rightly due under U.S. law to the injured domestic timber industry. If there is a negotiated solution, the funds can be apportioned fairly as part of the settlement.

There is zero likelihood that the countervailing duty, antisubsidy, order will disappear absent settlement of the lumber subsidy and dumping issues, no matter how often a NAFTA panel tries to achieve this outcome.

The U.S. right to challenge Canadian log export restrictions at the WTO is clear under the WTO, and Canada is clearly in violation of its WTO obligations. I understand that the Bush administration is evaluating this issue.

I also understand that the U.S. timber industry intends to bring a constitutional challenge to NAFTA dispute settlement if the lumber dumping issue is not resolved. The future of U.S. sawmills and millworkers cannot be allowed to be ruined by outlandish decisionmaking by NAFTA dispute panels and a panelist's service with an obvious, undisclosed conflict of interest.

Mr. BAUCUS. I agree completely with my colleagues. As suggested, a NAFTA dispute panel is requiring that the Commerce Department issue today yet another revised version of the original 2002 lumber-subsidy determination. Given the panel's pattern of overreaching, it may be a relatively low subsidy estimate. If so, this will be trumpeted in headlines across Canada as a victory for Canada's lumber policies. Before all those editorial writers seize on this supposed ''victory,'' they should understand that this determination will have absolutely no legal effect. It is the Commerce Department's December 2004 findings of a subsidy of over 17 percent and dumping of 4 percent that controls. Hyping the January 24 decision as having any meaning performs a disservice to Canadian interests, which lie in a mutually beneficial negotiated settlement.

Nothing can change the facts. The Canadian provinces provide timber to their lumber companies for a fraction of its value. This harms not only U.S. sawmills, millworkers and family forest landowners, but also the Canadian forest. Environmental groups have long decried the overharvesting of timber caused by undervaluing the resource.

## WIND TRANSMISSION FUNDING

Mr. DORGAN. Mr. President, I rise to discuss funding for a wind transmission study that was included in the fiscal year 2005 Omnibus Appropriations bill signed into law last December. As a member of the Senate Energy and Water Appropriations Subcommittee, I appreciated the efforts of Senators DOMENICI and REID, the chairman and the ranking member of our subcommittee, to include $500,000 for the Western Area Power Administration, WAPA, to continue its work on the placement of additional wind capacity in the Dakotas. They have generously provided funding for similar work for the past two years, and I am glad these efforts will be continued during this coming fiscal year.

North Dakota is the ''Saudi Arabia'' of wind. The Department of Energy has long identified North Dakota as having the greatest wind energy resource and potential for wind generation development in the lower 48 States. During my time in the Senate, I have been pushing hard on a number of fronts to develop our wind energy resources. For example, I have been a strong supporter of the Renewable Portfolio Standard, RPS, which requires utilities to produce 10 percent of their electricity from renewable energy sources by 2020. In addition, I believe the Federal Government should be a leader in this area and develop a policy of purchasing electricity from renewable energy sources.

Last February, I hosted the Fifth Annual Wind Energy Conference with the Energy and Environmental Research Center at the University of North Dakota to further promote this clean and limitless energy resource. Wind energy stakeholders from around the Nation attended this successful event, which attracted 436 people from 30 States and three Canadian provinces. Last year, the conference included a second day of events because of the overwhelming interest in wind energy. As a result of the wind energy industry's growth, North Dakota's skyline and economic future are forever changing and progressing forward. We will be doing another conference in February 2005, which more broadly embraces renewable energy in the Upper Midwest.

Despite my continued efforts to increase the use of wind as an energy source, North Dakota faces many transmission challenges in moving wind energy to other parts of the country. I have held field hearings in North Dakota on these issues and have also supported the development of new transmission technologies. While the Senate has wisely included funding for the last several years for WAPA to make some progress on these transmission problems, the fact remains that more needs to be done. WAPA and others have done a number of general studies on this issue and I think the next steps are clear. WAPA should use the funding earmarked in FY2005 for an Environmental Impact Study, EIS, that would allow transmission expansion for wind generation to be placed in North and South Dakota and should use the remaining funds to support specific demonstration projects in the region.

With respect to site-specific projects to support wind development for future electric generation, I believe that WAPA should first develop parameters for determining what constitutes a bona fide wind project. In doing this, WAPA should ensure that projects meet the following requirements: a minimum period of at least one year; minimum anemometer height of at least 40 meters; multiple monitoring points allowing calculation of wind shear; a defined system interconnection point and wind right easements adequate for the proposed project. To make these limited funds stretch farther, I would expect any proposed project to include a 50–50 cost share provision. It is my hope that WAPA will be able to support projects that will accurately determine the transmission requirements and related costs associated with the installation of specific wind and coal generation projects.

Following this guidance, it is my expectation that WAPA will use this funding to make real progress on these transmission problems in the next fiscal year, and provide wider benefits to the large region of the U.S. served by WAPA. After all, WAPA was created to market hydropower, a renewable energy resource. Wind is the next step.

## FISCAL RESPONSIBILITY FOR A SOUND FUTURE ACT

Mr. CONRAD. Mr. President, the Fiscal Responsibility for a Sound Future Act, S. 19, would help restore budget discipline and fiscal responsibility to our Nation's finances. Given the Federal budget's dramatic swing from record surplus to record deficit and debt over the last few years, it is vital that we restore the strong budget enforcement mechanisms that have worked in the past.

This legislation would return us to a path of budget discipline by restoring a strong pay-go rule, reinstating sequestration to enforce pay-go and discretionary spending caps, and limiting the use of reconciliation to deficit reduction legislation.

The first step we should take to put our Nation's finances back in order is to stop digging the hole deeper. Restoring a strong pay-go rule would help to do exactly that. This legislation would restore the Senate pay-as-you-go rule to require that mandatory spending and tax legislation be fully paid for, or be subject to a 60-vote point of order. Pay-go is one of the crucial budget enforcement tools that allowed the Federal Government to move from deficit to surplus in the 1990s. Unfortunately, the Senate pay-go rule has been weakened in recent years, in order to allow for passage of large tax cuts. Since then, deficits and debt have skyrocketed.

In 2004, a Democratic amendment was adopted to the Senate Republican budget resolution that would have restored a strong pay-go rule requiring that both mandatory spending and tax cuts be paid for. However, the Republican leadership refused to accept a budget resolution conference agreement that contained the provision, so the budget resolution was never adopted and the strong pay-go rule was never brought into effect. The Fiscal Responsibility for a Sound Future Act

would end the current practice of exempting all mandatory spending and tax cuts assumed in the budget resolution from the pay-as-you-go rule, and extend the Senate pay-go rule currently set to expire in 2008 through fiscal year 2015.

The bill would also reinstate sequestration, across-the-board spending cuts, to enforce pay-go and discretionary spending limits. Legislation that exceeds fiscal year 2005 discretionary spending caps, as well as mandatory spending and tax legislation that would increase the deficit, would trigger sequesters. The bill also expresses the sense of the Senate that a statutory discretionary spending limit should be enacted for 2006 to prevent passing more debt on to our children.

The bill would also limit the use of the Senate's fast-track ''reconciliation'' procedures, which cut off debate after only 20 hours, to deficit reduction legislation. Legislation that would increase the deficit could still be considered in the Senate, but could not be expedited using reconciliation procedures. This would restore reconciliation to its original purpose of deficit reduction, and ensure that any legislation increasing deficits is subject to full scrutiny, debate, and consideration in the Senate.

In addition, the legislation would prohibit the fast-tracking of Congressional budget resolutions that contain a reconciliation instruction that would worsen the deficit. Any budget resolution that includes an instruction to a committee to increase the deficit would be subject to unlimited debate rather than limited to 50 hours.

We must return our Nation to a path of fiscal responsibility. We must put an end to these record deficits and record debt. This legislation presents a clear test of whether we are serious about putting our fiscal house back in order. I urge my colleagues to support this legislation.

## THE PASSING OF NEBRASKA'S JOHNNY CARSON

Mr. HAGEL. Mr. President, I rise to express my sympathy over the loss of Nebraska's Johnny Carson, the 30-year host of the ''Tonight Show'' and a dedicated Nebraska philanthropist. He passed away yesterday at the age of 79 in his Malibu, CA home.

Johnny Carson was a Nebraska original and an American icon. He elevated the late night talk show to an art-form and he did it with class and fun. Carson will be remembered as a generous individual who was proud of his State.

After serving in the Navy during World War II, Carson attended the University of Nebraska at Lincoln, UNL, and earned a bachelor of arts degree in radio and speech. As a student, Carson practiced his comedy and perfected his ability to perform card and magic tricks. His experiences at UNL greatly influenced his career in entertainment.

Carson made many significant contributions to Nebraska. Among them a $2.27 million donation to a cancer radiation center in Norfolk and last November, he donated $5.3 million to UNL to help with the renovation of a building where he took classes.

I had the opportunity over the years to meet Carson. In 1967, he returned to Nebraska for the State's Centennial celebration. He was invited by the Governor to headline the gala with his former Omaha radio morning show cohost Harvey Swenson. Swenson was the manager of KLMS radio station in Lincoln, where I worked at the time. Carson came to the station and talked with all of us about his early days in Nebraska radio.

After Carson graduated from high school, his parents moved from Norfolk to Columbus, NE, where I lived. I would occasionally see Carson walking his dogs in Columbus when he would visit his parents during the summers.

America will miss this good man, Johnny Carson. We are all very proud of him—of what he represented and where he came from. I ask my colleagues to join me and all Americans in honoring Johnny Carson.

## THE 32ND ANNUAL MARCH FOR LIFE

Mr. HAGEL. Mr. President, today is the 32nd Annual March for Life on Washington, DC's National Mall. Individuals from all over the Nation will march together in solidarity, despite the bitterly cold weather, in support of the most basic of human rights: the right to life. The March for Life is an important opportunity to demonstrate a firm and clear commitment to preventing abortion and protecting the rights of each unborn child.

Today I met with 35 representatives from Nebraskans United for Life and Creighton University. They are committed to promoting the right to life for all human beings and work tirelessly to ensure that this issue remains at the forefront of debate.

I strongly support the efforts of the National Right to Life Committee. The March for Life is a powerful reminder of the progress that has been made and the work that remains for the pro-life cause.

Above all, we should focus on education, including the encouragement of abstinence and adoption. Communities, churches, synagogues and families must continue to come together to help provide a strong source of support and counsel for young men and women as they become adults.

## HEALTH CARE

Mr. ENZI. Mr. President, rising health care costs and access to affordable health insurance are among the biggest worries Americans face today.

Health care costs are increasing faster than any other basic service in American society. Today, 44 million Americans lack health insurance at any given point during the year, and between 20 to 30 million of them are chronically uninsured.

My Republican colleagues and I will soon be introducing one of our priority bills for the coming Congress. This legislation, the Healthy America Act of 2005, will bring together an aggressive and innovative set of health care solutions. These solutions build on the already impressive health care record of the last Congress—principally delivering Medicare prescription drug coverage to seniors and making tax-free health savings accounts available to all Americans.

Our bill will include many of President Bush's health care reform priorities, as well as the proposals developed last year by the Senate Republican Task Force on Health Care Costs and the Uninsured, of which I was proud to be a member.

At the heart of this legislation are measures aimed at restraining health care costs, increasing access to care, and improving health care quality.

Toward this end, one of our—and the President's—topmost priorities is comprehensive reform of America's costly, unfair, and chaotic medical liability system. Our bill will ensure fair and rapid compensation to injured patients, reduce frivolous lawsuits, and limit excessive and costly damage awards.

Also especially important, I believe, is the creation of a new national framework for establishing personal electronic health records and for exchanging health information securely and privately. As the new chairman of the Senate Health, Education, Labor and Pensions Committee I will be working closely with my colleagues in the coming months to develop legislation that will speed the adoption of standards and enable systems to ''talk'' to each other—reforms that eventually will save billions of dollars and, potentially, many thousands of lives.

Other critical features of this legislation include a commitment to reforming the struggling small group and individual health insurance markets, expanding the availability of health savings accounts, HSAs, creating targeted tax credits to help Americans purchase private health insurance, and expanding America's Community Health Centers and related facilities.

Mr. President, this legislation will be a solid foundation and a promising beginning as we begin this new Congress. Together with my colleagues and with the President, I will work tirelessly to assure that health care costs, access, and quality are at the forefront of our priorities in the weeks and months ahead.

## CONFIRMATION OF MARGARET SPELLINGS AS SECRETARY OF EDUCATION

Mr. HATCH. Mr. President, I rise today to express my support for Ms. Margaret Spellings as our new Secretary of Education.

This is a key position at a key time. As I travel around the great State of

Utah, there is no single issue area of greater concern than education. I am proud of the way Utah has been educating the children of my State. Our schools and teachers are among some of the best anywhere. Although we spend less per student than many other States, we are getting a great bang for our buck.

As a strong supporter of education, I have been pleased to play an active role in every piece of education reform legislation that has come before the Congress in the past 28 years. I attended public schools, as did my children and now my grandchildren, and I have faith in our Nation's schools. I look forward to working closely with Ms. Spellings and the Department of Education, particularly as I return to the Senate Committee on Health, Education, Labor, and Pensions.

I have been impressed by the President's complete confidence in Ms. Spellings and her ability to serve our Nation and its most valuable asset, our children, as our top educator.

While Ms. Spellings' credentials and experience are very impressive, none is greater than her role as a mother and primary educator of her two daughters, Mary and Grace. Without a doubt, the home is the greatest classroom.

We are all aware of Ms. Spellings' background of service in Texas as chief education advisor to then-Governor George W. Bush. I have been pleased to work with Ms. Spellings during the past four years in her capacity as the Assistant to the President for Domestic Policy. Since the announcement of her nomination by President Bush, I have received numerous letters in support of Ms. Spellings by various groups and individuals concerned about education issues.

Education is the hallmark of domestic issues. While I believe our Nation's education system ranks among the finest in the world, we can still make improvements. Funding for schools is vital, and I have consistently supported federal funding to assist our Nation's teachers, schools, and students. I will continue to support programs to enrich and improve our school system.

Ms. Spellings has indicated her strong commitment to the No Child Left Behind Act, NCLB, signed into law by President Bush on January 8, 2002. I have been supportive of NCLB. Even those who don't agree with everything in NCLB agree that they are now focused on making sure every child is progressing, and they are using innovative approaches to tracking student achievement and motivating them to meet the new standards.

For example, an inner-city school in Utah with a large number of students in low-income, non-English-speaking families is using funds from NCLB to purchase a student tracking database that shows how each child is doing in each subject with every teacher. They know who needs the extra help and in what areas. They are enlisting the support of parents, teachers, and the community to make sure that these kids get the help they need. And they are having great results. Test scores are up. Honor roll is up. Parents are more satisfied. Students are taking pride in their education. And, that's what NCLB is all about.

Of course, this does not mean the law is perfect. We need to fund it better, and too many schools do not make Annual Yearly Progress or AYP because they just do not understand what is required, or misinterpreted the law. I think it is going to take some time to adjust. We need to continue to do what is working in NCLB and look at what is not.

Utah has been in the forefront of the debate and was one of the first States to make moves toward possibly opting out of No Child Left Behind, due in part to concerns about retaining State control and objections to federal mandates without sufficient funding.

Make no mistake, I am a strong advocate for local control of education and want to make sure that there is sufficient flexibility for our States. I trust that the Department of Education will keep open lines of communication with the States and localities as we work together to ensure that truly no child is left behind.

I was particularly pleased that during her hearing before the Senate HELP Committee, Ms. Spellings accepted my invitation to personally visit Utah to meet with legislators and educators there. We look forward to her visit.

With her confirmation, Ms. Spellings will replace Secretary Roderick Paige. I would like to take a moment to note outgoing Secretary Roderick Paige's service. During his tenure, he led the implementation of major education reforms. He showed great commitment to providing our children a quality education, notwithstanding their circumstances, thereby honoring the pledge to leave no child behind. While so doing, Secretary Paige demonstrated willingness to consider certain adjustments in an effort to align the implementation of the No Child Left Behind Act with the intent of the law. We thank him for his service.

Without a doubt, Ms. Spellings has many challenges ahead, but I am confident that she will serve our country with dedication and distinction.

I yield the floor.

## IN HONOR OF DR. MARTIN LUTHER KING, JR.'S BIRTHDAY

Mr. LAUTENBERG. Mr. President, I ask that this statement be inserted in the proper place in the RECORD.

I rise today to honor the life and legacy of Reverend Dr. Martin Luther King, Jr.

While I participated in an event commemorating the life of Dr. King at the Morning Star Community Tabernacle Church in Linden, New Jersey, I felt it was important to pay tribute to the life and legacy of this extraordinary American on the first legislative day of this 109th Congress.

The impact of Dr. King's life, actions and deeds is just as great today as it was 36 years ago, when his life was taken from us. Dr. King accomplished so much in his short life; he was a pastor, civil rights activist and leader, Nobel Peace Prize recipient, Time magazine's Man of the Year, and in many ways, the emancipator of all Americans.

Dr. King's adherence to nonviolence in the pursuit of social justice left an indelible mark on our nation's history and conscience. Clearly, much progress has been made in the struggle for civil rights, equality and social justice. We rightly pay tribute to the civil rights accomplishments to date, and we rightly attribute much of that progress to Dr. King.

But there is still much to do. And sadly, the current administration has had a disappointing record on civil rights and has shown little interest in shouldering leadership responsibility on these important issues.

Two years ago, on the week before we celebrated the birthday of Dr. King, Jr., President Bush intervened in a case before the United States Supreme Court in an effort to destroy affirmative action, which is effectively ''equal education rights'' for African Americans and other minority groups.

The case involved the University of Michigan program which used race as one factor among many when selecting incoming students. I joined other United States Senators in an amicus brief in support of the University of Michigan affirmative action program. Thankfully, in its first ruling on affirmative action in higher education admissions in 25 years, the nation's highest court ruled on June 23, 2003, that race can be used in university admission decisions. Justice Sandra Day O'Connor was the eventual deciding vote in the case, saying that affirmative action is still needed in America—but hoped that its days are numbered.

Last year, on Dr. King's 75th birthday, President Bush went to Atlanta and laid a wreath at Dr. King's grave. The very next day, despite protest from the civil rights community and against the expressed will of the Senate, President Bush recess appointed Judge Charles Pickering to the Fifth Circuit Court of Appeals.

President Bush cast aside several significant concerns of the African American and civil rights community. Some of these concerns included: Judge Pickering's support as a State Senator in the 1960s for the Mississippi Sovereignty Commission, which was established to prevent the implementation of Brown v. Board of Education; Judge Pickering's opposition as a legislator and Federal judge to voting rights for African Americans; and Judge Pickering's disturbing positions as a Federal judge on two of the key protections of equal voting rights for all Americans—the one person-one vote

Constitutional doctrine and the Voting Rights Act.

These are just two examples of a broader indifference President Bush has shown to the social, economic, and legal obstacles African-Americans are forced to overcome in their ongoing effort to achieve real equality.

Affirmative action has proven beneficial in combating past discrimination and it remains necessary today. Judge Pickering is just one of a host of judicial nominees opposing civil rights President Bush has put forth as part of a larger effort to pack the Federal courts with ultra-conservative ideologues.

Each of us must do our part to advance the legacy of Dr. Martin Luther King, Jr., and to promote civil rights equality. I will continue to provide leadership in the 109th Congress to help minority businesses, increase access to education and health care, improve job growth, and fight racial profiling.

I hope that President Bush and the entire Congress will do the same.

## TRIBUTE TO STEVE BEASLEY

Mr. BAUCUS. Mr. President. I rise today to say a few words of thanks to Steve Beasley, an outstanding agriculture economist at USDA who recently completed a year-long fellowship on the Senate Finance Committee. Steve's service to the committee, and by extension to the State of Montana, will be remembered fondly and with great appreciation.

A year ago I was able to snag Steve away from his job at the Foreign Agriculture Service at the Department of Agriculture. He brought to us years of experience in foreign market development and capacity-building. During his time with the committee, his expertise proved invaluable as he worked on calculating the effects of the North American Free Trade Agreement on Montana agricultural products, analyzing the effect of agricultural trade liberalization on crop prices over the past few years, as well as helping prepare me for trade missions to Australia, New Zealand, China, Japan, and Thailand.

Half of my State's economy is based on agriculture, and the work Steve did for us will serve us for the next several years as we examine the effects of trade on our economy's largest sector. I am sad to see him go, but I know the USDA is eager to get him back. I thank him for his hard work over this past year, and I wish him all the luck in the future.

## TRIBUTE TO MR. PAUL KASTEN

Mr. BURNS. Mr. President, Senator BAUCUS and I are honored today to pay tribute to Paul Kasten and thank him for the exceptional service and commitment he has given to the people of Montana. Mr. Kasten served faithfully with the U.S. Postal Service, particularly to Montanans along the Brockway, Paris, Watkins, and Flowing Wells rural mail route loop. As he celebrates a well-deserved retirement, let it be known that he leaves behind a memorable and strong legacy, spanning 57 years of dedicated service to the U.S. Postal Service, his eastern Montana mail route loop, and the people of the State of Montana. We know Congressman REHBERG sends his support and congratulations as well for Paul's significant achievement.

Beginning with a team of horses, Mr. Kasten delivered the mail faithfully to this frontier mail route for 57 noteworthy years, honorably upholding the U.S. Postal Service's code of conduct. In fact, he has gone above and beyond the call of duty on many occasions, delivering groceries and other necessary items to many people along this remote mail route during his tenure. It is clear that Mr. Paul Kasten has ceaselessly served the U.S. Postal Service and the State of Montana for nearly six decades, and is justly deserving of the honor due to him today. It is with great pride that Senator BAUCUS and I bring to the attention of this great body the hard work that Mr. Kasten has completed, both to the State of Montana and to Montana's people. Thank you for all your commendable service, Paul, and we wish you and your family all the best in your future endeavors.

## ADDITIONAL STATEMENTS

### HONORING DENNIS WIESE

• Mr. JOHNSON. Mr. President, I rise today to publicly commend the work of Mr. Dennis Wiese, President of South Dakota Farmers Union, SDFU, for his 12 years of dedicated service to South Dakota's farmers, ranchers and rural people. After six and a half terms as President of SDFU, Dennis has decided not to seek reelection and will begin his own consulting business in his hometown of Flandreau, SD.

Over the years, Dennis has been extraordinarily committed to South Dakota agriculture and is a real ambassador for farming and ranching in the state. As chair of the National Farmers Union subcommittee that worked on the farm bill rural development section, Dennis' insight was invaluable, during negotiations on the Farm Security and Rural Investment Act of 2002.

Since its establishment in 1914, South Dakota Farmers Union has consistently been a voice for family farmers and ranchers, always striving to improve the business climate for agriculture and the quality of life for all South Dakotans. Now, 91 years later, SDFU is regarded as the leader on issues concerning concentration in the agri-business sector. I have always been able to rely on Dennis and the SDFU for the backing needed to stand up for the family agricultural producers and the special position they hold America's business and cultural structure. Always looking to improve the quality of rural living, Dennis has been a consistent champion for fair trade, even when the notion has been unpopular to some. Throughout his presidency, Dennis faced some difficult situations. However, he never lost focus on the concerns that are important to South Dakotan's and continued to work for the betterment of rural America.

Under Dennis' leadership, SDFU has enhanced the lives of thousands of South Dakotans through various educational programs, particularly those aimed at the younger generation of farmers. Involvement in the SDFU education program jumped from 389 young producers enrolled in camps in 1997, to over 1,200 participants in the most recent camps. These camps teach young people about the benefits of cooperatives and shared responsibility, as well as the important rural values that make South Dakota stronger. As Dennis noted in his farewell speech to SDFU:

> The most important Farmers Union is not the Farmers Union of yesterday. It is not the Farmers Union that I inherited from Dallas Tonsager, or the one we enjoy today. The most important Farmers Union is the one we turn over to the next generation of Farmers Union leaders. The most important Farmers Union is the Farmers Union of tomorrow.

Dennis' hard work as president is reflected in the impressive legacy he leaves behind. SDFU has a strong, expanding membership, and prosperous and thriving education program filled with innovative ideas to revitalize South Dakota's rural communities.

It is with great honor that I share Dennis' accomplishments with my colleagues and publicly commend him for excellently serving South Dakota and family farmers. I wish the very best for him, his wife Julie, and his children Dayton, Kyle, Owen, Austin and Elysa.•

### HONORING DR. VINE DELORIA, JR.

• Mr. JOHNSON. Mr. President, it is with great honor that I publicly commend Dr. Vine Deloria, Jr., for receiving the American Indian Visionary Award.

Dr. Deloria, a member of the Standing Rock Sioux tribe, is a distinguished Native American scholar whose research, writings, and teaching span history, law, religion, and politics. This award, given by the Native American publication, Indian Country Today, honors those who display ''the highest qualities and attributes of leadership in defending the foundations of American Indian freedom.'' This is an honor Dr. Deloria richly deserves.

Born in 1933 in Martin, SD., Dr. Deloria has been at the forefront of American Indian activism since the 1960s. As executive director of the National Congress of American Indians from 1964 to 1967, Dr. Deloria frequently worked with leaders whose experience dated back to the Indian Reorganization Act of 1934. Consequently, Dr. Deloria attributes his involvement

in the Indian movement to working with those influential people, as they encouraged a new breed of activists.

For the past 4 decades, Dr. Deloria has been a voice of influence in Indian history, writing more than twenty books and countless articles and lectures. His works stimulated political thinking and discourse among Indian activists. As Wilma Mankiller, former Principal Chief of the Cherokee Nation, said of Dr. Deloria, ''No writer has more clearly articulated the unspoken emotions, dreams and lifeways of contemporary Native people.''

Now a retired professor of political science from the University of Arizona and retired professor emeritus from the University of Colorado, Dr. Deloria is still writing and inspiring young activists from his home in Tucson, Arizona. In fact, Time magazine recognized Deloria as one of the 11 most influential religious thinkers of the twentieth century. As Indian Country Today notes, ''Vine Deloria Jr. provided enormous perception, guidance, strategy and sheer analytical heft to the struggle for respect and justice for American Indians.''

Dr. Vine Deloria, Jr., is an extraordinary pioneer and supporter of Native American rights and the honor of winning the American Indian Visionary Award is one he highly deserves. He is a man of great scholarship and knowledge, and will continue to shape history for years to come. Dr. Deloria has never sought honors or recognition, but his scholarship has brought him well-deserved accolades. It is an honor for me to share his accomplishments with my colleagues and to publicly commend Dr. Deloria on his talent and commitment to history, understanding, and education.●

## TRIBUTE TO DR. DAVID A. AUSTIN

● Mr. JEFFORDS. Mr. President, it is with a heavy heart that I rise today to pay tribute to Dr. David A. Austin, an extraordinary man who touched many lives but passed away on November 4, 2004.

Dr. Austin lived a life full of vitality and enthusiasm. He had an accomplished career, always helped others without thought for himself and made his family the center of his life.

Dr. Austin was born in Brattleboro, VT, where he graduated from St. Michael's High School and received his Bachelor of Science from St. Michael's College. From there he went on to medical school at the University of Vermont where he began his lifelong career of healing and helping others.

After receiving his Naval Medical Officer commission, he continued his education, graduating from the Naval Deep Sea Diving School here in Washington, DC and the School of Submarine and Undersea Medicine in New London, CT.

After completing his active duty and residency at St. Albans Naval Hospital in New York, Dr. Austin opened his medical practice in Rutland in 1970. When not practicing medicine, he was busy serving the community as a member of the Christ the King Elementary School Parent-Teacher Association and the Mount St. Joseph Academy school board, on both of which he served as president for a time.

Later in life, when many people his age were settling into retirement, he was called up during the first Gulf War to Bahrain to serve his country once again, after which he was awarded the Presidential Meritorious Service Medal.

But one of his greatest honors came last April when his peers in the medical community awarded him the Physician of the Year Award. A better man could not have been recognized.

Dr. Austin will be missed by family, friends and all those he touched with his healing hand.●

## TRIBUTE TO ADAM GARDNER, YILEI YANG, ASHLEY SMITH, JACK HARTZ AND BENJAMIN GOWAN

● Mr. BUNNING. Mr. President, I wish to pay tribute to Adam Gardner, Yilei Yang, Ashley Smith, Jack Hartz and Benjamin Gowan as five truly outstanding students from the Commonwealth of Kentucky.

The National Honor Society organizes a Scholar's Bowl to foster a spirit of aspiration and hard work in America's students. These Scholar Bowls include testing of each student in five different categories: English, math, science, social studies, and general knowledge. The tests are rigorous and they require a longstanding history as a good student.

Being recognized by this organization is truly an honor and I am pleased to hear that these five students from Kentucky have become the National Honor Society's Scholar Bowl Champions. The four students from duPont Manual High School in Louisville, KY successfully defended their school's title as National Honor Society National Scholar's Bowl Champions. They are Adam Gardner, Yilei Yang, Ashley Smith, and Jack Hartz. One student, Benjamin Gowan, from Nelson County High School in Bardstown, KY, took first place in the test on the individual science subject category. Thanks to the hard work of these young men and women, four out of five of the top scoring students at last year's Scholar's Bowl were from the Commonwealth of Kentucky.

In their letter to me, the National Honor Society informed me that ''these Kentucky students truly exhibited superlative performance.'' I congratulate these five students for their hard work and their achievement.●

## CELEBRATING WILLIAM BEAUMONT HOSPITAL'S FIFTIETH ANNIVERSARY

● Mr. LEVIN. Mr. President, on behalf of Senator STABENOW and myself, I congratulate the William Beaumont Hospital on 50 years of dedicated service to the Michigan community.

William Beaumont Hospital opened its doors in Royal Oak in 1955 as a result of a survey in southeast Michigan which showed an overwhelming need for medical assistance in the area. The survey was quickly proven correct. Within its first week of operation, the hospital performed over 40 major surgeries and delivered over 30 babies. As the need continued to grow, Beaumont opened a second hospital in 1977 in Troy.

In the past 50 years, Beaumont has grown significantly, logging nearly 1.7 million inpatient admissions and nearly 3.3 million emergency visits. It works closely with several universities in Michigan to provide premier residency and fellowship programs and the Beaumont Research Institute conducts more than 800 active studies funded by grants.

Today, Beaumont is ranked among the top hospitals not just in Michigan but in the Nation. With staff representing over 90 different medical and surgical specialties, Beaumont has been honored with numerous awards including AARP's ''Top 50 Hospitals,'' one of ''America's Best Hospitals'' by U.S. News and World Report, a ''100 Top Hospitals—National Benchmarks for Success'' by Solucient, and one of Michigan's ''Best Places to Work'' by Crain's Detroit Business.

Senator STABENOW and I are delighted to have the opportunity to thank the former and current staff of Beaumont Hospital for their enormous contributions to the State of Michigan and to congratulate them on reaching this significant milestone.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. CRAIG for the Committee on Veterans' Affairs.

*Jim Nicholson, of Colorado, to be Secretary of Veterans Affairs.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to

respond to requests to appear and testify before any duly constituted committee of the Senate.

## 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. GREGG (for himself, Mr. FRIST, Mr. SESSIONS, Mr. DEWINE, Mr. ALLEN, Mr. SANTORUM, Mr. MCCONNELL, and Mr. DEMINT):

S. 3. A bill to strengthen and protect America in the war on terror; to the Committee on Finance.

By Mr. SANTORUM (for himself, Mrs. HUTCHISON, Mr. FRIST, and Mr. MCCONNELL):

S. 6. A bill to amend the Internal Revenue Code of 1986 to provide permanent family tax relief, to reauthorize and improve the program of block grants to States for temporary assistance for needy families and to improve access to quality child care, and to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low-income Americans to gain financial security by building assets, and for other purposes; to the Committee on Finance.

By Mr. KYL (for himself, Mr. FRIST, Mr. DEMINT, and Mr. MCCONNELL):

S. 7. A bill to increase American jobs and economic growth by making permanent the individual income tax rate reductions, the reduction in the capital gains and dividend tax rates, and the repeal of the estate, gift, and generation-skipping transfer taxes; to the Committee on Finance.

By Mr. ENSIGN (for himself, Mr. HAGEL, Mr. BROWNBACK, Mr. SANTORUM, Mr. KYL, Mr. FRIST, Mrs. DOLE, Mr. SESSIONS, Mr. GRASSLEY, Mr. ALLEN, Mr. BUNNING, Mr. COBURN, Mr. DEMINT, and Mr. MCCONNELL):

S. 8. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; to the Committee on the Judiciary.

By Mr. ENZI (for himself, Mr. FRIST, and Mr. MCCONNELL):

S. 9. A bill to improve American competitiveness in the global economy by improving and strengthening Federal education and training programs, and for other purposes; to the Committee on Finance.

By Mr. LEVIN (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. DORGAN, Mr. LAUTENBERG, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. KENNEDY, Mr. CORZINE, Mr. PRYOR, Mr. NELSON of Nebraska, Mr. REED, Mr. SCHUMER, and Mr. DAYTON):

S. 11. A bill to amend title 10, United States Code, to ensure that the strength of the Armed Forces and the protections and benefits for members of the Armed Forces and their families are adequate for keeping the commitment of the people of the United States to support their service members, and for other purposes; to the Committee on Finance.

By Mr. BIDEN (for himself, Mr. REID, Mr. BINGAMAN, Ms. MIKULSKI, Mr. DURBIN, Ms. STABENOW, Mr. ROCKEFELLER, Mr. LAUTENBERG, and Mr. SCHUMER):

S. 12. A bill to combat international terrorism, and for other purposes; to the Committee on Foreign Relations.

By Mr. AKAKA (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. DORGAN, Mr. LAUTENBERG, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. KENNEDY, Mr. CORZINE, Mr. PRYOR, Mr. SCHUMER, Mr. SARBANES, and Mr. DAYTON):

S. 13. A bill to amend titles 10 and 38, United States Code, to expand and enhance health care, mental health, transition, and disability benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Ms. STABENOW (for herself, Mr. REID, Mr. CORZINE, Mr. KENNEDY, Mr. INOUYE, Ms. MIKULSKI, Mr. DORGAN, Mr. LEAHY, Mr. ROCKEFELLER, Mr. SCHUMER, Mr. DURBIN, and Mr. DAYTON):

S. 14. A bill to provide fair wages for America's workers, to create new jobs through investment in America, to provide for fair trade and competitiveness, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mr. REID, Mr. KENNEDY, Mr. CORZINE, Mr. DURBIN, Mr. REED, Mr. SCHUMER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Ms. STABENOW, Mr. LAUTENBERG, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. INOUYE, Mr. ROCKEFELLER, Mr. SARBANES, and Mr. DAYTON):

S. 15. A bill to improve education for all students, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. REID, Ms. STABENOW, Mr. CORZINE, Mr. SCHUMER, Ms. MIKULSKI, Mr. AKAKA, Mr. INOUYE, Mr. LEVIN, Mr. KERRY, Mr. LAUTENBERG, Mr. ROCKEFELLER, Mr. DODD, Mr. PRYOR, and Mr. DURBIN):

S. 16. A bill to reduce to the cost of quality health care coverage and improve the availability of health care coverage for all Americans; to the Committee on Finance.

By Mr. DODD (for himself, Ms. MIKULSKI, Ms. STABENOW, Mr. ROCKEFELLER, and Mr. SCHUMER):

S. 17. A bill to amend the Help America Vote Act of 2002 to protect voting rights and to improve the administration of Federal elections, and for other purposes; to the Committee on Rules and Administration.

By Mr. DAYTON (for himself, Mr. REID, Ms. STABENOW, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. CORZINE, Mr. SCHUMER, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. AKAKA, Mr. INOUYE, Mrs. CLINTON, Mr. LEVIN, Mr. KERRY, Mr. LEAHY, Mr. ROCKEFELLER, Mr. DODD, Mr. SARBANES, and Mr. DURBIN):

S. 18. A bill to amend title XVIII of the Social Security Act to make improvements to the medicare program for beneficiaries; to the Committee on Finance.

By Mr. CONRAD (for himself, Mr. REID, Mr. FEINGOLD, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. DAYTON, Mr. DODD, and Mrs. CLINTON):

S. 19. A bill to reduce budget deficits by restoring budget enforcement and strengthening fiscal responsibility; to the Committee on the Budget.

By Mr. REID (for himself, Mrs. MURRAY, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mrs. CLINTON, Mr. KERRY, Mrs. FEINSTEIN, Ms. CANTWELL, Mr. HARKIN, Ms. MIKULSKI, Mr. INOUYE, Mr. AKAKA, Mr. LEVIN, Mr. KENNEDY, Mr. LEAHY, Mr. WYDEN, and Ms. STABENOW):

S. 20. A bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women's health care; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. HUTCHISON:

S. 24. A bill to establish an emergency reserve fund to provide timely financial assistance in response to domestic disasters and emergencies; to the Committee on the Budget.

By Mr. CHAMBLISS:

S. 25. A bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States; to the Committee on Finance.

By Mrs. HUTCHISON (for herself, Mr. FRIST, Ms. CANTWELL, Mr. ENSIGN, Mr. ALEXANDER, and Mr. CORNYN):

S. 27. A bill to amend the Internal Revenue Code of 1986 to make permanent the deduction of State and local general sales taxes; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself and Mr. LEAHY):

S. 29. A bill to amend title 18, United States Code, to limit the misuse of social security numbers, to establish criminal penalties for such misuse, and for other purposes; to the Committee on the Judiciary.

By Mr. SARBANES (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. AKAKA, Mr. BINGAMAN, Mr. SCHUMER, Mr. DODD, Mrs. BOXER, Ms. MIKULSKI, and Mr. REID):

S. 31. A bill to amend the Electronic Fund Transfer Act to extend certain consumer protections to international remittance transfers of funds originating in the United States, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DAYTON (for himself, Mr. REID, Mr. DORGAN, Mr. LEAHY, Ms. MIKULSKI, Mr. CORZINE, and Mr. JOHNSON):

S. 32. A bill to enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extend active duty, and for other purposes; to the Committee on Armed Services.

By Ms. CANTWELL (for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mrs. MURRAY, and Mr. FEINGOLD):

S. 33. A bill to prohibit energy market manipulation; to the Committee on Energy and Natural Resources.

By Mr. LIEBERMAN:

S. 34. A bill to provide for the development of a global tsunami detection and warning system, to improve existing communication of tsunami warnings to all potentially affected nations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CONRAD:

S. 35. A bill to amend the Internal Revenue Code of 1986 to extend the credit for production of electricity from wind; to the Committee on Finance.

By Mr. INOUYE:

S. 36. A bill to amend title 10, United States Code, to recognize the United States Military Cancer Institute as an establishment within the Uniformed Services University of the Health Sciences, to require the Institute to promote the health of members of the Armed Forces and their dependents by enhancing cancer research and treatment, to provide for a study of the epidemiological causes of cancer among various ethnic groups for cancer prevention and early detection efforts, and for other purposes; to the Committee on Armed Services.

By Mrs. FEINSTEIN (for herself and Mrs. HUTCHISON):

S. 37. A bill to extend the special postage stamp for breast cancer research for 2 years; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. MURRAY:

S. 38. A bill to enhance and improve benefits for members of the National Guard and Reserves who serve extended periods on active duty, and for other purposes; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. BINGAMAN, Mrs. MURRAY, Ms. LANDRIEU, Mrs. BOXER, Mr. SARBANES, and Ms. COLLINS):

S. 40. A bill to amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to geriatric assessments and chronic care management, and for other purposes; to the Committee on Finance.

By Mr. NELSON of Nebraska (for himself, Mr. DOMENICI, and Mr. CRAIG):

S. 41. A bill to amend the Safe Drinking Water Act to exempt nonprofit small public water systems from certain drinking water standards relating to naturally occuring contaminants; to the Committee on Environment and Public Works.

By Mr. ALLEN (for himself, Mr. NELSON of Florida, Mr. DEWINE, Mr. NELSON of Nebraska, Mrs. DOLE, Ms. MURKOWSKI, and Mr. VITTER):

S. 42. A bill to amend title 10, United States Code, to increase the death gratuity payable with respect to deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

By Mr. HAGEL (for himself, Mr. COLEMAN, Mr. KENNEDY, Mr. DEWINE, and Mr. OBAMA):

S. 43. A bill to provide certain enhancements to the Montgomery GI Bill Program for certain individuals who serve as members of the Armed Forces after the September 11, 2001, terrorist attacks, and for other purposes; to the Committee on Armed Services.

By Mr. HAGEL (for himself, Mr. DEWINE, Mrs. CLINTON, Mr. KENNEDY, Mr. LAUTENBERG, and Mr. SALAZAR):

S. 44. A bill to amend title 10, United States Code, to increase the amount of the military death gratuity from $12,000 to $100,000; to the Committee on Armed Services.

By Mr. LEVIN (for himself, Mr. HATCH, and Mr. BIDEN):

S. 45. A bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

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

S. 46. A bill to authorize the extension of unconditional and permanent nondiscriminatory treatment (permanent normal trade relations treatment) to the products of Ukraine, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 47. A bill to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico; to the Committee on Energy and Natural Resources.

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 48. A bill to reauthorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. STEVENS (for himself and Ms. MURKOWSKI):

S. 49. A bill to establish a joint Federal-State Floodplain and Erosion Mitigation Commission for the State of Alaska; to the Committee on Energy and Natural Resources.

By Mr. INOUYE (for himself, Mr. STEVENS, Ms. CANTWELL, Mr. BURNS, Mr. LAUTENBERG, Ms. SNOWE, Mr. AKAKA, Ms. MURKOWSKI, Mrs. CLINTON, Mr. SMITH, and Mrs. MURRAY):

S. 50. A bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BROWNBACK (for himself, Mr. ALEXANDER, Mr. ALLEN, Mr. BUNNING, Mrs. DOLE, Mr. ISAKSON, Mr. CHAMBLISS, Mr. BURNS, Mr. COBURN, Mr. COLEMAN, Mr. CORNYN, Mr. CRAPO, Mr. DEMINT, Mr. DEWINE, Mr. ENZI, Mr. GRAHAM, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. INHOFE, Mr. KYL, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. TALENT, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. MARTINEZ, Mr. ENSIGN, and Mr. MCCONNELL):

S. 51. A bill to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HATCH:

S. 52. A bill to direct the Secretary of the Interior to convey a parcel of real property to Beaver County, Utah; to the Committee on Energy and Natural Resources.

By Mr. HATCH:

S. 53. A bill to amend the Mineral Leasing Act to authorize the Secretary of the Interior to issue separately, for the same area, a lease for tar sand and a lease for oil and gas, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HATCH:

S. 54. A bill to amend the National Trails System Act to require the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ALLARD:

S. 55. A bill to adjust the boundary of Rocky Mountain National Park in the State of Colorado; to the Committee on Energy and Natural Resources.

By Mr. ALLARD (for himself and Mr. SALAZAR):

S. 56. A bill to establish the Rio Grande Natural Area in the State of Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ALLARD:

S. 57. A bill to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 58. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

By Mr. INOUYE:

S. 59. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

By Mr. FEINGOLD:

S. 60. A bill to repeal the provision of law that provides automatic pay adjustments for Members of Congress; to the Committee on Homeland Security and Governmental Affairs.

By Mr. INOUYE:

S. 61. A bill to amend title XVIII of the Social Security Act to provide improved reimbursement for clinical social worker services under the medicare program; to the Committee on Finance.

By Mr. INOUYE:

S. 62. A bill for the relief of Jim K. Yoshida; to the Committee on Veterans' Affairs.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 63. A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. LINCOLN (for herself and Mr. PRYOR):

S. 64. A bill to direct the Secretary of Energy to establish a decommissioning pilot program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas; to the Committee on Energy and Natural Resources.

By Mr. INHOFE (for himself, Mr. STEVENS, and Mr. BURNS):

S. 65. A bill to amend the age restrictions for pilots; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE:

S. 66. A bill to amend title XIX of the Social Security Act to provide for coverage of services provided by nursing school clinics under medicaid programs; to the Committee on Finance.

By Mr. INOUYE:

S. 67. A bill to amend the Public Health Act to provide health care practitioners in rural areas with training in preventive health care, including both physical and mental care, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE:

S. 68. A bill to amend title XIX of the Social Security Act to provide 100 percent reimbursement for medical assistance provided to a Native Hawaiian through a federally-qualified health center or a Native Hawaiian health care system; to the Committee on Finance.

By Mr. INOUYE:

S. 69. A bill for the relief of Donald C. Pence; to the Committee on Armed Services.

By Mr. INOUYE:

S. 70. A bill to amend title XVIII of the Social Security Act to remove the restriction that a clinical psychologist or a clinical social worker provide services in a comprehensive outpatient rehabilitation facility to a patient only under the care of a physician; to the Committee on Armed Services.

By Mr. INOUYE:

S. 71. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work at certain medicare providers, and for other purposes; to the Committee on Finance.

By Mr. INOUYE:

S. 72. A bill to amend title 5, United States Code, to require the issuance of a prisoner-of-war medal to civilian employees of the Federal Government who are forcibly detained or interned by an enemy government or a hostile force under wartime conditions; to the Committee on Homeland Security and Governmental Affairs.

By Ms. CANTWELL:

S. 73. A bill to promote food safety and to protect the animal feed supply from bovine spongiform encephalopathy; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 74. A bill to designate a portion of the White Salmon River as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

By Ms. CANTWELL:

S. 75. A bill to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts; to the Committee on Finance.

By Ms. CANTWELL:

S. 76. A bill to amend the Internal Revenue Code of 1986 to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts, and to provide for a deduction for contributions to education savings accounts; to the Committee on Finance.

By Mr. SESSIONS (for himself and Mr. LIEBERMAN):

S. 77. A bill to amend titles 10 and 38, United States Code, to improve death benefits for the families of deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

By Mrs. HUTCHISON (for herself, Mr. BROWNBACK, Mr. CORNYN, Mr. BUNNING, Mr. BURNS, Mr. HAGEL, and Mr. ENSIGN):

S. 78. A bill to make permanent marriage penalty relief; to the Committee on Finance.

By Mr. INOUYE:

S. 79. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Veterans' Affairs.

By Mr. INOUYE:

S. 80. A bill to restore the traditional day of observance of Memorial Day, and for other purposes; to the Committee on the Judiciary.

By Mr. CRAIG:

S. 81. A bill for the relief of Benjamin M. Banfro; to the Committee on the Judiciary.

By Mr. CRAIG:

S. 82. A bill for the relief of Robert J. Bancroft, of Newport Washington, to permit the payment of backpay for overtime incurred in missions flown with the Drug Enforcement Agency; to the Committee on Homeland Security and Governmental Affairs.

By Mr. INOUYE:

S. 83. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for the conversion of cooperative housing corporations into condominiums; to the Committee on Finance.

By Mr. INOUYE:

S. 84. A bill to amend the Internal Revenue Code of 1986 to exempt certain sightseeing flights from taxes on air transportation; to the Committee on Finance.

By Mr. INOUYE:

S. 85. A bill for the relief of Ricke Kaname Fujino of Honolulu, Hawaii; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 86. A bill for the relief of Sung Jun Oh; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 87. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 88. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect, to be conducted by a clinical social worker; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 89. A bill to amend title VII of the Public Health Service Act to make certain graduate programs in professional psychology eligible to participate in various health professions loan programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE:

S. 90. A bill to amend the Public Health Service Act to provide for the establishment of a National Center for Social Work Research; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE:

S. 91. A bill to amend title VII of the Public Health Service Act to ensure that social work students or social work schools are eligible for support under certain programs to assist individuals in pursuing health careers and programs of grants for training projects in geriatrics, and to establish a social work training program; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE:

S. 92. A bill to amend title VII of the Public Health Service Act to establish a psychology post-doctoral fellowship program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE:

S. 93. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LUGAR (for himself, Mr. LEAHY, Mrs. LINCOLN, Mrs. DOLE, and Mr. SMITH):

S. 94. A bill to amend the Internal Revenue Code of 1986 to provide for a charitable deduction for contributions of food inventory; to the Committee on Finance.

By Mr. LAUTENBERG (for himself and Mr. DEWINE):

S. 95. A bill to amend titles 23 and 49, United States Code, concerning length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes; to the Committee on Environment and Public Works.

By Mr. INHOFE:

S. 96. A bill to target Federal funding for research and development, to amend section 1928 of the Social Security Act to encourage the production of influenza vaccines by eliminating the price cap applicable to the purchase of such vaccines under contracts entered into by the Secretary of Health and Human Services, to amend the Internal Revenue Code of 1986 to establish a tax credit to encourage vaccine production capacity, and for other purposes; to the Committee on Finance.

By Mr. ENZI:

S. 97. A bill to provide for the sale of bentonite in Big Horn County, Wyoming; to the Committee on Energy and Natural Resources.

By Mr. ALLARD (for himself, Mrs. CLINTON, Mr. SHELBY, Mr. FEINGOLD, Mr. BURNS, and Mr. ISAKSON):

S. 98. A bill to amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ENZI:

S. 99. A bill to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming; to the Committee on Energy and Natural Resources.

By Mr. ALLARD (for himself and Mr. SALAZAR):

S. 100. A bill to authorize the exchange of certain land in the State of Colorado; to the Committee on Energy and Natural Resources.

By Mr. ENZI:

S. 101. A bill to convey to the town of Frannie, Wyoming, certain land withdrawn by the Commissioner of Reclamation; to the Committee on Energy and Natural Resources.

By Mr. TALENT:

S. 102. A bill to provide grants to States to combat methamphetamine abuse; to the Committee on the Judiciary.

By Mr. TALENT (for himself, Mrs. FEINSTEIN, Mr. BAYH, Mr. NELSON of Nebraska, Mr. DAYTON, Mr. WYDEN, Mr. SALAZAR, Mr. HAGEL, Mr. HARKIN, Mr. SMITH, Mr. COLEMAN, and Mr. GRASSLEY):

S. 103. A bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. TALENT (for himself, Mr. WYDEN, Mr. COLEMAN, and Mr. CORZINE):

S. 104. A bill to amend the Internal Revenue Code of 1986 to provide tax-exempt financing of highway projects and rail-truck transfer facilities; to the Committee on Finance.

By Mr. TALENT (for himself, Mr. SESSIONS, and Mr. DEMINT):

S. 105. A bill to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes; to the Committee on Finance.

By Mr. LEVIN:

S. 106. A bill to provide for the reliquidation of certain entries of candles; to the Committee on Finance.

By Mr. LEVIN:

S. 107. A bill to provide for the reliquidation of certain entries of clock radios; to the Committee on Finance.

By Mr. JOHNSON (for himself, Mr. ENZI, Mr. BINGAMAN, and Mr. DORGAN):

S. 108. A bill to prohibit the operation during a calendar year of the final rule issued by the Secretary of Agriculture to establish standards for the designation of minimal-risk regions for the introduction of bovine spongiform encephalopathy into the United States, including designation of Canada as a minimal-risk region, and the importation into the United States from Canada of certain bovine ruminant products during that calendar year, unless country of origin labeling is required for the retail sale of a covered commodity during that calendar year; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. VITTER (for himself, Mr. SALAZAR, Mr. THUNE, and Mr. DEMINT):

S. 109. A bill entitled ''Pharmaceutical Market Access Act of 2005''; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN:

S. 110. A bill for the relief of Robert Liang and Alice Liang; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 111. A bill for the relief of Shigeru Yamada; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 112. A bill for the relief of Denes Fulop and Gyorgyi Fulop; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 113. A bill to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust; to the Committee on Indian Affairs.

By Mr. KERRY (for himself, Mr. KENNEDY, Mrs. MURRAY, Mr. LAUTENBERG, Mr. CORZINE, and Ms. CANTWELL):

S. 114. A bill to amend titles XIX and XXI of the Social Security Act to ensure that every uninsured child in America has health insurance coverage, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 115. A bill to require Federal agencies, and persons engaged in interstate commerce, in possession of electronic data containing personal information, to disclose any unauthorized acquisition of such information; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 116. A bill to require the consent of an individual prior to the sale and marketing of such individual's personally identifiable information, and for other purposes; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself and Mr. VOINOVICH):

S. 117. A bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN:

S. 118. A bill for the relief of Maria Cristina DeGrassi; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. SCHUMER, Mr. HAGEL, Mr. DURBIN, Mr. DEWINE, Ms. CANTWELL, Mr. INOUYE, and Mr. FEINGOLD):

S. 119. A bill to provide for the protection of unaccompanied alien children, and for other purposes; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 120. A bill for the relief of Esidronio Arreola-Saucedo, Maria Elna Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola; to the Committee on the Judiciary.

By Mr. DEWINE (for himself, Mr. DURBIN, Mr. ALLEN, Mr. HAGEL, Mr. COLEMAN, Mr. JOHNSON, Mr. OBAMA, and Mr. LEAHY):

S. 121. A bill to amend titles 10 and 38, United States Code, to improve the benefits provided for survivors of deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

By Mr. FEINGOLD:

S. 122. A bill to abolish the death penalty under Federal law; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 123. A bill to amend part D of title XVIII of the Social Security Act to provide for negotiation of fair prices for Medicare prescription drugs; to the Committee on Finance.

By Mr. FEINGOLD:

S. 124. A bill to amend title XVIII of the Social Security Act to repeal the MA Regional Plan Stabilization Fund; to the Committee on Finance.

By Mrs. BOXER (for herself, Mrs. FEINSTEIN, and Mr. DURBIN):

S. 125. A bill to designate the United States courthouse located at 501 I Street in Sacramento, California, as the ''Robert T. Matsui United States Courthouse''; to the Committee on Environment and Public Works.

By Mrs. LINCOLN:

S. 126. A bill to improve the administration of the Animal and Plant Health Inspection Service of the Department of Agriculture and for other purposes; to the Committee on Environment and Public Works.

By Mr. INOUYE:

S. 127. A bill to amend chapter 81 of title 5, United States Code, to authorize the use of clinical social workers to conduct evaluations to determine work-related emotional and mental illnesses; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 128. A bill to designate certain public land in Humboldt, Del Norte, Mendocino, Lake, and Napa Counties in the State of California as wilderness, to designate certain segments of the Black Butte River in Mendocino County, California as a wild or scenic river, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. TALENT:

S. 129. A bill to amend title 23, United States Code, to provide for HOV facilities; to the Committee on Environment and Public Works.

By Mr. HAGEL (for himself and Mr. NELSON of Nebraska):

S. 130. A bill to authorize an additional district judgeship for the district of Nebraska; to the Committee on the Judiciary.

By Mr. INHOFE (for himself and Mr. VOINOVICH):

S. 131. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program; to the Committee on Environment and Public Works.

By Mr. SMITH (for himself and Mrs. LINCOLN):

S. 132. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance; to the Committee on Finance.

By Mr. TALENT (for himself and Mr. FEINGOLD):

S. 133. A bill to amend section 302 of the PROTECT Act to modify the standards for the issuance of alerts through the AMBER Alert communications network; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 134. A bill to adjust the boundary of Redwood National Park in the State of California; to the Committee on Energy and Natural Resources.

By Mr. BURNS (for himself, Mr. JOHNSON, Mr. THOMAS, Mr. BINGAMAN, Mr. THUNE, and Mr. DORGAN):

S. 135. A bill to amend the Agricultural Marketing Act of 1946 to expand country of origin labeling for certain covered commodities; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. FEINSTEIN:

S. 136. A bill to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing education services for students attending schools located within Yosemite National Park, to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area; to the Committee on Energy and Natural Resources.

By Mr. KERRY:

S. 137. A bill to modify the contract consolidation requirements in the Small Business Act, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. KERRY (for himself and Mr. BINGAMAN):

S. 138. A bill to make improvements to the microenterprise programs administered by the Small Business Administration; to the Committee on Small Business and Entrepreneurship.

By Mr. KERRY:

S. 139. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a vocational and technical entrepreneurship development program; to the Committee on Small Business and Entrepreneurship.

By Mrs. CLINTON (for herself and Mr. SCHUMER):

S. 140. A bill to provide for a domestic defense fund to improve the Nation's homeland defense, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LEVIN (for himself and Mr. JEFFORDS):

S. 141. A bill to amend part A of title IV of the Social Security Act to allow up to 24 months of vocational educational training to be counted as a work activity under the temporary assistance to needy families program; to the Committee on Finance.

By Mr. SCHUMER:

S. 142. A bill for the relief of Alemseghed Mussie Tesfamical; to the Committee on the Judiciary.

By Mr. DAYTON:

S. 143. A bill to ensure that Members of Congress do not receive better prescription drug benefits than medicare beneficiaries; to the Committee on Homeland Security and Governmental Affairs.

By Mr. KOHL (for himself and Mr. CORZINE):

S. 144. A bill to change the date for regularly scheduled Federal elections and establish polling place hours; to the Committee on Rules and Administration.

By Mr. ALLARD (for himself, Mr. INHOFE, Mr. LOTT, Mr. ENZI, Mr. DEMINT, Mr. SANTORUM, Mr. CRAPO, Mr. SESSIONS, Mr. VITTER, Mr. THUNE, Mr. ALEXANDER, Mr. FRIST, Mr. TALENT, Mr. BURR, Mrs. HUTCHISON, Mr. KYL, Mrs. DOLE, Mr. MARTINEZ, Mr. ISAKSON, Mr. MCCONNELL, Mr. HATCH, Mr. ROBERTS, Mr. CORNYN, Mr. STEVENS, and Mr. COBURN):

S.J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.

By Mr. CRAIG:

S.J. Res. 2. A joint resolution proposing an amendment to the Constitution of the United States relative to require a balanced budget and protect Social Security surpluses; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself, Mr. ALEXANDER, Mr. DOMENICI, Mr. COCHRAN, Mr. HAGEL, Mr. WARNER, Mr. BIDEN, Mr. HATCH, Mr. KENNEDY, Mr. DODD, and Mr. GRAHAM):

S. Res. 7. A resolution relating to the death of Howard S. Liebengood, former Sergeant at Arms of the Senate; considered and agreed to.

By Ms. COLLINS (for herself, Mr. FEINGOLD, and Mr. COLEMAN):

S. Res. 8. A resolution expressing the sense of the Senate regarding the maximum amount of a Federal Pell Grant; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE:

S. Res. 9. A resolution expressing the sense of the Senate regarding designation of the month of November as ''National Military Family Month''; to the Committee on the Judiciary.

By Mr. SCHUMER (for himself and Mr. TALENT):

S. Con. Res. 3. A concurrent resolution expressing the sense of the Congress with respect to the murder of Emmett Till; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GREGG (for himself, Mr. FRIST, Mr. SESSIONS, Mr. DEWINE, Mr. ALLEN, Mr. SANTORUM, Mr. MCCONNELL, and Mr. DEMINT):

S. 3. A bill to strengthen and protect America in the war on terror; to the Committee on Finance.

Mr. ENZI. Mr. President, as reports continue to appear in the media, there can be little doubt that a critical area of homeland security, and one on which I will be focusing as Chairman of the Health, Education, Labor and Pensions Committee, is the issue of bioterrorism. It is clear that we cannot separate the need for a strong national biodefense from other aspects of emergency preparedness.

Last summer, when President Bush signed the Project Bioshield Act into law, he called bioterrorism and efforts to use modern technologies against us the greatest danger of our time. The threat posed by bioterror has not gone unnoticed by terrorists and those who wish to do us harm. That is why we must continue to do everything we can to ensure our ability to respond to the use of biological weapons.

In the months to come, my Committee will be working together to develop the strategy we will need to provide for a strong national biodefense. We will be exploring a number of options in that effort, like providing incentives to increase private sector participation in the development of bioterror countermeasures and biopreparedness tools. We will also be examining ways to strengthen our domestic vaccine industry and increase the overall readiness of our public health system.

While I commend its intent, I declined to cosponsor S. 3, the Republican leadership bioterrorism bill introduced today. I look forward to developing bipartisan legislation to strengthen our national biodefense system in our Committee. Senator BURR, who will be heading the Subcommittee on Bioterrorism and Public Health Preparedness, will be an important part of that effort. I am also looking forward to the input of my fellow Committee members, including Senators KENNEDY, GREGG and HATCH, as well as Senator LIEBERMAN, who, while not a member of my Committee, has made this a priority of his work in the Congress and put a great deal of thought and effort into the area. In the coming weeks and months, I will also be convening a number of discussions with critical stakeholders and experts as we develop our legislation.

Together, I am confident we can build on the work Congress and President Bush began with the Project Bioshield legislation and do what is necessary to ensure that we are as prepared as we possibly can be for the ever-present and constantly changing threat of bioterrorism.

By Mr. ENZI (for himself, Mr. FRIST, and Mr. MCCONNELL):

S. 9. A bill to improve American competitiveness in the global economy by improving and strengthening Federal education and training programs, and for other purposes; to the Committee on Finance.

Mr. ENZI. Mr. President, last week we had an opportunity to be a part of a truly historic event. As we gathered together on the west front of the Capitol, a huge crowd joined us along the Mall and down Pennsylvania Avenue to witness the inauguration of President Bush. It was a great moment for America as the President took his oath of office. Later, in what was one of the best inaugural speeches I have ever heard, he outlined his vision for the future and the theme for his second term.

It filled my heart with pride to hear him speak about freedom and the role America would continue to play in helping to bring its bright light to bear on the darkest regions of the world. As he spoke, I was pleased to hear him also renew, his commitment to our Nation's education system and to bringing the highest standards to our schools. The President made it clear that such an effort was an important part of making sure that every American has a stake in our future as a nation. Without it, the American dream we have shared for many years may be reduced to a nightmare for future generations.

Clearly, we can't allow that to happen. That is why I am pleased to join, with the distinguished majority leader, Dr. FRIST, and my friend and colleague, from Tennessee, Senator ALEXANDER, in introducing legislation we have written to address that need and ensure a brighter future for our children. Among the goals our legislation seeks to address is the importance of strengthening our public education system, ensuring parents are involved in the process and, above all, giving our teachers the support they need to obtain the results we must have if our children are to have the best chance to succeed in life.

The legislation I am introducing today continues the work we began with the passage of the No Child Left Behind Act. That bipartisan legislation made it clear that we had high expectations for all public school children. It made making sure those expectations were met the center of our Federal education policy. That policy has had good results. Children all over the country, including minority children, are improving their reading skills. Their math scores are getting better. In another 2 years, when science is included in the State assessments, I believe we will see that students are doing better in that subject, too. Thanks to the passage of the No Child Left Behind Act that we all had a hand in, we are continuing to see more and more positive results in our schools.

Although our record of success is impressive, there is still room for more improvement. According to the most recent National Assessment of Education Progress, over 25 percent of twelfth grade students could not read at grade level. Only two-thirds of students entering the ninth grade are expected to complete high school within 4 years. That is a dire forecast for our future, but it need not be so if we stick to the goals we have set and work to achieve them.

We want to make sure we continue to set high expectations of what all students can achieve, regardless of their background. This needs to be a common theme in all our Federal education programs. All students can learn and every child can be a star pupil. It is not just a slogan. It is a philosophy that our teachers need to put into practice every day in the classroom. It must then be echoed by every student's parents each evening at home at the dinner table.

We need to make sure Federal programs emphasize accountability, but we also need to make sure we do it in a way that makes sense. Many Federal programs designed to serve the same population of students have different requirements. We can help our teachers serve their students better by reducing the amount of time they spend outside the classroom on activities that don't help our children learn. Federal program requirements should not work against the, goal we have set of improving student achievement.

It is important to provide flexibility to the States so they can manage Federal program dollars and address their unique needs in the most effective manner possible. We need to let leaders at the State and local level make the important decisions about this country's education, because they are at the level closest to the people—and closest to the classroom where we must continue to get good results from our efforts.

The needs of rural schools must also continue to be addressed. Schools in rural States like Wyoming have unique needs and serve smaller populations. They can't be administered like the large schools of the big cities in the East. One-size-fits-all policies that may work in large population centers are all too often doomed to fail in the smaller towns and cities of the West.

Although funding will be a key in the effort to address these issues, the Federal Government provides only a fraction of education spending in this country. For K–12 education, the Federal investment is still around 8 percent. The rest of the money comes from States and local districts. We need to trust these educators and administrators to work on behalf of the children in their charge. We must ensure they have the tools they need to serve their students and help all children in their area succeed.

We also want to support lifelong learning opportunities for students at every stage in their life. Education is

changing; the way we approach learning has to change as well. Federal programs should reflect these changes and help our students adapt to them. Las year, more than 70 percent of college students were considered ''nontraditional.'' Our education system needs to address the needs of adult learners, as well as children who take the more ''traditional'' track in education.

We want to create a strong link between education and the workforce. Businesses are creating and filling good jobs with good candidates, and we want to make sure we are filling those jobs with American workers.

In our technology-driven economy, school can never be out. It is estimated that 60 percent of tomorrow's jobs will require skills that only 20 percent of today's workers possess. It is also estimated that the average worker leaving college today will switch careers 14 times in their life, and 10 of those careers haven't been invented yet.

To address those needs, we need a system in place that can support a lifetime of education, training, and retraining. As tomorrow's workers change careers, they will need to learn new skills, or to apply their current skills in new ways. Our postsecondary institutions will play a critical role in supporting these students, as they do now through a number of Federal education programs.

High school dropouts are the most at-risk school population in the workforce. We must look at Federal efforts to reform high schools to make sure we are keeping students in school. We need to make sure that students are leaving high school with a diploma, a quality education, and the strong foundation of reading, writing, math and science skills that will help them succeed in the workforce. We must also reach out to those who do not have high school diplomas to give them an opportunity to increase the level of their skills so that they, too, have a chance to succeed in life. We can do that by increasing their awareness of and involvement in lifetime of learning programs.

In this bill, we have also included language to reauthorize the Workforce Investment Act. That will help an estimated 900,000 unemployed workers each year get back to work and provide American workers with the skills they will need to be competitive in the global marketplace. That will help them land the good jobs that will be created in the years to come. Our legislation will also support the needs of businesses including small businesses looking for skilled workers. In addition, the bill will strengthen the role of public education institutions in the Federal workforce preparation effort, including our community colleges.

As we work on this and other education legislation, we must ensure we are focused on getting the results that will help our children succeed in life. We can do that by incorporating high expectations, accountability, flexibility for our States in administering Federal assistance, and a lifetime of learning opportunities, into our education policies. If we do that, every child's life will be a success story and everyone will have the freedom to live their own version of the American dream.

As we continue to work on improving our Nation's education system, an educated citizenry will continue to be our goal. It will never be enough to provide our children with a diploma. We must provide them with the skills they will need to compete for and win the jobs of tomorrow and keep them.

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By Mr. LEVIN (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. DORGAN, Mr. LAUTENBERG, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. KENNEDY, Mr. CORZINE, Mr. PRYOR, Mr. NELSON of Nebraska, Mr. REED, Mr. SCHUMER, and Mr. DAYTON):

S. 11. A bill to amend title 10, United States Code, to ensure that the strength of the Armed Forces and the protections and benefits for members of the Armed Forces and their families are adequate for keeping the commitment of the people of the United States to support their service members, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, I am honored to introduce the Standing with Our Troops Act of 2005. This bill addresses the needs of the Soldiers, Sailors, Airmen, and Marines who have responded so bravely to the call of our Nation. We owe it to them and their families to ensure that they are properly trained and equipped for the hazardous duties they are performing, that they are fairly compensated for their service, and that they receive their pay in the correct amount, on time.

We start with the recognition that we have cut our troop strength too far to sustain current military operations. This bill would authorize increases of up to 40,000 additional active duty Soldiers and Marines over the next two years. The bill authorizes an increase in the active duty Army end strength by up to 20,000 Soldiers in 2006 and an additional 10,000 in 2007, and it authorizes an increase in the Marine Corps' active duty end strength by up to 5,000 Marines in 2006 and an additional 5,000 Marines in 2007.

The Department of Defense currently reports numbers of service members killed or seriously wounded in action in our ongoing combat operations in Iraq and Afghanistan. This bill would require a formal monthly report that includes the numbers of Soldiers, Sailors, Airmen and Marines who are killed in action; killed as a result of non-combat injuries incurred during combat operations; killed as a result of self-inflicted wounds or suicide; wounded in action, when the injuries prevent the service member from returning to duty within 72 hours; wounded in action when the service member returns to duty within 72 hours, insofar as this data is currently maintained; and the total number of service personnel evacuated from theater for medical reasons.

To ensure that awards and decorations are expeditiously and fairly awarded to deserving military personnel, this bill would establish an Advisory Panel on Military Awards and Decorations to review the policies and practices of each of the Services for awarding medals and decorations and to report to Congress. This Panel would compare the different Service policies and practices for decorating its military personnel, and make a recommendation as to whether individual service practices should be continued or a single standard adopted that applies to all Services; recommend measures that can be taken to ensure that service members serving in combat are at least as likely to receive medals as those not exposed to combat, and enlisted personnel are just as likely as officers to be decorated for their service.

This bill would create an Office of Mobilization Planning and Preparedness within the National Security Council to ensure that all of our national resources are assembled and organized to respond to a national security emergency. National resources include our military, labor, transportation, industry and financial resources.

We know that current military operations are wearing out military equipment faster than we are replacing it. To address this, this bill would require the Secretary of Defense to report to Congress on the needs of our military forces for reconstituting stocks of equipment and material damaged, destroyed, and worn out in Operation Iraqi Freedom and Operation Enduring Freedom. The report will include the needs of each military service, including the reserve components, for repair and replacement of equipment; and authorize appropriation of $8.5 billion for the Army and $2.1 billion for the Marine Corps for repair, refurbishment, and replacement of equipment used in OIF and OEF.

The Government Accountability Office (GAO) found, and I agree, that the Department of Defense's mobilization and deployment policies were implemented in a piecemeal fashion not linked to a strategic framework. We owe it to our service men and women to have clear policies regarding lengths of deployments. The Department of Defense must clearly communicate these policies and other deployment related information to service members and their families. This bill would require the Secretary of Defense to report to Congress on DoD policies on lengths of mobilization and deployment periods and on the use of stop-loss to keep military personnel in the service beyond their service commitments.

In two separate reports, the GAO has found that more than 90 percent mobilized reserve component personnel experienced pay problems. The GAO found that ''These pay problems often had a profound adverse impact on individual soldiers and their families.'' This bill would require the designation of a senior official to ensure implementation of GAO recommendations to correct these pay problems.

Representation of our reserve component personnel at the highest levels in the Department of Defense has not kept pace with the increased role of our Guard and Reserve personnel. Accordingly, this bill creates a new position, a Deputy Under Secretary of Defense for Reserve Affairs, to speak for the Reserve Components.

This bill would give tax relief to mobilized service members and employers who make up for pay lost to service members who are ordered to active duty. It would amend the Internal Revenue Code to authorize activated National Guard and Reserve personnel to make penalty free withdrawals from qualified retirement plans; allow employers a tax deduction for making up the difference between military pay and civilian income of mobilized reservists; and authorize a tax credit to small business employers who continue to compensate members of the Ready Reserve ordered to active duty and for costs of hiring a replacement employee.

We know that the military pay of about a third of our mobilized National Guard and Reserve personnel is less than the pay they received from their civilian jobs. Many private employers already pay a wage differential to those who lose money, and we will encourage more to do so with the tax incentives I have just described. The biggest employer of our Guard and Reserve personnel is the Federal Government, and the Federal Government should do as much as the private employers do for those who lose money while serving our Nation. This bill would require Federal Agencies to make up the pay differences for Federal employees who are ordered to active duty.

Studies have shown that 40 percent of our junior enlisted members in the reserve components have no health insurance except when they are on active duty. This bill would provide access to the military's TRICARE health care program for all members of the Selected Reserve and their families. They would pay a subsidized premium similar to the premium charged Federal Employees for health care. This will help to ensure that members of the National Guard and Reserves are medically ready when called to serve in the military.

When a Soldier, Sailor, Airmen or Marine dies on active duty, his survivors currently receive a death gratuity of just over $12,000. This is simply not enough. This bill would raise the death gratuity to $100,000, and would allow survivors to receive Dependency and Indemnity Compensation from the VA as well as a Survivor Benefit Plan annuity from the Department of Defense.

United States taxpayers have borne a disproportionate share of the cost for the reconstruction of Iraq. The support of the international community for this reconstruction is critical. This bill would require the President to report to Congress on U.S., Iraqi, and foreign contributions to Iraq's reconstruction before any new U.S. reconstruction funds are appropriated. The bill would also require any U.S. funds for reconstruction in Iraq be in the form of a collateralized loan which the U.S. would guarantee unless the President reports to Congress that it is in the U.S. national security interest to provide the funds other than in the form of a loan.

I again want to compliment the service of the young men and women serving in our military forces for their magnificent and unselfish service to our Nation. I trust that the measures included in this bill will serve as a token of the Nation's sincere appreciation for their great sacrifices and service.

S. 11

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Standing With Our Troops Act of 2005''.

## DIVISION A—FULFILLMENT OF OBLIGATIONS TO THE MEMBERS OF THE ARMED FORCES

## TITLE I—STRENGTHS OF THE ARMY AND MARINE CORPS ACTIVE FORCES

**SEC. 101. FINDINGS.**

Congress makes the following findings:

(1) While the United States Armed Forces remain the premier fighting force in the world, the Defense Science Board, in a study carried out in the summer of 2004, found that ''When we match the existing and projected force structure with the current and projected need for stabilization forces we see an enduring shortfall in both total numbers of people and their ability to sustain the continuity of stabilization efforts.''.

(2) Between 1989 and 2004, the military personnel end strength of the Army has been reduced by more than 34 percent, and the Department of the Army's civilian workforce has been reduced by more than 45 percent, while the mission rate of the Army has increased by 300 percent.

(3) Because of the personnel reductions, the Army National Guard and the Army Reserve are repeatedly being called to active duty to meet Army mission requirements that the active-duty force of the Army is no longer large enough to meet alone. Army National Guard and Army Reserve units have provided up to 40 percent of the military personnel engaged in Operation Iraqi Freedom while they have also been performing a dramatically increased role in homeland defense and continuing to respond to natural disasters, other domestic emergencies, and military contingencies. As a result, the reserve components of the Army have been pushed to the breaking point.

**SEC. 102. ARMY.**

(a) STRENGTH FOR FISCAL YEAR 2006.—Effective on October 1, 2005, section 691(b)(1) of title 10, United States Code, is amended by striking ''502,400'' and inserting ''522,400''.

(b) STRENGTH FOR FISCAL YEARS AFTER FISCAL YEAR 2006.—Effective on October 1, 2006, section 691(b)(1) of such title is amended by striking ''522,400'' and inserting ''532,400''.

**SEC. 103. MARINE CORPS.**

(a) STRENGTH FOR FISCAL YEAR 2006.—Effective on October 1, 2005, section 691(b)(3) of title 10, United States Code, is amended by striking ''178,000'' and inserting ''183,000''.

(b) STRENGTH FOR FISCAL YEARS AFTER FISCAL YEAR 2006.—Effective on October 1, 2006, section 691(b)(3) of title 10, United States Code, is amended by striking ''183,000'' and inserting ''188,000''.

## TITLE II—FULL RECOGNITION OF SACRIFICE AND VALOR OF UNITED STATES SERVICEMEMBERS

### Subtitle A—Findings

**SEC 201. FINDINGS.**

Congress makes the following findings:

(1) On November 21, 2004, the Columbia Broadcasting System television program 60 Minutes reported that the staff of that program had received from the Department of Defense a letter containing the assertion that ''[m]ore than 15,000 troops with so-called 'non-battle' injuries and diseases have been evacuated from Iraq.''.

(2) This report was a rare disclosure by the Department of Defense, as it is the policy of the Department of Defense not to disclose publicly the number of Armed Forces personnel that sustain non-combat injuries.

### Subtitle B—Accounting for Casualties Incurred in the Prosecution of the Global War on Terrorism

**SEC. 211. MONTHLY ACCOUNTING.**

Not later than five days after the end of each month, the Secretary of Defense shall publish, for such month for each operation described in section 212, a full accounting of the casualties among the members of the Armed Forces that were incurred in such operation during that month.

**SEC. 212. OPERATIONS COVERED.**

The operations referred to in section 211 are as follows:

(1) Operation Iraqi Freedom.

(2) Operation Enduring Freedom.

(3) Each other operation undertaken by the Armed Forces in the prosecution of the Global War on Terrorism.

**SEC. 213. COMPREHENSIVE CONTENT OF ACCOUNTING.**

For the purpose of providing a full and complete accounting of casualties covered by a report under section 211, the Secretary of Defense shall include in the report the number of casualties in each casualty status in accordance with section 214.

**SEC. 214. CASUALTY STATUS.**

(a) STATUS TYPES.—In a report under this title, each casualty among members of the Armed Forces shall be characterized by the most specific casualty status applicable to the member as follows:

(1) Killed in action.

(2) Killed in non-hostile duty.

(3) Killed, self-inflicted.

(4) Wounded in action, not returned to duty.

(5) Wounded in action, returned to duty (to the extent that data is available to support this characterization of casualty status).

(6) Evacuated for medical reasons.

(b) DEFINITIONS.—In this section:

(1) KILLED IN ACTION.—The term ''killed in action'', with respect to a member of the Armed Forces, means that the member incurred one or more mortal wounds while involved in an action against a hostile force, whether or not the wounds are inflicted by the hostile force.

(2) KILLED IN NON-HOSTILE DUTY.—The term ''killed in non-hostile duty'', with respect to a member of the Armed Forces, means that the member incurred one or more mortal wounds that were not self-inflicted and not inflicted during an action against a hostile force.

(3) KILLED, SELF-INFLICTED.—The term ''killed, self-inflicted'', with respect to a member of the Armed Forces, means a suicide of the member or the death of the member as a result of one or more self-inflicted injuries.

(4) WOUNDED IN ACTION, NOT RETURNED TO DUTY.—The term ''wounded in action, not returned to duty'', with respect to a member of the Armed Forces, means that the member, while involved in an action against a hostile force, incurred one or more non-mortal injuries that required medical attention and that prevented the member from returning to duty within 72 hours after incurring the injury or injuries.

(5) WOUNDED IN ACTION, RETURNED TO DUTY.—The term ''wounded in action, returned to duty'', with respect to a member of the Armed Forces, means that the member, while involved in an action against a hostile force, incurred one or more non-mortal injuries that required medical attention but did not prevent the member from returning to duty within 72 hours after incurring the injury or injuries.

(6) EVACUATED FOR MEDICAL REASONS.—The term ''evacuated for medical reasons'', with respect to a member of the Armed Forces, means that the member was evacuated from a theater of operations for medical reasons.

**SEC. 215. PUBLICATION AND RELEASE OF REPORT.**

The Secretary of Defense shall—

(1) post the report under this title on the official website of the Department of Defense; and

(2) transmit a copy of the report to the chairmen and ranking members of the Committees on Armed Services of the Senate and the House of Representatives.

**SEC. 216. SENSE OF CONGRESS.**

It is the sense of Congress that the Secretary of Defense has an obligation to ensure full and accurate reporting of casualties among the members of the Armed Forces to Congress and the people of the United States.

**Subtitle C—Advisory Panel on Military Awards and Decorations**

**SEC. 221. ESTABLISHMENT.**

The Secretary of Defense shall establish within the Department of Defense an Advisory Panel on Military Awards and Decorations.

**SEC. 222. DUTIES.**

(a) COMPREHENSIVE REVIEW OF MILITARY DECORATIONS SYSTEM.—The Advisory Panel shall conduct a comprehensive review of the standards and processes used in the Armed Forces to award medals and decorations to members of the Armed Forces. The review shall include the following matters:

(1) An examination and evaluation of the standards of each of the Armed Forces for awarding each medal and decoration.

(2) A comparison of the standards of each of the Armed Forces with the standards of each of the other Armed Forces for awarding comparable medals and decorations.

(3) An examination and evaluation of the speed with which—

(A) each of the Armed Forces identifies and considers members for the awarding of medals and decorations; and

(B) the medals and decorations are ultimately awarded.

(4) A review of the medals and decorations awarded by the Armed Forces during 2002, 2003, and 2004, together with a review of the ranks of the recipients and the mission-related and other circumstances that are associated with the awarding of the medals and decorations to those recipients.

(b) REPORT.—

(1) REQUIREMENT FOR REPORT.—Not later than 18 months after the date of the enactment of this Act, the Advisory Panel shall submit a report on the results of the review under this section to the Secretary of Defense and to Congress.

(2) CONTENT.—The report under this subsection shall contain the findings and conclusions of the Advisory Panel together with any recommendations for action that the panel considers appropriate, and shall include the following matters:

(A) A discussion of the merits of maintaining for each of the Armed Forces separate policies for the awarding of comparable medals and decorations of the Armed Forces, together with a discussion of the merits of adopting uniform standards for awarding such medals and decorations.

(B) Measures that can be taken by each of the Armed Forces to expedite the process for timely identifying a member who deserves a medal of decoration, determining the appropriateness of awarding the medal or decoration to the member, and, in each appropriate case, awarding the medal or decoration to the member.

(C) Measures that can be taken to ensure that—

(i) members serving in combat are at least equally as likely to be considered for the awarding of medals and decorations as are personnel not exposed to combat; and

(ii) enlisted personnel are at least as likely to be considered for the awarding of medals and decorations as are officers.

(D) A recommendation regarding whether the Valor device awarded by each of the Armed Forces should be replaced by a separate class of medals honoring special bravery in combat.

(E) A determination of the desirability of adding a new class of medals, similar to the Purple Heart, to be awarded to military personnel who incur non-combat injuries in connection with performance of an official mission or duty during a combat operation in order to honor their sacrifice in service to the people of the United States.

(c) SCOPE LIMITED TO DEPARTMENT OF DEFENSE.—The scope of the review and report under this section does not include the Coast Guard.

**SEC. 223. COMPOSITION AND ADMINISTRATION.**

(a) COMPOSITION.—

(1) NUMBER; APPOINTMENT.—The Advisory Panel shall be composed of not more than seven members appointed by the Secretary of Defense.

(2) GENERAL AND FLAG OFFICERS.—The Secretary shall ensure that the membership of the task force includes a retired general or flag officer from each of the Army, Navy, Air Force, and Marine Corps who is familiar with the policies of the Armed Forces regarding military awards and decorations.

(3) VETERANS.—The Secretary shall appoint at least one representative of a leading veterans' advocacy organization as a member of the Advisory Panel.

(b) TIME FOR APPOINTMENT.—All members of the Advisory Panel shall be appointed within 60 days after the date of the enactment of this Act.

(c) CHAIRPERSON.—The chairperson of the Advisory Panel shall be selected from among the members of the Advisory Panel by a majority vote of the members.

(d) COMPENSATION AND EXPENSES OF MEMBERS.—Each member of the Advisory Panel shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular places of business in the performance of services for the Advisory Panel.

(e) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App) shall not apply to the Advisory Panel.

**SEC. 224. COOPERATION OF FEDERAL AGENCIES.**

(a) INFORMATION.—The Advisory Panel may obtain directly from the Department of Defense, the Department of Veterans Affairs, or any other department or agency of the United States any information of such department or agency that the panel considers necessary for the panel to carry out its duties.

(b) OTHER COOPERATION.—The Secretary of Defense, the Secretary of Veterans Affairs, and any other official of the United States shall provide the Advisory Panel with full and timely cooperation requested by the panel in carrying out its duties under this section.

**SEC. 225. TERMINATION.**

The Advisory Panel on Military Awards and Decorations shall terminate 30 days after the submission of the report to Congress under section 222(b).

**TITLE III—MILITARY EQUIPMENT AND MATERIEL**

**SEC. 301. FINDINGS.**

Congress makes the following findings:

(1) United States military personnel serving in Operations Iraqi Freedom have experienced significant shortages of critical equipment, such as body armor, aircraft survivability equipment, and armored trucks, including up-armored High Mobility Multipurpose Wheeled Vehicles. In many cases the shortages have lasted several months. For example, the individual body armor needed for protecting every member of the Armed Forces and Department of Defense civilians in Iraq was not produced and fielded until February 2004, 11 months after Operation Iraqi Freedom was launched. Shortages of armor for Army trucks still existed as of the beginning of 2005.

(2) Operation Iraqi Freedom and Operation Enduring Freedom have taken a substantial toll on military equipment of the Armed Forces. The commanding general of the Army Material Command estimated in 2004 that the Army is wearing out its equipment in Iraq and Afghanistan at a rate that could be up to 10 times faster than the rate at which it wears out its equipment elsewhere during peacetime, and there are no significant reserve stocks of that equipment remaining.

(3) It is a solemn obligation of the United States Government to ensure that, whenever the Armed Forces are called into battle, the military personnel fighting or supporting the battle are provided with the safest, most effective technology and equipment.

**SEC. 302. MOBILIZATION PLANNING AND PREPAREDNESS.**

(a) DIRECTOR OF MOBILIZATION PLANNING AND PREPAREDNESS.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by striking section 107 and inserting the following new sections:

''DIRECTOR OF MOBILIZATION PLANNING AND PREPAREDNESS

''SEC. 107. DEFINITIONS.—In this section:

''(1) The term 'Director' means the Director of Mobilization Planning and Preparedness referred to in subsection (b)(1), except where the context clearly indicates otherwise.

''(2) The term 'national security emergency' means any occurrence, including a

natural disaster, a military or terrorist attack against the territory of the United States, a military operation carried out by the Armed Forces abroad, a technological emergency, or any other emergency, that either seriously degrades or threatens the security of the United States or the Armed Forces.

''(3) The term 'mobilization' means the act of assembling and organizing national resources, including military personnel and equipment, labor, transportation systems, industry, and financial resources, to support national objectives of the United States in time of a national security emergency.

''(4) The term 'mobilization planning and preparedness' means all aspects of planning and preparing for a mobilization for a national security emergency, including the identification of functions that would have to be performed during a national security emergency, development of plans for performing such functions, development of the capability to execute such plans, and development of policies that maximize the speed and efficiency with which such plans can be executed during a national security emergency.

''(b) POSITION OF DIRECTOR.—

''(1) ESTABLISHMENT.—There is a Director of Mobilization Planning and Preparedness on the staff of the National Security Council.

''(2) APPOINTMENT.—The Director is appointed by the Assistant to the President for National Security Affairs.

''(3) RELATIONSHIP TO NATIONAL SECURITY ADVISOR.—The Director reports directly to the Assistant to the President for National Security Affairs.

''(c) DUTIES.—

''(1) PRINCIPAL DUTY.—The Director is the principal adviser to the Assistant to the President for National Security Affairs on matters of mobilization planning and preparedness.

''(2) SPECIFIC DUTIES.—The duties of the Director include the following:

''(A) Identify which governmental and private sector functions must be performed on a sustained basis during a national security emergency.

''(B) Develop plans for the sustained performance of the identified functions.

''(C) Provide guidance on the development of the capability to execute the plans.

''(D) Recommend policies for the maximization of the speed and efficiency with which the plans can be executed during a national security emergency.

''(E) Recommend planning and policy guidance regarding involvement of the National Guard in 2 or more national security emergency operations concurrently.

''(F) Administer quarterly exercises simulating mobilization for various types of national security emergencies, including the following:

''(i) A major military operation carried out in and around 1 or more foreign countries.

''(ii) An occupation and reconstruction mission.

''(iii) A terrorist attack within the United States.

''(iv) A natural disaster within the United States.

''(v) A major humanitarian crisis in 1 or more foreign countries.

''(vi) A minor military intervention in a foreign country.

''(3) RELATED DUTIES.—

''(A) MOBILIZATION PLANNING AND PREPAREDNESS POLICY COORDINATING COMMITTEE.—The Director serves on the Mobilization Planning and Preparedness Policy Coordinating Committee as provided in section 107A.

''(B) DEPARTMENT OF DEFENSE PRIMARY ALLOCATION OF INDUSTRIAL RESOURCES TASK FORCE.—The Director serves as a member of the Primary Allocation of Industrial Resources Task Force of the Department of Defense.

''(d) OFFICE OF MOBILIZATION PLANNING AND PREPAREDNESS.—

''(1) ESTABLISHMENT.—There is an Office of Mobilization Planning and Preparedness within the National Security Council. The Director is the head of the office.

''(2) COMPOSITION.—The Office of Mobilization Planning and Preparedness is composed of the following personnel:

''(A) Thirty employees appointed by the Assistant to the President for National Security Affairs.

''(B) An employee of the Department of Defense, who shall be detailed to the Office by the Under Secretary of Defense for Acquisition, Technology, and Logistics to serve as liaison between the Department of Defense and the Director to ensure that comprehensive and accurate information on the needs of the Armed Forces for equipment and materiel in a national security emergency are timely communicated to the Director.

''(e) COORDINATION WITH NATIONAL COUNTERTERRORISM CENTER.—

''(1) LIAISON OFFICER.—The Director shall detail an employee of the Office to the National Counterterrorism Center to serve as a liaison officer between the Director of Mobilization Planning and Preparedness and the Director of the National Counterterrorism Center for collaboration on counterterrorism-related information and issues necessary for effective mobilization planning and preparedness.

''(2) RESPONSIBILITY OF DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—The Director of the National Counterterrorism Center shall ensure that the liaison officer is accorded such privileges at the Center as are necessary to ensure that the collaboration between the Director of the National Counterterrorism Center and the Director of Mobilization Planning and Preparedness on counterterrorism-related information and issues is effective.

''(f) ANNUAL REPORT.—

''(1) REQUIREMENT FOR REPORT.—The President, acting through the Director, shall submit to Congress each year a report on mobilization planning and preparedness.

''(2) CONTENT.—The annual report under this subsection shall include the following information:

''(A) Funding needs for mobilization planning and preparedness.

''(B) An assessment of the state of mobilization planning and preparedness in the United States.

''(C) Any recommended policies on mobilization planning and preparedness that the President, in consultation with the Assistant to the President for National Security Affairs and the Director, considers appropriate.

''MOBILIZATION PLANNING AND PREPAREDNESS POLICY COORDINATING COMMITTEE

''SEC. 107A. (a) MOBILIZATION PLANNING AND PREPAREDNESS DEFINED.—In this section, the term 'mobilization planning and preparedness' has the meaning given that term in section 107(a).

''(b) ESTABLISHMENT.—There is in the executive branch an interagency committee known as the 'Mobilization Planning and Preparedness Policy Coordinating Committee'.

''(c) COMPOSITION.—The Committee shall be composed of the following members:

''(1) The Director of Mobilization Planning and Preparedness of the National Security Council, who shall chair the committee.

''(2) The Under Secretary for Emergency Preparedness and Response of the Department of Homeland Security.

''(3) The Under Secretary of State for Economic, Business, and Agricultural Affairs.

''(4) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(5) The Associate Attorney General.

''(6) The Assistant Secretary of the Interior for Land and Minerals Management.

''(7) The Under Secretary of Commerce for Industry and Security.

''(8) The Deputy Secretary of Labor.

''(9) The Assistant Secretary of Health and Human Services for Public Health Emergency Preparedness.

''(10) The Under Secretary of Transportation for Policy.

''(11) The Under Secretary of Energy for Energy, Science, and Environment.

''(12) One member designated by the Assistant to the President for National Security Affairs.

''(13) One member designated by the Director of National Intelligence.

''(d) DUTIES.—The Committee has the following duties:

''(1) To review, at least once each year, the mobilization planning and preparedness policies of the United States.

''(2) To make any recommendations for action to improve mobilization planning and preparedness that the Committee determines appropriate.

''(3) To participate in the exercises conducted by the Director of Mobilization Planning and Preparedness of the Department under section 510(b)(2)(F).''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the National Security Act of 1947 is amended by striking the item relating to section 107 and inserting the following new items:

''Sec. 107. Director of Mobilization Planning and Preparedness.

''Sec. 107A. Mobilization Planning and Preparedness Policy Coordinating Committee.''.

**SEC. 303. REPORT ON RECONSTITUTION NEEDS OF THE ARMED FORCES.**

(a) REPORT REQUIRED.—

(1) REQUIREMENT FOR REPORT.—Not later than March 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report on the needs of the Armed Forces for reconstituting its stocks of military equipment and other materiel in view of the attrition of military equipment and other materiel experienced by the Armed Forces in Operation Iraqi Freedom and Operation Enduring Freedom.

(2) CONSULTATION.—The Secretary shall consult with the Chief of Staff of the Army, the Chief of Staff of the Air Force, the Chief of Naval Operations, the Commandant of the Marine Corps, and the Inspector General of each of the Armed Forces in preparing the report under this section.

(b) CONTENT.—The report shall include an assessment of each of the following matters:

(1) The extent of the damage and destruction of military equipment and other military materiel in Operation Iraqi Freedom and Operation Enduring Freedom.

(2) The amount of such equipment, if any, that has become ineffective or obsolete by age or other causes.

(3) The needs of each of the Armed Forces, including the reserve components as well as the regular components, for repair and replacement of equipment.

(4) The total cost of reconstituting the stocks of military equipment and other materiel of the Armed Forces to meet the needs of the Armed Forces.

(5) The time needed to reconstitute such stocks to meet those needs.

(c) FORM OF REPORT.—The report shall be submitted in unclassified form, but may include a classified annex.

**SEC. 304. AUTHORIZATIONS OF APPROPRIATIONS.**

(a) ARMY.—Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Army for the repair, refurbishment, and replacement of equipment used by the Army in Operation Iraqi Freedom or Operation Enduring Freedom, as follows:

(1) OPERATION AND MAINTENANCE.—For expenses, not otherwise provided for, for operation and maintenance, $6,000,000,000.

(2) PROCUREMENT.—For procurement, $2,500,000,000.

(b) MARINE CORPS.—Fund are hereby authorized to be appropriated for fiscal year 2005 for the use of the Marine Corps for the repair, refurbishment, and replacement of equipment used by the Marine Corps in Operation Iraqi Freedom or Operation Enduring Freedom, as follows:

(1) OPERATION AND MAINTENANCE.—For expenses, not otherwise provided for, for operation and maintenance, $640,000,000.

(2) PROCUREMENT.—For procurement, $1,500,000,000.

(c) AVAILABILITY THROUGH FISCAL YEAR 2006.—Amounts authorized to be appropriated under this section shall remain available until September 30, 2006.

(d) LIMITATION.—None of the funds appropriated pursuant to an authorization of appropriations in this section may be obligated or expended until the date that is 15 days after the date on which the Secretary of Defense transmits to the congressional defense committees a report on the specific use for which the funds are to be obligated or expended, respectively.

**SEC. 305. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.**

In this title, the term ''congressional defense committees'' has the meaning given such term in section 101(a)(16) of title 10, United States Code.

## TITLE IV—PERIODS OF OVERSEAS DEPLOYMENTS OF RESERVES

**SEC. 401. FINDINGS.**

Congress makes the following findings:

(1) The Department of Defense failed to establish an adequate troop deployment and rotation policy for Operation Iraqi Freedom until several months after the operation had begun. For several reserve component units involved in that operation before 2005, the demobilization date was rescheduled three or more times before the unit members were finally allowed to return home.

(2) Without an adequate deployment and rotation plan, the Department of Defense has relied on a series of stop-gap measures to retain a sufficient number of troops to carry out the United States missions in Operation Iraqi Freedom and Operation Enduring Freedom, including—

(A) institution of a so-called ''stop-loss'' policy that prevents personnel from leaving their units during deployment;

(B) extensions of deployments beyond scheduled demobilization dates; and

(C) activation of members of the Individual Ready Reserve.

(3) In September 2004, the Government Accountability Office reported that ''Many of DOD's policies that affect mobilized reserve component personnel were implemented in a piecemeal manner and were not linked within the context of a strategic framework to meet the organizational goals. . . . Without a strategic framework, OSD and the services made several changes to their personnel policies to increase the availability of the reserve components for the longer-term requirements of the Global War on Terrorism, and predictability declined for reserve component members.''.

(4) Fairness to the men and women of the Armed Forces deployed overseas requires that the Department of Defense—

(A) have clear policies regarding lengths of deployment periods; and

(B) communicate these policies and other deployment-related information to them and their families.

**SEC. 402. SENSE OF CONGRESS ON TWO-YEAR LIMIT ON MOBILIZATION.**

It is the sense of Congress that the Secretary of Defense should continue the existing Department of Defense policy of limiting to a total of 24 months the period for which members of the reserve components serve on active duty to which called or ordered in support of a contingency operation.

**SEC. 403. COMMUNICATION OF LENGTHS OF DEPLOYMENT PERIODS TO RESERVES IN OPERATION IRAQI FREEDOM.**

(a) REPORT OF DEPARTMENT OF DEFENSE POLICIES.—

(1) REQUIREMENT FOR REPORT.—Not later than March 1, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on—

(A) Department of Defense policies governing the length of mobilization and deployment periods applicable to members of reserve components of the Armed Forces in connection with Operation Iraqi Freedom, and on the communication between the Department of Defense and reserve component personnel and their families regarding the lengths of the mobilization deployment periods; and

(B) Department of Defense stop-loss policies.

(2) CONSULTATION REQUIREMENT.—In preparing the report, the Secretary shall consult with the Chairman and other members of the Joint Chiefs of Staff and with such other officials as the Secretary considers appropriate.

(b) CONTENT OF REPORT.—The report under this section shall contain a discussion of the matters described in subsection (a)(1), including a discussion of the following matters:

(1) The process by which the Department of Defense determined its policy regarding the lengths of mobilization deployment periods.

(2) The reason that an adequate troop deployment policy was not in place before Operation Iraqi Freedom began.

(3) A comparison of the policies during Operation Iraqi Freedom with Department of Defense policies that applied to previous contingency operations.

(4) The timeliness of the process for notifying reserve component units for activation.

(5) The process for communicating with activated reserve component members and their families about demobilization schedules.

(6) The justification for delaying demobilization after members and their families have been notified of the anticipated demobilization schedule.

(7) The justification for current stop-loss policies, together with a statement of the period for which those policies are to remain in effect and the conditions under which management of personnel under those policies would terminate.

(8) The family support programs provided by the National Guard and other reserve components for families of activated Reserves.

(9) An assessment of lessons learned about how the increased operation tempos of the National Guard and other reserve components can be expected to affect readiness, recruitment and retention, civilian employers of Reserves, and equipment and supply resources of the National Guard and the other reserve components.

(c) MATTERS FOR PARTICULAR EMPHASIS.—In the discussion of the matters included in the report under this section, the Secretary of Defense shall place particular emphasis on—

(1) lessons learned, including deficiencies identified; and

(2) near-term and long-term corrective actions to address the identified deficiencies.

(d) FORM OF REPORT.—The report under this section shall be submitted in unclassified form, but may include a classified annex.

## TITLE V——TIMELY COMPENSATION

**SEC. 501. FINDINGS.**

Congress makes the following findings:

(1) In November 2003, the General Accounting Office reported, in connection with a study conducted by that office, that among Army National Guard soldiers ''450 of the 481 soldiers from our 6 case study units had at least 1 pay problem associated with their mobilization. These pay problems severely constrain the Army's and the Department of Defense's (DOD) ability to provide a most basic service to these personnel, many of whom were risking their lives in combat.''.

(2) In August 2004, a second study by that office (by then renamed the Government Accountability Office) found that among Army Reserve soldiers ''332 of 348 soldiers (95 percent) we audited at 8 case study units that were mobilized, deployed, and demobilized at some time during the 18-month period from August 2002 through January 2004 had at least 1 pay problem.''.

(3) The August 2004 report concluded that ''These pay problems often had a profound adverse impact on individual soldiers and their families. For example, soldiers were required to spend considerable time, sometimes while deployed in remote, hostile environments overseas, seeking help on pay inquiries or in correcting errors in their active duty pays, allowances, and related tax benefits.''.

**SEC. 502. CORRECTION OF MILITARY PAY PROBLEMS FOR ACTIVATED RESERVE COMPONENT PERSONNEL.**

The Secretary of the Army shall designate a senior level official of the Department of the Army to implement—

(1) the recommendations for executive action that are set forth in the report of the Comptroller General of the United States entitled ''Military Pay, Army National Guard Personnel Mobilized to Active Duty Experienced Significant Pay Problems'', dated November 2003; and

(2) the recommendations for executive action that are set forth in the report of the Comptroller General of the United States entitled ''Military Pay, Army Reserve Soldiers Mobilized to Active Duty Experienced Significant Pay Problems'', dated August 2004.

**SEC. 503. SUPERVISION BY COMPTROLLER OF DEPARTMENT OF DEFENSE.**

The official designated under section 502 shall report directly to, and be subject to the direction of, the Under Secretary of Defense (Comptroller) regarding performance of the duties that the official is designated to carry out under such section.

**SEC. 504. TERMINATION OF REQUIREMENT.**

The designation under section 502 shall terminate upon the submission of a certification of the Under Secretary of Defense (Comptroller) to Congress that all recommendations referred to in such section have been implemented.

## TITLE VI—IMPROVED REPRESENTATION OF RESERVE PERSONNEL INTERESTS IN DEPARTMENT OF DEFENSE SECRETARIAT

**SEC. 601. FINDINGS.**

Congress makes the following findings:

(1) Since September 11, 2001, the National Guard and the other reserve components of the Armed Forces have experienced an expansion of their role in the total force structure of the Armed Forces to an unprecedented level. In 2004, the reserve components comprised 40 percent of the total force of the Armed Forces. Reservists are experiencing a dramatic increase in operation tempo and average length of deployment.

(2) While the extent of the role of the reserve component has changed so dramatically, the Department of Defense approach to management of the reserve components has remained much the same. No new senior leadership positions have been established to manage the reserve components more effectively in the expanded role.

**SEC. 602. DEPUTY UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (RESERVE AFFAIRS).**

(a) ESTABLISHMENT OF POSITION.—

(1) POSITION AND DUTIES.—Chapter 4 of title 10, United States Code, is amended by inserting after section 136a the following new section:

**"§ 136b. Deputy Under Secretary of Defense for Personnel and Readiness (Reserve Affairs)**

''(a) There is a Deputy Under Secretary of Defense for Personnel and Readiness (Reserve Affairs), appointed from civilian life by the President, by and with the advice and consent of the Senate.

''(b) The Deputy Under Secretary of Defense for Personnel and Readiness (Reserve Affairs) shall have as his principal duty the overall supervision of reserve component affairs of the Department of Defense.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 136a the following new item:

''136b. Deputy Under Secretary of Defense for Personnel and Readiness (Reserve Affairs).''.

(b) EXECUTIVE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by inserting after ''Deputy Under Secretary of Defense for Personnel and Readiness.'' the following:

''Deputy Under Secretary of Defense for Personnel and Readiness (Reserve Affairs).''.

**SEC. 603. ELIMINATION OF POSITION OF ASSISTANT SECRETARY OF DEFENSE FOR RESERVE AFFAIRS.**

(a) REPEAL OF REQUIREMENT FOR POSITION.—Subsection (b) of section 138 of title 10, United States Code, is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3), (4), and (5), as paragraphs (2), (3), and (4), respectively.

(b) REDUCTION IN TOTAL NUMBER OF ASSISTANT SECRETARIES OF DEFENSE.—

(1) AUTHORIZED NUMBER.—Subsection (a) of such section is amended by striking ''nine'' and inserting ''eight''.

(2) CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code, is amended by striking ''(9)'' after ''Assistant Secretaries of Defense'' and inserting ''(8)''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date on which a person is first appointed as Deputy Under Secretary of Defense for Personnel and Readiness (Reserve Affairs).

## DIVISION B—MILITARY FAMILY PROTECTIONS

## TITLE XXI—GUARDSMEN AND RESERVISTS FINANCIAL RELIEF

**SEC. 2101. FINDINGS.**

Congress makes the following findings:

(1) According to a Government Accountability Office report in November 2004, ''The September 11, 2001, terrorist attacks and the global war on terrorism have triggered the largest activation of National Guard forces since World War II. As of June 2004, over one-half of the National Guard's 457,000 personnel had been activated for overseas warfighting or domestic homeland security missions in Federal and State active duty roles.''. In all, over 400,000 reservists have been mobilized between September 11, 2001, and the beginning of 2005.

(2) In March 2003, the General Accounting Office reported that among members of the National Guard and other reserve components of the Armed Forces ''. . . data for past military operations show that 41 percent of drilling unit members reported income loss . . .''. The report further noted that senior officers in the reserve component reported average losses of $5,000 in income upon activation.

(3) Not only has operation tempo drastically increased for members of the reserve components, meaning that reservists are being called away from their civilian jobs more often, but also the durations of deployments have increased dramatically as well, meaning that reservists are being called away from their civilian jobs for longer periods. The Government Accountability Office reported in September 2004 that the average annual days of duty performed by members of the reserve components has risen from approximately 40 days in 1989 to approximately 120 days in 2003. A consequence of both increased operations tempo and increased duration of deployment has been a far greater loss of income for reservists answering their country's call to duty.

**SEC. 2102. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

''(i) IN GENERAL.—Any qualified reservist distribution.

''(ii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified reservist distribution' means any distribution to an individual if—

''(I) such distribution is from any qualified retirement plan (as defined in section 4974(c)),

''(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

''(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

''(iii) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2005.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions after September 11, 2001.

**SEC. 2103. INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.**

(a) IN GENERAL.—Section 3401 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

''(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

''(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

''(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term 'differential wage payment' means any payment which—

''(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and

''(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 2004.

**SEC. 2104. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.**

(a) PENSION PLANS.—

(1) IN GENERAL.—Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans' reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

''(11) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

''(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

''(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

''(ii) the differential wage payment shall be treated as compensation, and

''(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution which is based on the differential wage payment.

''(B) SPECIAL RULE FOR DISTRIBUTIONS.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(i)(2)(A).

''(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

''(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5), of section 410(b) shall apply.

''(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term 'differential wage payment' has the meaning given such term by section 3401(i)(2).''.

(2) CONFORMING AMENDMENT.—The heading for section 414(u) of such Code is amended by inserting ''AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY'' after ''USERRA''.

(b) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—Section 219(f)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by adding at the end the

following new sentence: ''The term 'compensation' includes any differential wage payment (as defined in section 3401(i)(2)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(d) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of the Internal Revenue Code of 1986 or the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007.

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

**SEC. 2105. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.**

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by inserting after section 45I the following new section:

**''SEC. 45J. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.**

''(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of such taxpayer is an amount equal to 50 percent of the lesser of—

''(1) the actual compensation amount with respect to such employee for such taxable year, or

''(2) $30,000.

''(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term 'actual compensation amount' means the amount of compensation paid or incurred by an eligible taxpayer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

''(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—

''(A) IN GENERAL.—The term 'eligible taxpayer' means a small business employer.

''(B) SMALL BUSINESS EMPLOYER.—

''(i) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(ii) CONTROLLED GROUPS.—For purposes of clause (i), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(2) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' means—

''(A) active duty under an order or call for a period in excess of 179 days or for an indefinite period, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

''(B) hospitalization incident to such duty.

''(3) COMPENSATION.—The term 'compensation' means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer's gross income under section 162(a)(1).

''(4) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

''(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2005.''.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following:

''(20) the Ready Reserve-National Guard employee credit determined under section 45J(a).''.

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended by inserting ''45J(a),'' after ''45A(a),''.

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45I the following:

''Sec. 45J. Ready Reserve-National Guard employee credit.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.—

(1) IN GENERAL.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'' and by adding at the end the following new subparagraph:

''(I) a qualified replacement employee.''.

(2) QUALIFIED REPLACEMENT EMPLOYEE.—Section 51(d) of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (10), (11), and (12) as paragraphs (11), (12), and (13), respectively, and by inserting after paragraph (9) the following new paragraph:

''(10) QUALIFIED REPLACEMENT EMPLOYEE.—

''(A) IN GENERAL.—The term 'qualified replacement employee' means an individual who is certified by the designated local agency as being hired by an eligible taxpayer to replace a Ready Reserve-National Guard employee of such taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee participates in qualified active duty, including time spent in travel status.

''(B) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means a small business employer.

''(ii) SMALL BUSINESS EMPLOYER.—

''(I) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(II) CONTROLLED GROUPS.—For purposes of subclause (I), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(iii) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' has the meaning given such term by section 45J(d)(3).

''(iv) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' has the meaning given such term by section 45J(d)(1).

''(C) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) by reason of paragraph (1)(I) to a taxpayer for—

''(i) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(ii) the 2 succeeding taxable years.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred to an individual who begins work for the employer after September 30, 2004.

(c) STUDY BY GAO.—

(1) IN GENERAL.—The Comptroller General of the United States shall study the following:

(A) What, if any, problems exist in recruiting individuals for a reserve component of an Armed Force of the United States.

(B) What, if any, problems exist as the result of providing differential wage payments (as defined in section 3401(i)(2) of the Internal Revenue Code of 1986 (as added by this Act)) to individuals described in subparagraph (A) in the recruitment and retention of individuals as regular members of the Armed Forces of the United States.

(C) Whether the credit allowed under section 45J of the Internal Revenue Code of 1986 (as added by this section) is an effective incentive for the hiring and retention of employees who are individuals described in subparagraph (A) and whether there exists any compliance problems in the administration of such credit.

(2) REPORT.—The Comptroller General of the United States shall report on the results of the study required under paragraph (1) to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives before July 1, 2005.

**SEC. 2106. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.**

(a) PRESERVATION OF PAY LEVEL.—

(1) REQUIREMENTS.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

**"§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard**

''(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

''(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

''(2) the amount of pay and allowances which (as determined under subsection (d))—

''(A) is payable to such employee for that service; and

''(B) is allocable to such pay period.

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).

''(c) Any amount payable under this section to an employee shall be paid—

''(1) by such employee's employing agency;

''(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

''(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

''(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

''(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

''(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

''(f) For purposes of this section—

''(1) the terms 'employee', 'Federal Government', and 'uniformed services' have the same respective meanings as given them in section 4303 of title 38;

''(2) the term 'employing agency', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

''(3) the term 'basic pay' includes any amount payable under section 5304.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

''5538. Nonreduction in pay while serving in the uniformed services or National Guard.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Section 5538 of title 5, United States Code (as added by subsection (a)), shall apply with respect to pay periods (as described in subsection (b) of such section) beginning on or after the date of the enactment of this Act.

(2) CONDITIONAL RETROACTIVE APPLICATION.—

(A) Section 5538 of title 5, United States Code (as added by subsection (a)), shall apply with respect to pay periods (as described in subsection (b) of such section) beginning on or after October 11, 2002 through the date of the enactment of this Act, subject to the availability of appropriations.

(B) There are authorized to be appropriated $100,000,000 for purposes of subparagraph (A).

## TITLE XXII—NATIONAL GUARD AND RESERVE COMPREHENSIVE HEALTH BENEFITS

**SEC. 2201. SHORT TITLE.**

This title may be cited as the ''National Guard and Reserve Comprehensive Health Benefits Act of 2005''.

**SEC. 2202. FINDINGS.**

Congress makes the following findings:

(1) According to the results of a Department of Defense survey conducted in 2000, 20 percent of members of the reserve components of the Armed Forces, including 40 percent of junior enlisted personnel, had no health care coverage while not on active duty.

(2) In 2004, Congress passed legislation authorizing reservists to obtain access to the military TRICARE health care program for one year for each 90-day period of active duty service. While the enactment of this law was an important step forward, the law only provides eligibility for health care after active duty has been completed and fails to provide the complete health care coverage necessary to ensure that reservists are medically ready to answer a future call to active duty.

(3) In September 2004, the Government Accountability Office, after reviewing pre-deployment health screenings of over 240,000 reservists, reported finding that nearly 7 percent of activated reservists were categorized as nondeployable for health reasons, including nearly 10 percent of the Army Reserve.

**SEC. 2203. TRICARE COVERAGE FOR MEMBERS OF THE READY RESERVE.**

(a) ELIGIBILITY.—Section 1076b of title 10, United States Code, is amended to read as follows:

**"§ 1076b. TRICARE program: coverage for members of the Ready Reserve**

''(a) ELIGIBILITY.—Members of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces and members of the Individual Ready Reserve described in subsection 10144(b) of this title are eligible, subject to subsection (h)(1), to enroll in the following TRICARE program options:

''(1) TRICARE Prime.

''(2) TRICARE Standard.

''(b) TYPES OF COVERAGE.—(1) A member eligible under subsection (a) may enroll for either of the following types of coverage:

''(A) Self alone coverage.

''(B) Self and family coverage.

''(2) An enrollment by a member for self and family covers the member and the dependents of the member who are described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

''(c) OPEN ENROLLMENT PERIODS.—The Secretary of Defense shall provide for at least one open enrollment period each year. During an open enrollment period, a member eligible under subsection (a) may enroll in the TRICARE program or change or terminate an enrollment in the TRICARE program.

''(d) SCOPE OF CARE.—(1) A member and the dependents of a member enrolled in the TRICARE program under this section shall be entitled to the same benefits under this chapter as a member of the uniformed services on active duty or a dependent of such a member, respectively.

''(2) Section 1074(c) of this title shall apply with respect to a member enrolled in the TRICARE program under this section.

''(e) PREMIUMS.—(1) The Secretary of Defense shall charge premiums for coverage pursuant to enrollments under this section. The Secretary shall prescribe for each of the TRICARE program options referred to in subsection (a) a premium for self alone coverage and a premium for self and family coverage.

''(2) The monthly amount of the premium in effect for a month for a type of coverage under this section shall be the amount equal to 28 percent of the total amount determined by the Secretary on an appropriate actuarial basis as being reasonable for the coverage.

''(3) The premiums payable by a member under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums by members not entitled to such basic pay or compensation.

''(4) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

''(f) OTHER CHARGES.—A person who receives health care pursuant to an enrollment in a TRICARE program option under this section, including a member who receives such health care, shall be subject to the same deductibles, copayments, and other nonpremium charges for health care as apply under this chapter for health care provided under the same TRICARE program option to dependents described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

''(g) TERMINATION OF ENROLLMENT.—(1) A member enrolled in the TRICARE program under this section may terminate the enrollment only during an open enrollment period provided under subsection (c), except as provided in subsection (h)(2).

''(2) An enrollment of a member for self alone or for self and family under this section shall terminate on the first day of the first month beginning after the date on which the member ceases to be eligible under subsection (a).

''(3) The enrollment of a member under this section may be terminated on the basis of failure to pay the premium charged the member under this section.

''(h) RELATIONSHIP TO TRANSITION TRICARE COVERAGE UPON SEPARATION FROM ACTIVE DUTY.—(1) A member may not enroll in the TRICARE program under this section while entitled to transitional health care under subsection (a) of section 1145 of this title or while authorized to receive health care under subsection (c) of such section.

''(2) A member who enrolls in the TRICARE program under this section within 90 days after the date of the termination of the member's entitlement or eligibility to receive health care under subsection (a) or (c) of section 1145 of this title may terminate the enrollment at any time within one year after the date of the enrollment.

''(i) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.''.

(b) DEFINITIONS.—

(1) TRICARE OPTIONS.—Section 1072 of title 10, United States Code, is amended by adding at the end the following new paragraphs:

''(10) The term 'TRICARE Prime' means the managed care option of the TRICARE program.

''(11) The term 'TRICARE Standard' means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1076d(f) of such title is amended—

(i) by striking ''(f) DEFINITIONS.—'' and all that follows through ''(1) The'' and inserting ''(f) IMMEDIATE FAMILY DEFINED.—In this section, the''; and

(ii) by striking paragraph (2).

(B) Section 1097a(f) of such title is amended by striking ''DEFINITIONS.—In this section:'' and all that follows through ''(2) The term'' and inserting ''CATCHMENT AREA DEFINED.—In this section, the term''.

(c) PERIOD FOR IMPLEMENTATION.—Section 1076b of title 10, United States Code (as added by subsection (a)), shall apply with respect to months that begin on or after the date that is 180 days after the date of the enactment of this Act.

(d) COORDINATION WITH OVERLAPPING AUTHORITY.—

(1) REPEAL.—Effective one year after the date of the enactment of this Act—

(A) section 1076d of title 10, United States Code, is repealed; and

(B) the table of sections at the beginning of chapter 55 of such title is amended by striking the item relating to section 1076d.

(2) TRANSITION COVERAGE.—The Secretary of Defense shall provide for an orderly transition to TRICARE coverage under section 1076b of title 10, United States Code (as amended by subsection (a)), for persons enrolled for TRICARE coverage under section 1076d of such title before the repeal of such section takes effect under paragraph (1)(A).

**SEC. 2204. ALLOWANCE FOR CONTINUATION OF NON-TRICARE HEALTH BENEFITS COVERAGE FOR CERTAIN MOBILIZED RESERVES.**

(a) PAYMENT OF PREMIUMS.—

(1) REQUIREMENT TO PAY PREMIUMS.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1078a the following new section:

**''§ 1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents**

''(a) PAYMENT OF PREMIUMS.—The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subsection (j).

''(b) ELIGIBLE MEMBER.—A member of a reserve component is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subsection (a) while serving on active duty pursuant to a call or order issued under a provision of law referred to in section 101(a)(13)(B) of this title during a war or national emergency declared by the President or Congress.

''(c) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—For the purposes of this section, health benefits plan coverage for a member called or ordered to active duty is qualified health benefits plan coverage if—

''(1) the coverage was in force on the date on which the Secretary notified the member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order;

''(2) on such date, the coverage applied to the member and dependents of the member described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

''(3) the coverage has not lapsed.

''(d) APPLICABLE PREMIUM.—The applicable premium payable under this section for continuation of health benefits plan coverage in the case of a member is the amount of the premium payable by the member for the coverage of the member and dependents.

''(e) MAXIMUM AMOUNT.—The total amount that may be paid for the applicable premium of a health benefits plan for a member under this section in a fiscal year may not exceed the amount determined by multiplying—

''(1) the sum of one plus the number of the member's dependents covered by the health benefits plan, by

''(2) the per capita cost of providing TRICARE coverage and benefits for dependents under this chapter for such fiscal year, as determined by the Secretary of Defense.

''(f) BENEFITS COVERAGE CONTINUATION PERIOD.—The benefits coverage continuation period under this section for qualified health benefits plan coverage in the case of a member called or ordered to active duty is the period that—

''(1) begins on the date of the call or order; and

''(2) ends on the earlier of the date on which—

''(A) the member's eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section; or

''(B) the member elects to terminate the continued qualified health benefits plan coverage of the dependents of the member.

''(g) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

''(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for a member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

''(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

''(h) NONDUPLICATION OF BENEFITS.—A dependent of a member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of a member by the Secretary concerned under this section is not eligible for benefits under the TRICARE program during a period of the coverage for which so paid.

''(i) REVOCABILITY OF ELECTION.—A member who makes an election under subsection (a) may revoke the election. Upon such a revocation, the member's dependents shall become eligible for benefits under the TRICARE program as provided for under this chapter.

''(j) REGULATIONS.—The Secretary of Defense shall prescribe regulations for carrying out this section. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1078a the following new item:

''1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents.''.

(b) APPLICABILITY.—Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that are issued by the Secretary of a military department on or after the date of the enactment of this Act.

**TITLE XXIII—IMPROVED DEATH GRATUITY AND OTHER SURVIVOR BENEFITS**

**SEC. 2301. FINDINGS.**

Congress makes the following findings:

(1) No amount of money can make up for the loss of a loved one. But the United States can, and is obliged to, honor the service of lost servicemembers by ensuring that their families are financially supported at the time of great need occasioned by those losses.

(2) The Federal Government owes families of servicemembers dying on duty a death gratuity that is sufficient to help each family pay for costs associated with the death of the servicemember and to help the members of the family adjust to the financial instability that results from termination of the servicemember's income.

(3) Survivors of fallen military personnel who are eligible for both a Survivor Benefit Plan annuity and Dependency and Indemnity Compensation suffer a loss of income as a result of the law that requires a reduction in the Survivor Benefit Plan annuity by the amount of the Dependency and Indemnity Compensation. This unjust prohibition against concurrent receipt of two independent benefits prevents the United States from fulfilling its obligation to the survivors during the time of financial need that is occasioned by the deaths of the fallen servicemembers.

**SEC. 2302. INCREASED AMOUNT OF DEATH GRATUITY.**

(a) AMOUNT OF DEATH GRATUITY.—Section 1478(a) of title 10, United States Code, is amended by striking ''$12,000'' in the first sentence and inserting ''$100,000''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.

**SEC. 2303. DEATH GRATUITY EXCLUDABLE FROM FEDERAL INCOME TAXATION.**

(a) IN GENERAL.—Paragraph (1) of section 134(b) of the Internal Revenue Code of 1986 (relating to certain military benefits) is amended by adding at the end the following new flush sentence:

''Such term shall include any death gratuity to which the limitation in section 1478(a) of title 10, United States Code, applies.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid with respect to deaths occurring on or after September 11, 2001.

**SEC. 2304. REPEAL OF REQUIREMENT OF REDUCTION OF SBP SURVIVOR ANNUITIES BY DEPENDENCY AND INDEMNITY COMPENSATION.**

(a) REPEAL.—Subchapter II of chapter 73 of title 10, United States Code is amended—

(1) in section 1450(c)(1), by inserting after ''to whom section 1448 of this title applies'' the following: ''(except in the case of a death as described in subsection (d) or (f) of such section)''; and

(2) in section 1451(c)—

(A) by striking paragraph (2); and

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(b) PROHIBITION ON RETROACTIVE BENEFITS.—No benefits may be paid to any person for any period before the effective date provided under subsection (e) by reason of the amendments made by subsection (a).

(c) PROHIBITION ON RECOUPMENT OF CERTAIN AMOUNTS PREVIOUSLY REFUNDED TO SBP RECIPIENTS.—A surviving spouse who is or has been in receipt of an annuity under the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, that is in effect before the effective date provided under subsection (e) and that is adjusted by reason of the amendments made by subsection (a) and who has received a refund of retired pay under section 1450(e) of title 10, United States Code, shall not be required to repay such refund to the United States.

(d) RECONSIDERATION OF OPTIONAL ANNUITY.—Section 1448(d)(2) of title 10, United States Code, is amended by adding at the end the following new sentences: ''The surviving spouse, however, may elect to terminate an annuity under this subparagraph in accordance with regulations prescribed by the Secretary concerned. Upon such an election, payment of an annuity to dependent children under this subparagraph shall terminate effective on the first day of the first month that begins after the date on which the Secretary concerned receives notice of the election, and, beginning on that day, an annuity shall be paid to the surviving spouse under paragraph (1) instead.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the later of—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) the first day of the fiscal year that begins in the calendar year in which this Act is enacted.

**SEC. 2305. EFFECTIVE DATE FOR PAID-UP COVERAGE UNDER SURVIVOR BENEFIT PLAN.**

Section 1452(j) of title 10, United States Code, is amended by striking ''October 1, 2008'' and inserting ''October 1, 2005''.

## DIVISION C—TAXPAYER PROTECTION

## TITLE XXXI—FUNDING OF RECONSTRUCTION IN IRAQ

**SEC. 3101. FINDINGS.**

Congress makes the following findings:

(1) The international community's support for Iraq's efforts to reconstruct the infrastructure of Iraq following the overthrow of Saddam Hussein's regime is critical to the achievement of regional and international stability and to the protection of national security interests of the United States.

(2) United States taxpayers have borne a disproportionate burden in supporting the reconstruction of Iraq. The United States Government has committed to providing Iraq with grants of financial assistance worth more than 500 percent more than the grant assistance that has been committed by the governments of all of the rest of the countries of the world combined.

(3) The disproportionate contribution of the United States to the reconstruction of Iraq has resulted in a commitment of United States resources to reconstruction that otherwise would be available for supporting the efforts of United States military personnel to rid Iraq and Afghanistan of hostile insurgents.

(4) Iraq possesses the world's second largest reserve of crude oil, with 112,000,000,000 barrels, and administration officials have stated on several occasions that revenue from Iraq's oil industry could fund a significant portion of the costs of the reconstruction of Iraq.

**SEC. 3102. REPORT ON ADDITIONAL NEEDS FOR FUNDING MILITARY AND RECONSTRUCTION EFFORTS.**

(a) REQUIREMENT FOR REPORT.—Whenever the President submits to Congress a request for a supplemental appropriation of funds for use in connection with United States military or reconstruction efforts in Iraq, the President shall submit to the chairmen and ranking members of the appropriate committees of Congress in accordance with this section a report on the status of United States financial commitments to the reconstruction of Iraq.

(b) CONTENT.—The report under subsection (a) shall include the following information:

(1) An estimate of the amount of the United States Government funds spent for the reconstruction of Iraq between March 19, 2003, and the date of the report that is attributable to tax revenue collected from United States taxpayers.

(2) An assessment of the activities funded by that amount, together with a discussion of the results that such activities have achieved.

(3) An estimate of the amount of the funds that have been contributed by all other foreign governments for the reconstruction of Iraq and in relief of Iraq's national debt.

(4) The amount of the crude oil that has been extracted by Iraq since March 19, 2003, and the total value of that oil in United States dollars.

(c) TIME FOR REPORT.—The President shall submit the report under this section not later than 24 hours after any proposed legislation to provide a supplemental appropriation of funds requested by the President for use in connection with United States military or reconstruction activities in Iraq is introduced in either the Senate or the House of Representatives.

(d) FORM.—The report under this section shall be submitted in unclassified form.

**SEC. 3103. LIMITATION ON USE OF FUNDS.**

(a) LIMITATION.—Funds appropriated or otherwise available for providing financial assistance for reconstruction activities in Iraq may not be obligated or expended for providing financial assistance for such activities other than in the form of a collateralized loan until the President submits to the chairmen and ranking members of the appropriate committees of Congress a report that contains the following matters:

(1) The President's plan for seeking increased financial support for reconstruction activities in Iraq from the international community.

(2) The President's statement that he has determined that—

(A) Iraq is incapable of producing sufficient revenues from its oil industry to pay for future reconstruction activities; and

(B) it is not in the national security interests of the United States for the United States to provide financial assistance for reconstruction activities in Iraq solely in the form of loans.

(b) WAIVER AUTHORITY.—The President may waive the applicability of the limitation in subsection (a) to an obligation or expenditure of funds if the President determines that the applicability of the limitation to such obligation or expenditure would adversely affect the physical safety of United States Armed Forces personnel operating in Iraq, except that any such waiver shall not take effect before the President submits a written notification of the waiver and determination to the chairmen and ranking members of the appropriate committees of Congress.

**SEC. 3104. APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**

In this title, the term ''appropriate committees of Congress'' mean the following committees:

(1) The Committee on Foreign Relations Committee, the Committee on Armed Services, and the Committee on Appropriations of the Senate.

(2) The Committee on International Relations, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

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By Mr. BIDEN (for himself, Mr. REID, Mr. BINGAMAN, Ms. MIKULSKI, Mr. DURBIN, Ms. STABENOW, Mr. ROCKEFELLER, Mr. LAUTENBERG, and Mr. SCHUMER):

S. 12. A bill to combat international terrorism, and for other purposes; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, I am pleased to join the Democratic Leader in introducing S. 12, a bill to combat international terrorism.

We all know that the primary security threat facing America is from terrorists motivated by a radical Islamic fundamentalism. Since the 9/11 attacks, we have done much to confront this threat, but we must do much more. As the 9/11 Commission reported, we are safer, but we are not yet safe. I know that all Senators are committed to the objective of making our country safer.

We must understand that those who would spread radical Islamic fundamentalism and weapons of mass destruction are beyond the reach of reason. We must—and we will—defeat them. But hundreds of millions of hearts and minds around the world are open to American ideas and ideals. We must reach them.

This bill contains a range of proposals that are designed to strengthen our anti-terrorism efforts in a broad range of areas. It will strengthen our military by expanding our special forces. It will strengthen our intelligence operations by increasing the cadre of the trained linguists in the government. It will strengthen our public diplomacy by increasing funds for State Department programs, international exchanges, and international broadcasting. It will strengthen our effort to expand basic educational opportunities in the Muslim world and combat radical madrassas. It will strengthen our assistance to non-governmental organizations working to build democratic institutions. It will strengthen our programs to help Russia account for, secure and destroy dangerous nuclear materials. And it will strengthen our law enforcement by increasing support for cops on the beat—the people

who labor on the front lines of homeland security.

I cannot take credit for every proposal in this bill. Many of them are ideas contributed by my Democratic colleagues. The Democratic Leader has graciously allowed me to be the lead sponsor of the bill, for which I am grateful. I look forward to working with all my colleagues to strengthen America's defenses against the threat of terrorism—through this and other legislation—in the coming Congress.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 12

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Targeting Terrorists More Effectively Act of 2005''.

**TITLE I—EFFECTIVELY TARGETING TERRORISTS**

**SEC. 101. INCREASED STRENGTH OF ARMY SPECIAL OPERATIONS FORCES.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that the number of the active-duty Army personnel comprising the Army Special Forces Command as of the last day of a fiscal year should be increased as follows:

(1) To 4,644, as of September 30, 2006.

(2) To 5,144, as of September 30, 2007.

(3) To 5,644, as of September 30, 2008.

(4) To 6,144, as of September 30, 2009.

(b) INCREASED ACTIVE FORCES END STRENGTHS TO EFFECTUATE POLICY ON INCREASE IN STRENGTH OF ARMY SPECIAL FORCES.—

(1) FISCAL YEAR 2006.—Effective on October 1, 2005, section 691(b)(1) of title 10, United States Code, is amended by striking ''502,400'' and inserting ''502,900''.

(2) FISCAL YEAR 2007.—Effective on October 1, 2006, section 691(b)(1) of such title is amended by striking ''502,900'' and inserting ''503,400''.

(3) FISCAL YEAR 2008.—Effective on October 1, 2007, section 691(b)(1) of such title is amended by striking ''503,400'' and inserting ''503,900''.

(4) FISCAL YEAR 2009.—Effective on October 1, 2008, section 691(b)(1) of such title is amended by striking ''503,900'' and inserting ''504,400''.

**SEC. 102. FOREIGN LANGUAGE EXPERTISE.**

(a) FINDINGS.—Congress makes the following findings:

(1) Success in the global war on terrorism will require a dramatic increase in institutional and personal expertise in the languages and cultures of the societies where terrorism has taken root, including a substantial increase in the number of national security personnel who obtain expert lingual training.

(2) The National Commission on Terrorist Attacks Upon the United States identified the countries in the Middle East, South Asia, Southeast Asia, and West Africa as countries that serve or could serve as terrorist havens.

(3) Although 22 countries have Arabic as their official language, the National Commission on Terrorist Attacks Upon the United States found that a total of only 6 undergraduate degrees for the study of Arabic were granted by United States colleges and universities in 2002.

(4) The report of the National Commission on Terrorist Attacks Upon the United States contained several criticisms of the lack of linguistic expertise in the Central Intelligence Agency and the Federal Bureau of Investigation prior to the September 11, 2001 terrorist attacks, and called for the Central Intelligence Agency to ''develop a stronger language program, with high standards and sufficient financial incentives''.

(5) An audit conducted by the Department of Justice in July 2004, revealed that the Federal Bureau of Investigation has a backlog of hundreds of thousands of untranslated audio recordings from terror and espionage investigations.

(6) The National Security Education Program Trust Fund, which funds critical grant and scholarship programs for linguistic training in regions critical to national security, will have exhausted all its funding by fiscal year 2006, unless additional appropriations are made to the Trust Fund.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the overwhelming majority of Muslims reject terrorism and a small, radical minority has grossly distorted the teachings of one of the world's great faiths to seek justification for acts of terrorism, such radical Islamic fundamentalism constitutes a primary threat to the national security interests of the United States, and an effective strategy for combating terrorism should include increasing the number of personnel throughout the Federal Government with expertise in languages spoken in predominately Muslim countries and in the culture of such countries;

(2) Muslim-Americans constitute an integral and cherished part of the fabric of American society and possess many talents, including linguistic, historic, and cultural expertise that should be harnessed in the war against radical, fundamentalist terror; and

(3) amounts appropriated for the National Flagship Language Initiative pursuant to the amendments made by subsection (e)(2) should be used to support the establishment, operation, and improvement of programs for the study of Arabic, Persian, and other Middle Eastern, South Asian, Southeast Asian, and West African languages in institutes of higher education in the United States.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) NATIONAL SECURITY EDUCATION TRUST FUND.—Section 810 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1910) is amended by adding at the end the following:

''(d) AUTHORIZATION OF APPROPRIATIONS FOR THE FUND FOR FISCAL YEAR 2006.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Fund $150,000,000 for fiscal year 2006.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended and not more than $15,000,000 of such amounts may be obligated and expended during any fiscal year.''.

(2) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—

(A) IN GENERAL.—Section 811(a) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1911(a)) is amended by striking ''there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, $10,000,000'' and inserting ''there is authorized to be appropriated to the Secretary for each fiscal year 2003 through 2005, $10,000,000, and for each fiscal year after 2005, $20,000,000,''.

(B) AVAILABILITY OF FUNDS.—Section 811(b) of such Act (50 U.S.C. 1911(b)) is amended by inserting ''for fiscal years 2003 through 2005'' after ''this section''.

(3) DEMONSTRATION PROGRAM.—There are authorized to be appropriated to the Director of National Intelligence such sums as may be necessary for each of fiscal years 2006, 2007, and 2008 in order to carry out the demonstration program established under subsection (c).

**SEC. 103. CURTAILING TERRORIST FINANCING.**

(a) FINDINGS.—Congress makes the following findings:

(1) The report of the National Commission on Terrorist Attacks Upon the United States stated that ''[v]igorous efforts to track terrorist financing must remain front and center in United States counterterrorism efforts''.

(2) The report of the Independent Task Force sponsored by the Council on Foreign Relations stated that ''currently existing U. S. and international policies, programs, structures, and organizations will be inadequate to assure sustained results commensurate with the ongoing threat posed to the national security of the United States''.

(3) The report of the Independent Task Force contained the conclusion that ''[l]ongterm success will depend critically upon the structure, integration, and focus of the U. S. Government—and any intergovernmental efforts undertaken to address this problem''.

(b) POLICY.—It is the policy of the United States—

(1) to work with the Government of Saudi Arabia to curtail terrorist financing originating from that country using a range of methods, including diplomacy, intelligence, and law enforcement;

(2) to ensure effective coordination and sufficient resources for efforts of the agencies and departments of the United States to disrupt terrorist financing by carrying out, through the Office of Terrorism and Financial Intelligence in the Department of the Treasury, a comprehensive analysis of the budgets and activities of all such agencies and departments that are related to disrupting the financing of terrorist organizations;

(3) to provide each agency or department of the United States with the appropriate number of personnel to carry out the activities of such agency or department related to disrupting the financing of terrorist organizations;

(4) to centralize the coordination of the efforts of the United States to combat terrorist financing and utilize existing authorities to identify foreign jurisdictions and foreign financial institutions suspected of abetting terrorist financing and take actions to prevent the provision of assistance to terrorists; and

(5) to work with other countries to develop and enforce strong domestic terrorist financing laws, and increase funding for bilateral and multilateral programs to enhance training and capacity-building in countries who request assistance.

(c) AUTHORIZATION OF APPROPRIATIONS TO PROVIDE TECHNICAL ASSISTANCE TO PREVENT FINANCING OF TERRORISTS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President for the ''Economic Support Fund'' to provide technical assistance under the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.) to foreign countries to assist such countries in preventing the financing of terrorist activities—

(A) for fiscal year 2006, $300,000,000; and

(B) for fiscal years 2007 and 2008, such sums as may be necessary.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in this subsection are authorized to remain available until expended.

(3) ADDITIONAL FUNDS.—Amounts authorized to be appropriated under this subsection are in addition to amounts otherwise available for such purposes.

**SEC. 104. PROHIBITION ON TRANSACTIONS WITH COUNTRIES THAT SUPPORT TERRORISM.**

(a) CLARIFICATION OF CERTAIN ACTIONS UNDER IEEPA.—In any case in which the President takes action under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) with respect to a foreign country, or persons dealing with or associated with the government of that foreign country, as a result of a determination by the Secretary of State that the government of that foreign country has repeatedly provided support for acts of international terrorism, such action shall apply to a United States person or other person.

(b) DEFINITIONS.—In this section:

(1) CONTROLLED IN FACT.—The term ''is controlled in fact'' includes—

(A) in the case of a corporation, holds at least 50 percent (by vote or value) of the capital structure of the corporation; and

(B) in the case of any other kind of legal entity, holds interests representing at least 50 percent of the capital structure of the entity.

(2) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories or possessions of the United States.

(3) UNITED STATES PERSON.—The term ''United States person'' includes any United States citizen, permanent resident alien, entity organized under the law of the United States or of any State (including foreign branches), wherever located, or any other person in the United States.

(c) APPLICABILITY.—

(1) IN GENERAL.—In any case in which the President has taken action under the International Emergency Economic Powers Act and such action is in effect on the date of enactment of this Act, the provisions of subsection (a) shall not apply to a United States person (or other person) if such person divests or terminates its business with the government or person identified by such action within 90 days after the date of enactment of this Act.

(2) ACTIONS AFTER DATE OF ENACTMENT.—In any case in which the President takes action under the International Emergency Economic Powers Act on or after the date of enactment of this Act, the provisions of subsection (a) shall not apply to a United States person (or other person) if such person divests or terminates its business with the government or person identified by such action within 90 days after the date of such action.

(d) NOTIFICATION OF CONGRESS OF TERMINATION OF INVESTIGATION BY OFFICE OF FOREIGN ASSETS CONTROL.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

**''SEC. 42. NOTIFICATION OF CONGRESS OF TERMINATION OF INVESTIGATION BY OFFICE OF FOREIGN ASSETS CONTROL.**

''The Director of the Office of Foreign Assets Control shall notify Congress upon the termination of any investigation by the Office of Foreign Assets Control of the Department of the Treasury if any sanction is imposed by the Director of such office as a result of the investigation.''.

## TITLE II—PREVENTING THE GROWTH OF RADICAL ISLAMIC FUNDAMENTALISM

### Subtitle A—Quality Educational Opportunities

**SEC. 201. FINDINGS, POLICY, AND DEFINITION.**

(a) FINDINGS.—Congress makes the following findings:

(1) The report of the National Commission on Terrorist Attacks Upon the United States stated that ''[e]ducation that teaches tolerance, the dignity and value of each individual, and respect for different beliefs is a key element in any global strategy to eliminate Islamic terrorism''.

(2) According to the United Nations Development Program Arab Human Development Report for 2002, 10,000,000 children between the ages of 6 through 15 in the Arab world do not attend school, and ⅔ of the 65,000,000 illiterate adults in the Arab world are women.

(3) The report of the National Commission on Terrorist Attacks Upon the United States concluded that ensuring educational opportunity is essential to the efforts of the United States to defeat global terrorism and recommended that the United States Government ''should offer to join with other nations in generously supporting [spending funds] ... directly on building and operating primary and secondary schools in those Muslim states that commit to sensibly investing financial resources in public education''.

(b) POLICY.—It is the policy of the United States—

(1) to work toward the goal of dramatically increasing the availability of basic education in the developing world, which will reduce the influence of radical madrassas and other institutions that promote religious extremism;

(2) to join with other countries in generously supporting the International Youth Opportunity Fund authorized under section 7114 of the 9/11 Commission Implementation Act of 2004 (Public Law 108–458), with the goal of building and operating primary and secondary schools in Muslim countries that commit to sensibly investing the resources of such countries in public education;

(3) to work with the international community, including foreign countries and international organizations to raise $7,000,000,000 to $10,000,000,000 each year to fund education programs in Muslim countries;

(4) to offer additional incentives to countries to increase the availability of basic education; and

(5) to work to prevent financing of educational institutions that support radical Islamic fundamentalism.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subtitle, the term ''appropriate congressional committees'' means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

**SEC. 202. ANNUAL REPORT TO CONGRESS.**

Not later than June 1 of each year, the Secretary of State shall submit to the appropriate congressional committees a report on the efforts of countries in the developing world to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism. Each report shall include—

(1) a list of countries that are making serious and sustained efforts to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism;

(2) a list of countries that are making efforts to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism, but such efforts are not serious and sustained; and

(3) a list of countries that are not making efforts to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism.

**SEC. 203. AUTHORIZATION OF APPROPRIATIONS.**

(a) INTERNATIONAL EDUCATION PROGRAMS.—There are authorized to be appropriated to the President for ''Development Assistance'' for international education programs carried out under sections 105 and 496 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151c and 2293)—

(1) for fiscal year 2006, $1,000,000,000; and

(2) for fiscal years 2007 and 2008, such sums as may be necessary.

(b) INTERNATIONAL YOUTH OPPORTUNITY FUND.—There are authorized to be appropriated to the President for fiscal years 2006, 2007, and 2008 such sums as may be necessary for the United States contribution to the International Youth Opportunity Fund authorized under section 7114 of the 9/11 Commission Implementation Act of 2004 (Public Law 108–458) for international education programs.

(c) ADDITIONAL FUNDS.—Amounts authorized to be appropriated in this section are in addition to amounts otherwise available for such purposes.

### Subtitle B—Democracy and Development in the Muslim World

**SEC. 211. PROMOTING DEMOCRACY AND DEVELOPMENT IN THE MIDDLE EAST, CENTRAL ASIA, SOUTH ASIA, AND SOUTHEAST ASIA.**

(a) FINDINGS.—Congress makes the following findings:

(1) Al-Qaeda and affiliated groups have established a terrorist network with linkages throughout the Middle East, Central Asia, South Asia, and Southeast Asia.

(2) While political repression and lack of economic development do not justify terrorism, increased political freedoms and economic growth can contribute to an environment that undercuts tendencies and conditions that facilitate the rise of terrorist organizations.

(3) It is in the national security interests of the United States to promote democracy, good governance, political freedom, independent media, women's rights, private sector development, and open economic systems in the countries of the Middle East, Central Asia, South Asia, and Southeast Asia.

(b) POLICY.—It is the policy of the United States—

(1) to promote the objectives described in subsection (a)(3) in the countries of the Middle East, Central Asia, South Asia, and Southeast Asia;

(2) to provide assistance and resources to organizations that are committed to promoting such objectives; and

(3) to work with other countries and international organizations to increase the resources devoted to promoting such objectives.

(c) STRATEGY.—Not later than 180 days after the date of enactment of this Act, the Secretary of State shall submit to Congress a strategy to promote the policy of the United States set out in subsection (b). Such strategy shall describe how funds appropriated pursuant to the authorization of appropriations in subsection (d) will be used.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President for the ''Economic Support Fund'' for activities carried out under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.) to promote the policy of the United States set out in subsection (b)—

(A) for fiscal year 2006, $500,000,000; and

(B) for fiscal years 2007 and 2008, such sums as may be necessary.

(2) SENSE OF CONGRESS ON USE OF FUNDS.—It is the sense of Congress that a substantial portion of the funds appropriated pursuant to the authorization of appropriations in paragraph (1) should be made available to non-governmental organizations that have a record of success working in the countries of

the Middle East, Central Asia, South Asia, and Southeast Asia to support democratic parties, human rights organizations, independent media, and the efforts to promote the rights of women.

(3) ADDITIONAL FUNDS.—Amounts authorized to be appropriated in paragraph (1) are in addition to amounts otherwise available for such purposes.

**SEC. 212. MIDDLE EAST FOUNDATION.**

(a) PURPOSES.—The purposes of this section are to support, through the provision of grants, technical assistance, training, and other programs, in the countries of the Middle East, the expansion of—

(1) civil society;

(2) opportunities for political participation for all citizens;

(3) protections for internationally recognized human rights, including the rights of women;

(4) educational system reforms;

(5) independent media;

(6) policies that promote economic opportunities for citizens;

(7) the rule of law; and

(8) democratic processes of government.

(b) MIDDLE EAST FOUNDATION.—

(1) DESIGNATION.—The Secretary of State is authorized to designate an appropriate private, nonprofit organization that is organized or incorporated under the laws of the United States or of a State as the Middle East Foundation (referred to in this section as the ''Foundation'').

(2) FUNDING.—The Secretary of State is authorized to provide funding to the Foundation through the Middle East Partnership Initiative of the Department of State. The Foundation shall use amounts provided under this paragraph to carry out the purposes of this section, including through making grants and providing other assistance to entities to carry out programs for such purposes.

(3) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—The Secretary of State shall notify the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives prior to designating an appropriate organization as the Foundation.

(c) GRANTS FOR PROJECTS.—

(1) FOUNDATION TO MAKE GRANTS.—The Secretary of State shall enter into an agreement with the Foundation that requires the Foundation to use the funds provided under subsection (b)(2) to make grants to persons (other than governments or government entities) located in the Middle East or working with local partners based in the Middle East to carry out projects that support the purposes specified in subsection (a).

(2) CENTER FOR PUBLIC POLICY.—Under the agreement described in paragraph (1), the Foundation may make a grant to an institution of higher education located in the Middle East to create a center for public policy for the purpose of permitting scholars and professionals from the countries of the Middle East and from other countries, including the United States, to carry out research, training programs, and other activities to inform public policymaking in the Middle East and to promote broad economic, social, and political reform for the people of the Middle East.

(3) APPLICATIONS FOR GRANTS.—An entity seeking a grant from the Foundation under this section shall submit an application to the head of the Foundation at such time, in such manner, and including such information as the head of the Foundation may reasonably require.

(d) PRIVATE CHARACTER OF THE FOUNDATION.—Nothing in this section shall be construed to—

(1) make the Foundation an agency or establishment of the United States Government, or to make the officers or employees of the Foundation officers or employees of the United States for purposes of title 5, United States Code; or

(2) to impose any restriction on the Foundation's acceptance of funds from private and public sources in support of its activities consistent with the purposes of this section.

(e) LIMITATION ON PAYMENTS TO FOUNDATION PERSONNEL.—No part of the funds provided to the Foundation under this section shall inure to the benefit of any officer or employee of the Foundation, except as salary or reasonable compensation for services.

(f) RETENTION OF INTEREST.—The Foundation may hold funds provided under this section in interest-bearing accounts prior to the disbursement of such funds to carry out the purposes of this section, and may retain for use for such purposes any interest earned without returning such interest to the Treasury of the United States and without further appropriation by Congress.

(g) FINANCIAL ACCOUNTABILITY.—

(1) INDEPENDENT PRIVATE AUDITS OF THE FOUNDATION.—The accounts of the Foundation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The report of the independent audit shall be included in the annual report required by subsection (h).

(2) GAO AUDITS.—The financial transactions undertaken pursuant to this section by the Foundation may be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States.

(3) AUDITS OF GRANT RECIPIENTS.—

(A) IN GENERAL.—A recipient of a grant from the Foundation shall agree to permit an audit of the books and records of such recipient related to the use of the grant funds.

(B) RECORDKEEPING.—Such recipient shall maintain appropriate books and records to facilitate an audit referred to subparagraph (A), including—

(i) separate accounts with respect to the grant funds;

(ii) records that fully disclose the use of the grant funds;

(iii) records describing the total cost of any project carried out using grant funds; and

(iv) the amount and nature of any funds received from other sources that were combined with the grant funds to carry out a project.

(h) ANNUAL REPORTS.—Not later than January 31, 2006, and annually thereafter, the Foundation shall submit to Congress and make available to the public an annual report that includes, for the fiscal year prior to the fiscal year in which the report is submitted, a comprehensive and detailed description of—

(1) the operations and activities of the Foundation that were carried out using funds provided under this section;

(2) grants made by the Foundation to other entities with funds provided under this section;

(3) other activities of the Foundation to further the purposes of this section; and

(4) the financial condition of the Foundation.

## Subtitle C—Restoring American Moral Leadership

**SEC. 221. ADVANCING UNITED STATES INTERESTS THROUGH PUBLIC DIPLOMACY.**

(a) FINDINGS.—Congress makes the following findings:

(1) The United States needs to improve its communication of information and ideas to people in foreign countries, particularly in countries with significant Muslim populations.

(2) Public diplomacy should reaffirm the paramount commitment of the United States to democratic principles, including preserving the civil liberties of all the people of the United States, including Muslim-Americans.

(3) The report of the National Commission on Terrorist Attacks Upon the United States stated that, ''Recognizing that Arab and Muslim audiences rely on satellite television and radio, the government has begun some promising initiatives in television and radio broadcasting to the Arab world, Iran, and Afghanistan. These efforts are beginning to reach large audiences. The Broadcasting Board of Governors has asked for much larger resources. It should get them.''.

(4) A significant expansion of United States international broadcasting would provide a cost-effective means of improving communication with countries with significant Muslim populations by providing news, information, and analysis, as well as cultural programming, through both radio and television broadcasts.

(b) SPECIAL AUTHORITY FOR SURGE CAPACITY.—The United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.) is amended by adding at the end the following new section:

**''SEC. 316. SPECIAL AUTHORITY FOR SURGE CAPACITY.**

''(a) EMERGENCY AUTHORITY.—

''(1) IN GENERAL.—Whenever the President determines it to be important to the national interests of the United States and so certifies to the appropriate congressional committees, the President, on such terms and conditions as the President may determine, is authorized to direct any department, agency, or other entity of the United States to furnish the Broadcasting Board of Governors with such assistance as may be necessary to provide international broadcasting activities of the United States with a surge capacity to support United States foreign policy objectives during a crisis abroad.

''(2) SUPERSEDES EXISTING LAW.—The authority of paragraph (1) supersedes any other provision of law.

''(3) SURGE CAPACITY DEFINED.—In this subsection, the term 'surge capacity' means the financial and technical resources necessary to carry out broadcasting activities in a geographical area during a crisis.

''(b) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the President such sums as may be necessary for the President to carry out this section, except that no such amount may be appropriated which, when added to amounts previously appropriated for such purpose but not yet obligated, would cause such amounts to exceed $25,000,000.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in this subsection are authorized to remain available until expended.

''(3) DESIGNATION OF APPROPRIATIONS.—Amounts appropriated pursuant to the authorization of appropriations in this subsection may be referred to as the 'United States International Broadcasting Surge Capacity Fund'.''.

(c) REPORT.—An annual report submitted to the President and Congress by the Broadcasting Board of Governors under section 305(a)(9) of the United States International Broadcasting Act of 1994 (22 U.S.C. 6204(a)(9)) shall provide a detailed description of any activities carried out under section 316 of such Act, as added by subsection (b).

(d) AUTHORIZATION OF APPROPRIATIONS FOR UNITED STATES INTERNATIONAL BROADCASTING ACTIVITIES.—

(1) IN GENERAL.—In addition to amounts otherwise available for such purposes, the following amounts are authorized to be appropriated to carry out United States Government broadcasting activities under the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.), the United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.), the Foreign Affairs Reform and Restructuring Act of 1998 (as enacted in division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277), and this Act, and to carry out other authorities in law consistent with such purposes:

(A) INTERNATIONAL BROADCASTING OPERATIONS.—For ''International Broadcasting Operations'', $497,000,000 for the fiscal year 2006.

(B) BROADCASTING CAPITAL IMPROVEMENTS.—For ''Broadcasting Capital Improvements'', $70,000,000 for the fiscal year 2006.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in this section are authorized to remain available until expended.

**SEC. 222. DEPARTMENT OF STATE PUBLIC DIPLOMACY PROGRAMS.**

(a) UNITED STATES EDUCATIONAL, CULTURAL, AND PUBLIC DIPLOMACY PROGRAMS.—There is authorized to be appropriated for the Department of State to carry out public diplomacy programs of the Department under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, Reorganization Plan Number 2 of 1977, the Foreign Affairs Reform and Restructuring Act of 1998, the Center for Cultural and Technical Interchange Between East and West Act of 1960, the Dante B. Fascell North-South Center Act of 1991, and the National Endowment for Democracy Act, and to carry out other authorities in law consistent with the purposes of such Acts for ''Educational and Cultural Exchange Programs'', $500,000,000 for the fiscal year 2006.

(b) ADMINISTRATION OF FOREIGN AFFAIRS.—The is authorized to be appropriated for the Department of State under ''Administration of Foreign Affairs'' to carry out the authorities, functions, duties, and responsibilities in the conduct of foreign affairs of the United States, and for other purposes authorized by law for ''Diplomatic and Consular Programs'', $500,000,000 for the fiscal year 2006, which shall only be available for public diplomacy international information programs.

**SEC. 223. TREATMENT OF DETAINEES.**

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Carrying out the global war on terrorism requires the development of policies with respect to the detention and treatment of captured international terrorists that are adhered to by all coalition forces.

(2) Article 3 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), was specifically designed for cases in which the usual rules of war do not apply, and the minimum standards of treatment pursuant to such Article are generally accepted throughout the world as customary international law.

(b) POLICY.—The policy of the United States is as follows:

(1) It is the policy of the United States to treat all foreign persons captured, detained, interned, or otherwise held in the custody of the United States (hereinafter ''detainees'') humanely and in accordance with the legal obligations under United States law and international law, including the obligations in the Convention Against Torture and in the minimum standards set forth in the Geneva Conventions.

(2) It is the policy of the United States that all officials of the United States are bound both in wartime and in peacetime by the legal prohibitions against torture, cruel, inhumane, or degrading treatment set out in the Constitution, laws, and treaties of the United States.

(3) If there is any doubt as to whether a detainee is entitled to the protections afforded by the Geneva Conventions, it is the policy of the United States that such detainee shall enjoy the protections of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316) until such time as the detainee's status can be determined pursuant to the procedures authorized by Army Regulation 190–8, Section 1–6.

(4) It is the policy of the United States to provide individualized hearings for all detainees for the purpose of expeditiously holding detainees accountable for violations of the law of war, other relevant international prohibitions, or criminal laws alleged to have been committed by such detainees or to expeditiously conduct intelligence debriefings of such detainees.

(5) It is the policy of the United States to avoid the indefinite detention of any individual in a manner which is contrary to the legal principles and security interests of the United States.

(c) REPORTING.—The Secretary shall submit to the appropriate congressional committees:

(1) A quarterly report providing the number of detainees who were denied prisoner of war status under the Geneva Conventions and the basis for denying such status to each such detainee.

(2) Not later than 180 days after the date of the enactment of this Act, a report setting forth—

(A) the proposed schedule for military commissions to be held at Guantanamo Bay, Cuba; and

(B) the number of individuals currently held at Guantanamo Bay, Cuba, the number of such individuals who are unlikely to face a military commission in the next six months, and each reason for not bringing such individuals before a military commission.

(3) Not later than 15 days after the date of the enactment of this Act, all International Committee of the Red Cross reports, completed prior to the enactment of this Act, concerning the treatment of detainees in United States custody at Guantanamo Bay, Cuba, Iraq, and Afghanistan. Such reports should be provided, in classified form.

(4) Not later than 90 days after the date of the enactment of this Act, a report setting forth all interrogation techniques approved, as of the date of the enactment of this Act, by officials of the United States for use with detainees.

(d) ANNUAL TRAINING REQUIREMENT.—The Secretary of Defense shall certify to the appropriate congressional committees, no later than June 1 of each year, that all Federal employees and civilian contractors engaged in the handling or interrogating of detainees have fulfilled an annual training requirement on the laws of war, the Geneva Conventions, the Convention Against Torture, and the obligations of the United States under international humanitarian law.

(e) PROHIBITION ON TORTURE OR CRUEL, INHUMANE, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No detainee shall be subject to torture or cruel, inhumane, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.

(2) RELATIONSHIP TO GENEVA CONVENTIONS.—Nothing in this section shall affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

(f) RULES, REGULATIONS, AND GUIDELINES.—

(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary and the Director shall prescribe the rules, regulations, or guidelines necessary to ensure compliance with the prohibition in subsection (e)(1) by all personnel of the United States Government and by any person providing services to the United States Government on a contract basis.

(2) REPORT TO CONGRESS.—The Secretary and the Director shall submit to Congress the rules, regulations, or guidelines prescribed under paragraph (1), and any modifications to such rules, regulations, or guidelines—

(A) not later than 30 days after the effective date of such rules, regulations, guidelines, or modifications; and

(B) in a manner and form that will protect the national security interests of the United States.

(g) REPORTS ON POSSIBLE VIOLATIONS.—

(1) REQUIREMENT.—The Secretary and the Director shall each submit, on a timely basis and not less than twice each year, a report to Congress on the circumstances surrounding, and a status report on, any investigation of a possible violation of the prohibition in subsection (e)(1) by United States Government personnel or by a person providing services to the United States Government on a contract basis.

(2) FORM OF REPORT.—A report required under paragraph (1) shall be submitted in a manner and form that—

(A) will protect the national security interests of the United States; and

(B) will not prejudice any prosecution of an individual alleged to have violated the prohibition in subsection (e)(1).

(h) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on Armed Services, the Committee on the Judiciary, and the Committee on Foreign Relations of the Senate and the Committee on Armed Services, the Committee on the Judiciary, and the Committee on International Relations of the House of Representatives.

(2) CONVENTION AGAINST TORTURE.—The term ''Convention Against Torture'' means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

(3) DIRECTOR.—The term ''Director'' means the Director of National Intelligence.

(4) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means—

(A) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(B) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(C) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(D) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Defense.

(6) TORTURE.—The term ''torture'' has the meaning given that term in section 2340 of title 18, United States Code.

**SEC. 224. NATIONAL COMMISSION TO REVIEW POLICY REGARDING THE TREATMENT OF DETAINEES.**

(a) ESTABLISHMENT OF COMMISSION.—There is established the National Commission To Review Policy Regarding the Treatment of Detainees.

(b) PURPOSES.—The purposes of the Commission are as follows:

(1) To examine and report upon the role of policymakers in the development of intelligence related to the treatment of individuals detained during Operation Iraqi Freedom or Operation Enduring Freedom.

(2) To examine and report on the impact of the abuse of prisoners by the United States personnel on the security of the Armed Forces of the United States.

(3) To build upon the reviews of the policies of the United States related to the treatment of individuals detained by the United States, including such reviews conducted by the executive branch, Congress, or other entities.

(c) COMPOSITION OF THE COMMISSION.—

(1) MEMBERS.—The Commission shall be composed of 15 members, of whom—

(A) 3 members shall be appointed by the majority leader of the Senate;

(B) 3 members shall be appointed by the Speaker of the House of Representatives;

(C) 3 members shall be appointed by the minority leader of the Senate;

(D) 3 members shall be appointed by the minority leader of the House of Representatives;

(E) 1 member shall be appointed by the Judge Advocate General of the Army;

(F) 1 member shall be appointed by the Judge Advocate General of the Navy; and

(G) 1 member shall be appointed by the Judge Advocate General of the Air Force.

(2) CHAIRPERSON; VICE CHAIRPERSON.—

(A) IN GENERAL.—Subject to subparagraph (B), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(B) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson may not be from the same political party.

(3) INITIAL MEETING.—Once 9 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(4) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the Chairperson or a majority of its members. Eight members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(5) SENSE OF CONGRESS ON QUALIFICATIONS OF COMMISSION MEMBERS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in the fields of intelligence, law enforcement, or foreign affairs, or experience serving the United States Government, including service in the Armed Forces.

(d) FUNCTIONS OF THE COMMISSION.—The functions of the Commission are—

(1) to conduct an investigation that—

(A) investigates the development of policy relating to individuals detained during Operation Iraqi Freedom or Operation Enduring Freedom;

(B) determines whether the United States policy related to the treatment of detained individuals has adversely affected the security of the members of the Armed Forces of the United States;

(C) determines whether and to what extent the incidences of abuse of detained individuals has affected the standing of the United States in the world;

(D) determines whether and to what extent leaders of the United States Armed Forces were given the opportunity to comment on and influence policy relating to treatment of detained individuals; and

(E) determines whether and to what extent policy relating to the treatment of individuals detained during Operation Iraqi Freedom or Operation Enduring Freedom differed from the policies and practices regarding detainees established by the Armed Forces prior to such operations; and

(2) to submit to the President and Congress such report as is required by this section containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

(e) POWERS OF THE COMMISSION.—

(1) IN GENERAL.—

(A) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this section—

(i) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, cables, electronic messages, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(B) SUBPOENAS.—

(i) ISSUANCE.—Subpoenas issued under subparagraph (A)(ii) may be issued under the signature of the Chairperson of the Commission, the Vice Chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the Chairperson, subcommittee chairperson, or member.

(ii) ENFORCEMENT.—

(I) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A)(ii), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(II) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(2) CLOSED MEETINGS.—

(A) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(B) ADDITIONAL AUTHORITY.—In addition to the authority under subparagraph (A), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(3) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this section.

(4) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this section. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(5) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subparagraph (A), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(7) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(f) STAFF OF THE COMMISSION.—

(1) APPOINTMENT AND COMPENSATION.—The Chairperson and Vice Chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to a member of the Commission.

(3) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(4) CONSULTANT SERVICES.—The Commission is authorized to procure the services of

experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(g) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(h) SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.—The appropriate departments and agencies of the Government shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

(i) REPORT OF THE COMMISSION.—Not later than 9 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress a report containing such findings, conclusions, and recommendations as have been agreed to by a majority of Commission members.

(j) TERMINATION.—

(1) TERMINATION.—The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the report is submitted under subsection (i).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission to carry out this section $5,000,000, to remain available until expended.

**Subtitle D—Strategy for the United States Relationship With Afghanistan, Pakistan, and Saudi Arabia**

**SEC. 231. AFGHANISTAN.**

(a) AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.—Section 108(a) the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7518(a)) is amended by striking ''such sums as may be necessary for each of the fiscal years 2005 and 2006'' and inserting ''$2,400,000,000 for fiscal year 2006 and such sums as may be necessary for each of the fiscal years 2007 and 2008''.

(b) OTHER AUTHORIZATIONS OF APPROPRIATIONS.—

(1) Fiscal year 2006.—There are authorized to be appropriated to the President for providing assistance for Afghanistan in a manner consistent with the provisions of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.) for fiscal year 2006—

(A) for ''International Military Education and Training'', $1,000,000 to carry out the provisions of section 541 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347);

(B) for ''Foreign Military Financing Program'' grants, $444,000,000 to carry out the provisions of section 23 of the Arms Export Control Act (22 U.S.C. 2763); and

(C) for ''Peacekeeping Operations'', $30,000,000 to carry out the provisions of section 551 of the Foreign Assistance Act of 1961 (22 U.S.C. 2348).

(2) FISCAL YEARS 2007 AND 2008.—

(A) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated for each of the purposes described in subparagraphs (A) through (C) of paragraph (1) such sums as may be necessary for each of the fiscal years 2007 and 2008.

(B) SENSE OF CONGRESS.—It is the sense of Congress that the amount appropriated for each purpose described in subparagraphs (A) through (C) of paragraph (1) for each of the fiscal years 2007 and 2008 should be an amount that is equal to 125 percent of the amount appropriated for such purpose during the preceding fiscal year.

(3) OTHER FUNDS.—Amounts authorized to be appropriated under this section are in addition to amounts otherwise available for such purposes.

**SEC. 232. PAKISTAN.**

(a) FINDINGS.—Congress makes the following findings:

(1) Since September 11, 2001, the Government of Pakistan has been an important partner in helping the United States remove the Taliban regime in Afghanistan and combating international terrorism in the frontier provinces of Pakistan.

(2) There remain a number of critical issues that threaten to disrupt the relationship between the United States and Pakistan, undermine international security, and destabilize Pakistan, including—

(A) curbing the proliferation of nuclear weapons technology;

(B) combating poverty and corruption;

(C) building effective government institutions, especially secular public schools;

(D) promoting democracy and rule of law, particularly at the national level; and

(E) effectively dealing with Islamic extremism.

(b) POLICY.—It is the policy of the United States—

(1) to work with the Government of Pakistan to combat international terrorism, especially in the frontier provinces of Pakistan;

(2) to establish a long-term strategic partnership with the Government of Pakistan to address the issues described in subparagraphs (A) through (E) of subsection (a)(2);

(3) to dramatically increase funding for United States Agency for International Development and Department of State programs that assist Pakistan in addressing such issues, if the Government of Pakistan demonstrates a commitment to building a moderate, democratic state; and

(4) to work with the international community to secure additional financial and political support to effectively implement the policies set forth in this subsection and help to resolve the dispute between the Government of Pakistan and the Government of India over the disputed territory of Kashmir.

(c) STRATEGY ON PAKISTAN.—

(1) REQUIREMENT FOR REPORT ON STRATEGY.—Not later than 90 days after the date of enactment of this Act, the President shall submit to the appropriate congressional committees a report, in classified form if necessary, that describes the long-term strategy of the United States to engage with the Government of Pakistan to address the issues described in subparagraphs (A) through (E) of subsection (a)(2) in order accomplish the goal of building a moderate, democratic Pakistan.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection the term ''appropriate congressional committees'' means the Committee on Appropriations and the Committee on Foreign Relations in the Senate, and the Committee on Appropriations and the Committee on International Relations of the House of Representatives.

(d) NUCLEAR PROLIFERATION.—

(1) FINDING.—Congress finds that Pakistan's maintenance of a global missile and nuclear proliferation network would be inconsistent with Pakistan being considered an ally of the United States.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the national security interest of the United States will best be served if the United States develops and implements a long-term strategy to improve the United States relationship with Pakistan and works with the Government of Pakistan to stop nuclear proliferation.

(3) LIMITATION ON ASSISTANCE TO PAKISTAN.—None of the funds appropriated for a fiscal year to provide military or economic assistance to the Government of Pakistan may be made available for such purpose unless the President submits to Congress for such fiscal year a certification that no military or economic assistance provided by the United States to the Government of Pakistan will be provided, either directly or indirectly, to a person that is opposing or undermining the efforts of the United States Government to halt the proliferation of nuclear weapons.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President for providing assistance for Pakistan for fiscal year 2006—

(A) for ''Development Assistance'', $50,000,000 to carry out the provisions of section 103, 105, and 106 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151a, 2151c, and 2151d,);

(B) for the ''Child Survival and Health Programs Fund'', $35,000,000 to carry out the provisions of sections 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b);

(C) for the ''Economic Support Fund'', $350,000,000 to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.);

(D) for ''International Narcotics and Law Enforcement'', $50,000,000 to carry out the provisions of section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291);

(E) for ''Nonproliferation, Anti-Terrorism, Demining, and Related Programs'', $10,000,000;

(F) for ''International Military Education and Training'', $2,000,000 to carry out the provisions of section 541 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347); and

(G) for ''Foreign Military Financing Program'', $300,000,000 grants to carry of the provision of section 23 of the Arms Export Control Act (22 U.S.C. 2763).

(2) OTHER FUNDS.—Amounts authorized to be appropriated under this section are in addition to amounts otherwise available for such purposes.

**SEC. 233. SAUDI ARABIA.**

(a) FINDINGS.—Congress makes the following findings:

(1) The Kingdom of Saudi Arabia has an uneven record in the fight against terrorism, especially with respect to terrorist financing, support for radical madrassas, and a lack of political outlets for its citizens, that poses a threat to the security of the United States, the international community, and the Kingdom of Saudi Arabia itself.

(2) The United States has a national security interest in working with the Government of Saudi Arabia to combat international terrorists that operate within that nation or that operate outside Saudi Arabia with the support of citizens of Saudi Arabia.

(3) In order to more effectively combat terrorism, the Government of Saudi Arabia must undertake a number of political and economic reforms, including increasing anti-terrorism operations conducted by law enforcement agencies, providing more political rights to its citizens, increasing the rights of women, engaging in comprehensive educational reform, enhancing monitoring of charitable organizations, promulgating and enforcing domestic laws and regulation on terrorist financing.

(b) POLICY.—It is the policy of the United States—

(1) to engage with the Government of Saudi Arabia to openly confront the issue of terrorism, as well as other problematic issues such as the lack of political freedoms, with the goal of restructuring the relationship on terms that leaders of both nations can publicly support;

(2) to enhance counterterrorism cooperation with the Government of Saudi Arabia, if the political leaders of such Government are committed to making a serious, sustained effort to combat terrorism; and

(3) to support the efforts of the Government of Saudi Arabia to make political, economic, and social reforms throughout the country.

(c) STRATEGY ON SAUDI ARABIA.—

(1) REQUIREMENT FOR REPORT ON STRATEGY.—Not later than 90 days after the date of enactment of this Act, the President shall submit to the appropriate congressional committees a report, in classified form if necessary, that describes the long-term strategy of the United States—

(A) to engage with the Government of Saudi Arabia to facilitate political, economic, and social reforms that will enhance the ability of the Government of Saudi Arabia to combat international terrorism; and

(B) to effectively prevent the financing of terrorists in Saudi Arabia.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection the term ''appropriate congressional committees'' means the Committee on Appropriations and the Committee on Foreign Relations in the Senate, and the Committee on Appropriations and the Committee on International Relations of the House of Representatives.

## TITLE III—PROTECTION FROM TERRORIST ATTACKS THAT UTILIZE NUCLEAR, CHEMICAL, BIOLOGICAL, AND RADIOLOGICAL WEAPONS

### Subtitle A—Non-Proliferation Programs

**SEC. 301. REPEAL OF LIMITATIONS TO THREAT REDUCTION ASSISTANCE.**

Section 5 of S. 2980 of the 108th Congress (the ''Nunn-Lugar Cooperative Threat Reduction Act of 2004''), as introduced on November 16, 2004, is hereby enacted into law.

**SEC. 302. REUSE OF RUSSIAN NUCLEAR FACILITIES.**

(a) IN GENERAL.—The Secretary of Energy shall work with the Minister of Atomic Energy of Russia to carry out a program to close or convert to non-defense work one or more nuclear weapons assembly and disassembly facilities in Russia.

(b) DESIGNATION OF FACILITIES.—The Secretary of Energy and Minister of Atomic Energy of Russia shall jointly designate each facility to be covered by the program under subsection (a).

(c) COMMISSIONS TO PROVIDE ADVICE AND RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than two months after the designation of a facility under subsection (b), the Secretary of Energy shall establish a commission to provide advice and recommendations on the closure or conversion of the facility to non-defense work.

(2) COMMISSION MEMBERSHIP.—Each commission established under paragraph (1) shall consist of such personnel, including Russian nationals, as the Secretary considers appropriate for its work. The names of each member of each commission shall be made public upon designation under this paragraph.

(3) PERSONNEL MATTERS.—

(A) COMPENSATION.—Each member of a commission established under paragraph (1) who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of such commission. All members of a commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) TRAVEL EXPENSES.—The members of a commission established under paragraph (1) shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for such commission.

(4) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activities of a commission established under paragraph (1).

(5) OPEN MEETINGS.—The meetings of any commission under paragraph (1) shall, to the maximum extent practicable, be open to the public.

(d) PROPOSED FACILITY REUSE PLAN.—

(1) REQUIREMENT FOR PROPOSED PLAN.—Not later than six months after the designation of a facility under subsection (b), the commission for the facility under subsection (c) shall submit to the Secretary of Energy and the Minister of Atomic Energy of Russia a proposed plan on the closure or conversion of the facility to non-defense work.

(2) ELEMENTS OF PROPOSED PLAN.—A proposed plan under paragraph (1) may include one or more of the elements specified in subsection (f).

(3) AVAILABILITY OF PROPOSED PLAN.—Any proposed plan submitted under paragraph (1) shall be made public upon its submittal.

(e) FINAL FACILITY REUSE PLAN.—

(1) REQUIREMENT FOR FINAL PLAN.—Not later than nine months after receiving a proposed plan for a facility under subsection (d), the Secretary of Energy and the Minister of Atomic Energy of Russia shall jointly develop a final plan on the closure or conversion of the facility to non-defense work.

(2) ELEMENTS OF FINAL PLAN.—A final plan for a facility under paragraph (1) shall include the following:

(A) Any of the elements specified in subsection (f).

(B) Assurances of access to the facility necessary to carry out the final plan.

(C) Resolution of any matters relating to liability and taxation.

(D) An estimate of the costs of the United States, and of Russia, under the final plan.

(E) The commitment of Russia to pay at least 15 percent of the costs of the final plan.

(F) Milestones for the final plan, including a deadline for the closure or conversion of the facility to non-defense work.

(G) Appropriate auditing and accounting mechanisms.

(f) PLAN ELEMENTS.—The plan for a facility under subsection (d) or (e) may include one or more of the following elements:

(1) A retraining program for facility employees.

(2) Economic incentives to attract and facilitate commercial ventures in connection with the facility.

(3) A site preparation plan.

(4) Technical exchange and training programs.

(5) The participation of a redevelopment manager and of business, legal, financial, or other appropriate experts.

(6) Promotional or marketing plans.

(7) Provision for startup funds, loans, or grants, or other venture capital or financing.

(g) LIMITATION ON AVAILABILITY OF FUNDS.—No amount authorized to be appropriated by subsection (h) may be available for a facility under the program established under subsection (a) unless the deadlines for the preparation of the proposed facility reuse plan for the facility under subsection (d) and for the preparation of the final facility reuse plan for the facility under subsection (e) are both met.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Department of Energy, $60,000,000 to carry out this section, of which not more than $4,000,000 may be available to each commission established under subsection (c).

(2) AVAILABILITY OF FUNDS.—The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

**SEC. 303. RUSSIAN TACTICAL NUCLEAR WEAPONS.**

(a) REPORT REQUIRED.—Not later than six months after the date of the enactment of this Act, the President shall submit to Congress a report setting forth the following:

(1) An assessment of the number, location, condition, and security of Russian tactical nuclear weapons.

(2) An assessment of the threat that would be posed by the theft of Russian tactical nuclear weapons.

(3) A plan for developing with Russia a cooperative program to secure, consolidate, and, as appropriate, dismantle Russian tactical nuclear weapons.

(b) PROGRAM.—The Secretary of Defense and the Secretary of Energy shall jointly work with Russia to establish a cooperative program, based on the report under subsection (a), to secure, consolidate, and, as appropriate, dismantle Russian tactical nuclear weapons in order to achieve reductions in the total number of Russian tactical nuclear weapons.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) DEPARTMENT OF DEFENSE.—There is authorized to be appropriated for the Department of Defense, $25,000,000 to carry out this section.

(2) DEPARTMENT OF ENERGY.—There is authorized to be appropriated for the Department of Energy, $25,000,000 to carry out this section.

**SEC. 304. ADDITIONAL ASSISTANCE TO ACCELERATE NON-PROLIFERATION PROGRAMS.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE.—There is authorized to be appropriated to the Department of Defense $40,000,000 for fiscal year 2006 for Cooperative Threat Reduction Activities as follows:

(1) To accelerate security upgrades at warhead storage sites located in Russia or another country of the former Soviet Union, $15,000,000.

(2) To accelerate security upgrades at warhead storage sites located in countries other than the countries of the former Soviet Union, $10,000,000.

(3) To accelerate biological weapons proliferation prevention programs in Kazakhstan, Georgia, and Uzbekiztan, $15,000,000.

(b) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF ENERGY.—There is

authorized to be appropriated to the Department of Energy $95,000,000 for fiscal year 2006 for nonproliferation activities of the National Nuclear Security Administration as follows:

(1) To accelerate the Global Threat Reduction Initiative, $20,000,000.

(2) To accelerate security upgrades at warhead storage sites located in Russia or another country of the former Soviet Union, $15,000,000.

(3) To accelerate the closure of the plutonium producing reactor at Zheleznogorsk, Russia as part of the program to eliminate weapons grade plutonium production, $25,000,000.

(4) To accelerate completion of comprehensive security upgrades at Russian storage sites for weapons-usable nuclear materials, $15,000,000.

(c) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF STATE.—

(1) IN GENERAL.—There is authorized to be appropriated to the Department of State $25,000,000 for fiscal year 2006 for nonproliferation activities as follows:

(A) To accelerate engagement of former chemical an biological weapons scientists in Russia and the countries of the former Soviet Union through the Bio-Chem Redirect Program, $15,000,000.

(B) To enhance efforts to combat bioterrorism by transforming the for Soviet biological weapons research and production facilities to commercial enterprises through the BioIndustry Initiative, $10,000,000.

(2) AVAILABILITY OF FUNDS.—The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

**SEC. 305. ADDITIONAL ASSISTANCE TO THE INTERNATIONAL ATOMIC ENERGY AGENCY.**

There is authorized to be appropriated to the Department of Energy $20,000,000 to be used to provide technical and other assistance to the International Atomic Energy Agency to support nonproliferation programs. Such amount is in addition to amounts otherwise available for such purpose.

## Subtitle B—Border Protection

**SEC. 311. FINDINGS.**

Congress makes the following findings:

(1) More than 500,000,000 people cross the borders of the United States at legal points of entry each year, including approximately 330,000,000 people who are not citizens of the United States.

(2) The National Commission on Terrorist Attacks Upon the United States found that 15 of the 19 hijackers involved in the September 11, 2001 terrorist attacks ''were potentially vulnerable to interception by border authorities''.

(3) Officials with the Bureau of Customs and Border Protection and with the Bureau of Immigration and Customs Enforcement have stated that there is a shortage of agents in such Bureaus. Due to an inadequate budget, the Bureau of Immigration and Customs Enforcement has effected a hiring freeze since March 2004, and the Bureau has not made public any plans to end this freeze.

**SEC. 312. HIRING AND TRAINING OF BORDER SECURITY PERSONNEL.**

(a) INSPECTORS AND AGENTS.—

(1) INCREASE IN INSPECTORS AND AGENTS.—During each of fiscal years 2005 through 2008, the Under Secretary shall—

(A) increase the number of full-time agents and associated support staff in the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security by the equivalent of at least 100 more than the number of such employees in the Bureau as of the end of the preceding fiscal year; and

(B) increase the number of full-time inspectors and associated support staff in the Bureau of Customs and Border Protection by the equivalent of at least 200 more than the number of such employees in the Bureau as of the end of the preceding fiscal year.

(2) WAIVER OF FTE LIMITATION.—The Under Secretary is authorized to waive any limitation on the number of full-time equivalent personnel assigned to the Department of Homeland Security to fulfill the requirements of paragraph (1).

(b) TRAINING.—The Under Secretary shall provide appropriate training for agents, inspectors, and associated support staff on an ongoing basis to utilize new technologies and to ensure that the proficiency levels of such personnel are acceptable to protect the borders of the United States.

## Subtitle C—Seaport Protection

**SEC. 321. FINDINGS.**

Congress makes the following findings:

(1) The United States port system is a vital artery of the economy of the United States. Almost 95 percent of all foreign trade passes through one or more of the 361 ports in the United States. Such seaports handle more than 2,000,000,000 tons of domestic and international freight each year of which has a value of more than $740,000,000. The shipment of cargo in vessels creates employment for 13,000,000 people within the United States.

(2) The United States Coast Guard has estimated that, given this tremendous commerce, a terrorist attack shutting down a major port in the United States would have a $60,000,000 impact on the United States economy during the first 30 days after such an attack.

(3) Although 6,000,000 cargo containers, each a possible hiding place for a bomb or other weapon, are off-loaded at ports in the United States each year, less than 1/10 of these containers are physically inspected. A container ship can carry as many as 3,000 containers, each one weighing up to 45,000 pounds, hundreds of which may be off-loaded at a port.

(4) The United States Coast Guard has estimated that the maritime security requirements set for ports by the Maritime Transportation Security Act of 2002 (Public Law 107–295; 116 Stat. 2064), which are critical to protecting United States ports from a nuclear terrorist attack, will cost $5,400,000,000 to implement over a 10-year period.

**SEC. 322. PORT SECURITY GRANT FUNDING.**

Section 70107(h) of title 46, United States Code, is amended to read as follows:

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out subsections (a) through (g)—

''(1) $500,000,000 for fiscal year 2006;

''(2) $750,000,000 for fiscal year 2007;

''(3) $1,000,000,000 for fiscal year 2008;

''(4) $1,250,000,000 for fiscal year 2009; and

''(5) such sums as may be needed for each fiscal year after fiscal year 2009.''.

**SEC. 323. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT; INTEGRATED CARGO INSPECTION SYSTEM.**

(a) IN GENERAL.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.) is amended by adding at the end the following new section:

**''SEC. 431. DETECTION OF NUCLEAR MATERIAL AT UNITED STATES SEAPORTS.**

''(a) DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT.—

''(1) DEPLOYMENT.—Not later than September 30, 2006, the Undersecretary for Border and Transportation Security shall deploy radiation detection portal equipment at all United States seaports, other United States ports of entry, and major facilities as determined by the Undersecretary.

''(2) REPORT.—Not later than December 31, 2005, the Undersecretary shall submit to the appropriate congressional committees a report on the implementation of the requirement under paragraph (1).

''(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Undersecretary $217,000,000 for fiscal year 2006 to carry out this subsection.

''(b) INTEGRATED CARGO INSPECTION SYSTEM.—

''(1) PLAN.—The Undersecretary for Border and Transportation Security shall develop a plan to integrate radiation detection portal equipment with gamma-ray inspection technology equipment at United States seaports and foreign seaports that are participating the Container Security Initiative in order to facilitate the detection of nuclear weapons in maritime cargo containers. Such plan shall include methods for automatic identification of containers and vehicles for inspection in a timely manner and a data sharing network capable of transmitting gamma-ray images and cargo data among relevant ports and the National Targeting Center of the Bureau of Customs and Border Protection.

''(2) REPORT.—Not later than 180 days after the date of the enactment of the Targeting Terrorists More Effectively Act of 2005, the Undersecretary for Border and Transportation Security shall prepare and submit to the appropriate congressional committees a report that contains—

''(A) a description of the plan developed under paragraph (1), including any infrastructure improvements required at the seaports involved;

''(B) an estimate of the costs associated with implementation of the plan; and

''(C) an estimate of the timeframe for implementation of the plan.''.

**SEC. 324. ACCELERATION OF THE MEGAPORTS INITIATIVE.**

(a) DEPLOYMENT.—Not later than September 30, 2007, the Administrator of the National Nuclear Security Administration shall—

(1) complete agreements under the Megaports Initiative of the Office of International Material Protection and Cooperation with each country that possesses one or more of the world's twenty largest seaports, as defined by volume of maritime cargo traffic; and

(2) deploy radiation portal monitoring equipment to each seaport operating under an agreement described in subsection (a)(1).

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator such funds as are necessary to carry out the provisions of this section.

**SEC. 325. TANKER SECURITY INITIATIVE.**

(a) ESTABLISHMENT.—The Secretary of Homeland Security shall establish a Tanker Security Initiative to promulgate and enforce standards and carry out activities to ensure that tanker vessels that transport oil, natural gas, or other materials are not used by terrorists or as carriers of weapons of mass destruction.

(b) ELEMENTS.—To carry out the Tanker Security Initiative the Secretary of Homeland Security may—

(1) develop physical standards intended to prevent terrorists from placing a weapon of mass destruction in or on a tanker vessel without detection;

(2) develop detection equipment, and prescribe the use of such equipment, to be employed on a tanker vessel that is bound for a United States port of entry;

(3) develop new security inspection procedures required to be carried out on a tanker vessel at a foreign port of embarkation, on

the high seas, or in United States waters prior to the arrival of such tanker at a United States port of entry;

(4) carry out research and development of sensing devices to detect any nuclear device that is placed in or on a tanker vessel; and

(5) provide assistance to a foreign country to assist such country in carrying out any provisions of the Tanker Security Initiative.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report that includes—

(1) a description of the terrorism risks posed by tanker vessels:

(2) the elements of the Tanker Security Initiative developed to combat such risks;

(3) a proposed budget describing the resources needed to carry out the Tanker Security Initiative during the 3-year period beginning on the date of the enactment of this Act; and

(4) any proposal for legislation that the Secretary determines would address effectively such risks.

**Subtitle D—First Responders**

**SEC. 331. FINDINGS.**

Congress makes the following findings:

(1) In a report entitled ''Emergency First Responders: Drastically Underfunded, Dangerously Unprepared'', an independent task force sponsored by the Council on Foreign Relations found that ''America's local emergency responders will always be the first to confront a terrorist incident and will play the central role in managing its immediate consequences. Their efforts in the first minutes and hours following an attack will be critical to saving lives, establishing order, and preventing mass panic. The United States has both a responsibility and a critical need to provide them with the equipment, training, and other resources necessary to do their jobs safely and effectively.''.

(2) The task force further concluded that many state and local emergency responders, including police officers and firefighters, lack the equipment and training needed to respond effectively to a terrorist attack involving weapons of mass destruction.

(3) The Federal Government has a responsibility to ensure that the people of the United States are protected to the greatest possible extent against a terrorist attack, especially an attack that utilizes nuclear, chemical, biological, or radiological weapons, and consequently, the Federal Government has a critical responsibility to address the equipment, training, and other needs of State and local first responders.

**SEC. 332. RESTORATION OF JUSTICE ASSISTANCE FUNDING.**

(a) FINDINGS.—Congress makes the following findings:

(1) State and local police officers, firefighters, and emergency responders play an essential role in the efforts of the United States to prevent terrorist attacks and, if an attack occurred, to address the effects of the attack.

(2) An independent task force has concluded that hundreds of local police offices and firefighting and emergency response units throughout the United States are unprepared for responding to a terrorist attack involving nuclear, chemical, biological, or radiological weapons.

(3) The Edward Byrne Memorial Justice Assistance Grant Program provides critical Federal support for personnel, equipment, training, and technical assistance for the homeland security responsibilities of local law enforcement offices.

(4) The Consolidated Appropriations Act, 2005 (Public Law 108–447) appropriated funding for the Edward Byrne Memorial Justice Assistance Grant Program, a program that resulted from the combination of the Edward Byrne Memorial Grant Program and the Local Law Enforcement Block Grant Program.

(5) Funding for the Edward Byrne Memorial Justice Assistance Grant Program, as provided in the Consolidated Appropriations Act, 2005, has been reduced by nearly 50 percent since fiscal year 2002.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should request in the annual budget proposal, and Congress should appropriate, the full amount authorized to be appropriated in subsection (c).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Edward Byrne Memorial Justice Assistance Grant Program—

(1) for fiscal year 2006, $1,250,000,000;

(2) for fiscal year 2007, $1,400,000,000; and

(3) for fiscal year 2008, $1,600,000,000.

**SEC. 333. PROVIDING RELIABLE OFFICERS, TECHNOLOGY, EDUCATION, COMMUNITY PROSECUTORS, AND TRAINING IN OUR NEIGHBORHOOD INITIATIVE.**

(a) COPS PROGRAM.—Section 1701(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(a)) is amended by—

(1) inserting ''and prosecutor'' after ''increase police''; and

(2) inserting ''to enhance law enforcement access to new technologies, and'' after ''presence,''.

(b) HIRING AND REDEPLOYMENT GRANT PROJECTS.—Section 1701(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by inserting after ''Nation'' the following: '', or pay overtime to existing career law enforcement officers to the extent that such overtime is devoted to community policing efforts''; and

(ii) by striking ''and'' at the end;

(B) in subparagraph (C), by—

(i) striking ''or pay overtime''; and

(ii) striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(D) promote higher education among in-service State and local law enforcement officers by reimbursing them for the costs associated with seeking a college or graduate school education.''; and

(2) in paragraph (2) by striking all that follows ''SUPPORT SYSTEMS.—'' and inserting ''Grants pursuant to—

''(A) paragraph (1)(B) for overtime may not exceed 25 percent of the funds available for grants pursuant to this subsection for any fiscal year;

''(B) paragraph (1)(C) may not exceed 20 percent of the funds available for grants pursuant to this subsection in any fiscal year; and

''(C) paragraph (1)(D) may not exceed 5 percent of the funds available for grants pursuant to this subsection for any fiscal year.''.

(c) ADDITIONAL GRANT PROJECTS.—Section 1701(d) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(d)) is amended—

(1) in paragraph (2)—

(A) by inserting ''integrity and ethics'' after ''specialized''; and

(B) by inserting ''and'' after ''enforcement officers'';

(2) in paragraph (7) by inserting ''school officials, religiously-affiliated organizations,'' after ''enforcement officers'';

(3) by striking paragraph (8) and inserting the following:

''(8) establish school-based partnerships between local law enforcement agencies and local school systems, by using school resource officers who operate in and around elementary and secondary schools to serve as a law enforcement liaison with other Federal, State, and local law enforcement and regulatory agencies, combat school-related crime and disorder problems, gang membership and criminal activity, firearms and explosives-related incidents, illegal use and possession of alcohol, and the illegal possession, use, and distribution of drugs;'';

(4) in paragraph (10) by striking ''and'' at the end;

(5) in paragraph (11) by striking the period that appears at the end and inserting ''; and''; and

(6) by adding at the end the following:

''(12) develop and implement innovative programs (such as the TRIAD program) that bring together a community's sheriff, chief of police, and elderly residents to address the public safety concerns of older citizens.''.

(d) TECHNICAL ASSISTANCE.—Section 1701(f) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(f)) is amended—

(1) in paragraph (1)—

(A) by inserting ''use up to 5 percent of the funds appropriated under subsection (a) to'' after ''The Attorney General may'';

(B) by inserting at the end the following: ''In addition, the Attorney General may use up to 5 percent of the funds appropriated under subsections (d), (e), and (f) for technical assistance and training to States, units of local government, Indian tribal governments, and to other public and private entities for those respective purposes.'';

(2) in paragraph (2) by inserting ''under subsection (a)'' after ''the Attorney General''; and

(3) in paragraph (3)—

(A) by striking ''the Attorney General may'' and inserting ''the Attorney General shall'';

(B) by inserting ''regional community policing institutes'' after ''operation of''; and

(C) by inserting ''representatives of police labor and management organizations, community residents,'' after ''supervisors,''.

(e) TECHNOLOGY AND PROSECUTION PROGRAMS.—Section 1701 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended by—

(1) striking subsection (k);

(2) redesignating subsections (f) through (j) as subsections (g) through (k); and

(3) striking subsection (e) and inserting the following:

''(e) LAW ENFORCEMENT TECHNOLOGY PROGRAM.—Grants made under subsection (a) may be used to assist police departments, in employing professional, scientific, and technological advancements that will help them—

''(1) improve police communications through the use of wireless communications, computers, software, videocams, databases and other hardware and software that allow law enforcement agencies to communicate more effectively across jurisdictional boundaries and effectuate interoperability;

''(2) develop and improve access to crime solving technologies, including DNA analysis, photo enhancement, voice recognition, and other forensic capabilities; and

''(3) promote comprehensive crime analysis by utilizing new techniques and technologies, such as crime mapping, that allow law enforcement agencies to use real-time crime and arrest data and other related information—including non-criminal justice data—to improve their ability to analyze, predict, and respond pro-actively to local crime and disorder problems, as well as to engage in regional crime analysis.

''(f) COMMUNITY-BASED PROSECUTION PROGRAM.—Grants made under subsection (a) may be used to assist State, local or tribal prosecutors' offices in the implementation of community-based prosecution programs that build on local community policing efforts. Funds made available under this subsection may be used to—

''(1) hire additional prosecutors who will be assigned to community prosecution programs, including programs that assign prosecutors to handle cases from specific geographic areas, to address specific violent crime and other local crime problems (including intensive illegal gang, gun and drug enforcement projects and quality of life initiatives), and to address localized violent and other crime problems based on needs identified by local law enforcement agencies, community organizations, and others;

''(2) redeploy existing prosecutors to community prosecution programs as described in paragraph (1) of this section by hiring victim and witness coordinators, paralegals, community outreach, and other such personnel; and

''(3) establish programs to assist local prosecutors' offices in the implementation of programs that help them identify and respond to priority crime problems in a community with specifically tailored solutions.

At least 75 percent of the funds made available under this subsection shall be reserved for grants under paragraphs (1) and (2) and of those amounts no more than 10 percent may be used for grants under paragraph (2) and at least 25 percent of the funds shall be reserved for grants under paragraphs (1) and (2) to units of local government with a population of less than 50,000.''.

(f) RETENTION GRANTS.—Section 1703 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd–2) is amended by inserting at the end the following:

''(d) RETENTION GRANTS.—The Attorney General may use no more than 50 percent of the funds under subsection (a) to award grants targeted specifically for retention of police officers to grantees in good standing, with preference to those that demonstrate financial hardship or severe budget constraint that impacts the entire local budget and may result in the termination of employment for police officers funded under subsection (b)(1).''.

(g) DEFINITIONS.—

(1) CAREER LAW ENFORCEMENT OFFICER.—Section 1709(1) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd–8) is amended by inserting after ''criminal laws'' the following: ''including sheriffs deputies charged with supervising offenders who are released into the community but also engaged in local community policing efforts.''.

(2) SCHOOL RESOURCE OFFICER.—Section 1709(4) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd–8) is amended—

(A) by striking subparagraph (A) and inserting the following:

''(A) to serve as a law enforcement liaison with other Federal, State, and local law enforcement and regulatory agencies, to address and document crime and disorder problems including gangs and drug activities, firearms and explosives-related incidents, and the illegal use and possession of alcohol affecting or occurring in or around an elementary or secondary school;'';

(B) by striking subparagraph (E) and inserting the following:

''(E) to train students in conflict resolution, restorative justice, and crime awareness, and to provide assistance to and coordinate with other officers, mental health professionals, and youth counselors who are responsible for the implementation of prevention/intervention programs within the schools;''; and

(C) by adding at the end the following:

''(H) to work with school administrators, members of the local parent teacher associations, community organizers, law enforcement, fire departments, and emergency medical personnel in the creation, review, and implementation of a school violence prevention plan;

''(I) to assist in documenting the full description of all firearms found or taken into custody on school property and to initiate a firearms trace and ballistics examination for each firearm with the local office of the Bureau of Alcohol, Tobacco, and Firearms;

''(J) to document the full description of all explosives or explosive devices found or taken into custody on school property and report to the local office of the Bureau of Alcohol, Tobacco, and Firearms; and

''(K) to assist school administrators with the preparation of the Department of Education, Annual Report on State Implementation of the Gun-Free Schools Act which tracks the number of students expelled per year for bringing a weapon, firearm, or explosive to school.''.

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(11) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(11)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) There are authorized to be appropriated to carry out part Q, to remain available until expended—

''(i) $1,150,000,000 for fiscal year 2006;

''(ii) $1,150,000,000 for fiscal year 2007;

''(iii) $1,150,000,000 for fiscal year 2008;

''(iv) $1,150,000,000 for fiscal year 2009;

''(v) $1,150,000,000 for fiscal year 2010; and

''(vi) $1,150,000,000 for fiscal year 2011.''; and

(2) in subparagraph (B)—

(A) by striking ''3 percent'' and inserting ''5 percent'';

(B) by striking ''1701(f)'' and inserting ''1701(g)'';

(C) by striking the second sentence and inserting ''Of the remaining funds, if there is a demand for 50 percent of appropriated hiring funds, as determined by eligible hiring applications from law enforcement agencies having jurisdiction over areas with populations exceeding 150,000, no less than 50 percent shall be allocated for grants pursuant to applications submitted by units of local government or law enforcement agencies having jurisdiction over areas with populations exceeding 150,000 or by public and private entities that serve areas with populations exceeding 150,000, and no less than 50 percent shall be allocated for grants pursuant to applications submitted by units of local government or law enforcement agencies having jurisdiction over areas with populations less than 150,000 or by public and private entities that serve areas with populations less than 150,000.'';

(D) by striking ''85 percent'' and inserting ''$600,000,000''; and

(E) by striking ''1701(b),'' and all that follows through ''of part Q'' and inserting the following: ''1701 (b) and (c), $350,000,000 to grants for the purposes specified in section 1701(e), and $200,000,000 to grants for the purposes specified in section 1701(f).''.

**SEC. 334. FIRST RESPONDERS ANTI-TERRORISM PARTNERSHIP.**

(a) DEFINITIONS.—In this section:

(1) INDIAN TRIBE.—The term ''Indian tribe'' has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(2) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' means any officer, agent, or employee of a State, unit of local government, public or private college or university, or Indian tribe authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders.

(3) PUBLIC SAFETY OFFICER.—The term ''public safety officer'' means any person serving a public or private agency with or without compensation as a law enforcement officer, as a firefighter, or as a member of a rescue squad or ambulance crew.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(5) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level.

(b) FIRST RESPONDERS PARTNERSHIP GRANT PROGRAM FOR PUBLIC SAFETY OFFICERS.—

(1) IN GENERAL.—The Secretary is authorized to make grants to States, units of local government, and Indian tribes to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(2) USE OF FUNDS.—Grants awarded under this section shall be—

(A) distributed directly to the State, unit of local government, or Indian tribe; and

(B) used to fund overtime expenses, equipment, training, and facilities to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(3) ALLOCATION AND DISTRIBUTION OF FUNDS.—

(A) SET-ASIDE FOR INDIAN TRIBES.—

(i) IN GENERAL.—The Secretary shall reserve 1 percent of the amount appropriated for grants pursuant to this section to be used for grants to Indian tribes.

(ii) SELECTION OF INDIAN TRIBES.—

(I) IN GENERAL.—The Secretary shall award grants under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria.

(II) RULEMAKING.—The criteria under subclause (I) shall be contained in a regulation promulgated by the Secretary after notice and public comment.

(B) SET-ASIDE FOR RURAL STATES.—

(i) IN GENERAL.—The Secretary shall reserve 5 percent of the amount appropriated for grants pursuant to this section to be used for grants to rural States.

(ii) SELECTION OF RURAL STATES.—The Secretary shall award grants under this subparagraph to rural States (as defined in section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(b))).

(C) MINIMUM AMOUNT.—The Secretary shall allocate, from the total amount appropriated for grants to States under this subsection—

(i) not less than 0.75 percent for each State; and

(ii) not less than 0.25 percent for American Samoa, Guam, the Northern Mariana Islands, and the United States Virgin Islands, respectively.

(D) ALLOCATION TO METROPOLITAN CITIES AND URBAN COUNTIES.—The balance of the total amount appropriated for grants to States under this subsection after allocations have been made to Indian tribes, rural States, and the minimum amount to each State pursuant to subparagraphs (A) through

(C), shall be allocated by the Secretary to metropolitan cities and urban counties pursuant to subparagraphs (E) and (F).

(E) COMPUTATION OF AMOUNT ALLOCATED TO METROPOLITAN CITIES.—

(i) COMPUTATION RATIOS.—The Secretary shall determine the amount to be allocated to each metropolitan city, which shall bear the same ratio to the allocation for all metropolitan cities as the weighted average of—

(I) the population of the metropolitan city divided by the population of all metropolitan cities;

(II) the potential chemical security risk of the metropolitan city divided by the potential chemical security risk of all metropolitan cities;

(III) the proximity of the metropolitan city to the nearest operating nuclear power plant compared to the proximity of all metropolitan cities to the nearest operating nuclear power plant to each such city;

(IV) the proximity of the metropolitan cities to the nearest United States land or water port compared with the proximity of all metropolitan cities to the nearest United States land or water port to each such city;

(V) the proximity of the metropolitan city to the nearest international border compared with the proximity of all metropolitan cities to the nearest international border to each such city; and

(VI) the proximity of the metropolitan city to the nearest Disaster Medical Assistance Team (referred to in this subsection as ''DMAT'') compared with the proximity of all metropolitan cities to the nearest DMAT to each such city.

(ii) CLARIFICATION OF COMPUTATION RATIOS.—

(I) RELATIVE WEIGHT OF FACTOR.—In determining the average of the ratios under clause (i), the ratio involving population shall constitute 50 percent of the formula in calculating the allocation and the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK.—If a metropolitan city is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department that captures the same information for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of metropolitan cities that are within such a zone.

(III) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY.—If a metropolitan city is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of metropolitan cities, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(IV) PROXIMITY AS IT PERTAINS TO PORT SECURITY.—If a metropolitan city is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If a metropolitan city is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If a metropolitan city is located within 50 miles of a DMAT, as organized by the National Disaster Medical System, the ratio under clause (i)(VI) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a DMAT.

(F) COMPUTATION OF AMOUNT ALLOCATED TO URBAN COUNTIES.—

(i) COMPUTATION RATIOS.—The Secretary shall determine the amount to be allocated to each urban county, which shall bear the same ratio to the allocation for all urban counties as the weighted average of—

(I) the population of the urban county divided by the population of all urban counties;

(II) the potential chemical security risk of the urban county divided by the potential chemical security risk of all urban counties;

(III) the proximity of the urban county to the nearest operating nuclear power plant compared to the proximity of all urban counties to the nearest operating nuclear power plant to each such county;

(IV) the proximity of the urban counties to the nearest United States land or water port compared with the proximity of all urban counties to the nearest United States land or water port to each such county;

(V) the proximity of the urban county to the nearest international border compared with the proximity of all urban counties to the nearest international border to each such county; and

(VI) the proximity of the urban county to the nearest Disaster Medical Assistance Team compared with the proximity of all urban counties to the nearest DMAT to each such county.

(ii) CLARIFICATION OF COMPUTATION RATIOS.—

(I) RELATIVE WEIGHT OF FACTOR.—In determining the average of the ratios under clause (i), the ratio involving population shall constitute 50 percent of the formula in calculating the allocation and the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK.—If an urban county is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department that captures the same information for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of urban counties that are within such a zone.

(III) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY.—If an urban county is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of urban counties, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(IV) PROXIMITY AS IT PERTAINS TO PORT SECURITY.—If an urban county is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If an urban county is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of urban counties that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If an urban county is located within 50 miles of a DMAT, as organized by the National Disaster Medical System, the ratio under clause (i)(VI) shall be 1 divided by the total number of urban counties that are located within 50 miles of a DMAT.

(G) EXCLUSIONS.—

(i) IN GENERAL.—In computing amounts or exclusions under subparagraph (F) with respect to any urban county, units of general local government located in the county shall be excluded if the populations of such units are not counted to determine the eligibility of the urban county to receive a grant under this paragraph.

(ii) INDEPENDENT CITIES.—

(I) IN GENERAL.—In computing amounts under clause (i), there shall be included any independent city (as defined by the Bureau of the Census) which—

(aa) is not part of any county;

(bb) is not eligible for a grant;

(cc) is contiguous to the urban county;

(dd) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(ee) is not included as a part of any other unit of general local government for purposes of this section.

(II) LIMITATION.—Any independent city that is included in the computation under subclause (I) shall not be eligible to receive assistance under this paragraph for the fiscal year for which such computation is used to allocate such assistance.

(H) INCLUSION.—

(i) LOCAL GOVERNMENT STRADDLING COUNTY LINE.—In computing amounts or exclusions under subparagraph (F) with respect to any urban county, all of the area of any unit of local government shall be included, which is part of, but is not located entirely within the boundaries of, such urban county if—

(I) the part of such unit of local government that is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this subsection; and

(II) the part of such unit of local government that is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this subsection.

(ii) USE OF GRANT FUNDS OUTSIDE URBAN COUNTY.—Any amount received under this section by an urban county described under clause (i) may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(I) POPULATION.—

(i) EFFECT OF CONSOLIDATION.—Where data are available, the amount to be allocated to a metropolitan city that has been formed by the consolidation of 1 or more metropolitan cities within an urban county shall be equal to the sum of the amounts that would have been allocated to the urban county or cities and the balance of the consolidated government if such consolidation had not occurred.

(ii) LIMITATION.—Clause (i) shall apply only to a consolidation that—

(I) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(II) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(III) took place on or after January 1, 2005.

(iii) GROWTH RATE.—The population growth rate of all metropolitan cities defined in this section shall be based on the population of metropolitan cities other than consolidated governments the grant for which is determined under this paragraph and cities that were metropolitan cities before their incorporation into consolidated governments.

(4) MAXIMUM AMOUNT PER GRANTEE.—

(A) IN GENERAL.—A qualifying State, unit of local government, or Indian tribe may not receive more than 5 percent of the total amount appropriated for grants under this section.

(B) AGGREGATE AMOUNT PER STATE.—A State, together with the grantees within the State, may not receive more than 20 percent of the total amount appropriated for grants under this section.

(5) MATCHING FUNDS.—

(A) IN GENERAL.—The portion of the costs of a program provided by a grant under paragraph (1) may not exceed 90 percent.

(B) WAIVER.—If the Secretary determines that a grantee is experiencing fiscal hardship, the Secretary may waive, in whole or in part, the matching requirement under subparagraph (A).

(C) EXCEPTION.—Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement under subparagraph (A).

(c) APPLICATIONS.—

(1) IN GENERAL.—To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Secretary in such form and containing such information as the Secretary may reasonably require.

(2) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this subsection.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000,000 for fiscal year 2006 to carry out this section.

**TITLE IV—PROTECTING TAXPAYERS**

**SEC. 401. REPORTS ON METRICS FOR MEASURING SUCCESS IN GLOBAL WAR ON TERRORISM.**

(a) REQUIREMENT FOR REPORTS.—The Comptroller General of the United States shall submit to Congress reports on the metrics for use in tracking and measuring acts of global terrorism, international counterterrorism efforts, and the success of United States counterterrorism policies and practices including specific, replicable definitions, criteria, and standards of measurement to be used for the following:

(A) Counting and categorizing acts of international terrorism.

(B) Monitoring counterterrorism efforts of foreign governments.

(C) Monitoring financial support provided to terrorist groups.

(D) Assessing the success of United States counterterrorism policies and practices.

(b) SCHEDULE OF REPORTS.—The Comptroller General shall submit to Congress an initial report under subsection (a) not later than 1 year after the date of enactment of this Act and a second report not later than 1 year after the date on which the initial report is submitted.

**SEC. 402. PROHIBITION ON WAR PROFITEERING.**

(a) FINDINGS.—Congress makes the following findings:

(1) War profiteering, the overcharging of taxpayers for any good or service with the specific intent to excessively profit from a conflict or reconstruction situation, not only defrauds taxpayers in the United States, but also threatens the safety of United States troops in harms way by hindering reconstruction progress, damaging the credibility of the United States, and wasting resources that could be used for troop protection.

(2) Laws prohibiting fraud protect against waste of tax dollars within the United States, but no current fraud statute expressly prohibits waste of tax dollars resulting from war profiteering during conflicts in foreign countries.

(3) War profiteers have hindered United States efforts to secure and reconstruct Iraq. In its third quarterly report, the Coalition Provisional Authority Inspector General reported that, as of October 12, 2004, it had received a total of 113 potential criminal cases.

(4) In nine separate reports, the Defense Contract Audit Agency, the Coalition Provisional Authority Inspector General, and the Government Accountability Office have found widespread, systematic abuses by the Halliburton Company and its subsidiaries, including instances of overcharging worth tens of millions of dollars, fraudulent accounting practices, and kickbacks. Contracts awarded to Custer Battles, LLC, were suspended by the Department of Defense after it uncovered fraudulent billing practices including the establishment of phantom off-shore corporations. Government investigators have found contract irregularities, including lack of transparency and poor accounting, in contracts awarded to other firms.

(b) PROHIBITION OF PROFITEERING.—

(1) PROHIBITION.—

(A) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

**"§ 1038. War profiteering and fraud relating to military action, relief, and reconstruction efforts**

''(a) PROHIBITION.—

''(1) IN GENERAL.—Whoever, in any matter involving a contract or the provision of goods or services, directly or indirectly, in connection with the war, military action, or relief or reconstruction activities, knowingly and willfully—

''(A) executes or attempts to execute a scheme or artifice to defraud the United States;

''(B) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

''(C) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; or

''(D) materially overvalues any good or service with the specific intent to excessively profit from the war, military action, or relief or reconstruction activities;

shall be fined under paragraph (2), imprisoned not more than 20 years, or both.

''(2) FINE.—A person convicted of an offense under paragraph (1) may be fined the greater of—

''(A) $1,000,000; or

''(B) if such person derives profits or other proceeds from the offense, not more than twice the gross profits or other proceeds.

''(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

''(c) VENUE.—A prosecution for an offense under this section may be brought—

''(1) as authorized by chapter 211 of this title;

''(2) in any district where any act in furtherance of the offense took place; or

''(3) in any district where any party to the contract or provider of goods or services is located.''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

''1038. War profiteering and fraud relating to military action, relief, and reconstruction efforts.''.

(c) CIVIL FORFEITURE.—Section 981(a)(1)(C) of title 18, United States Code, is amended by inserting ''1038,'' after ''1032,''.

(d) CRIMINAL FORFEITURE.—Section 982(a)(2)(B) of title 18, United States Code, is amended by striking ''or 1030'' and inserting ''1030, or 1038''.

(e) MONEY LAUNDERING.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting ''section 1038 (relating to war profiteering and fraud relating to military action, relief, and reconstruction efforts),'' after ''liquidating agent of financial institution),''.

(f) RELATIONSHIP TO EXISTING LAW.—This section shall not limit or repeal any additional authorities provided by law.

(g) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this section shall be effective during the 7-year period beginning on the date of enactment of this Act.

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By Mr. AKAKA (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. DORGAN, Mr. LAUTENBERG, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. KENNEDY, Mr. CORZINE, Mr. PRYOR, Mr. SCHUMER, Mr. SARBANES, and Mr. DAYTON):

S. 13. A bill to amend titles 10 and 38, United States Code, to expand and enhance health care, mental health, transition, and disability benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce a bill that would make sweeping changes to the way the Department of Veterans Affairs (VA) delivers health care and benefits to our nation's veterans. S. 13 would, among other things, guarantee full funding for VA health care, provide for full concurrent receipt, enhance mental health care services, and ease the transition from military service to civilian life.

This bill would mean that the 115,000 veterans who choose to make Hawaii their home would be assured the services they have earned. The nearly 18,000 veterans who avail themselves of VA health care in Honolulu, Hawaii,

Kauai, and Maui would not have to worry if resources for doctors and nurses will materialize next year.

And because so many of our reservists and Guardsmen are being deployed for the current wars in Iraq and Afghanistan, this bill will help ensure they get the care they need upon their return.

Every year the President sends forward his budget proposal to Congress, and every year we go through the same battles to get VA health care the money it needs to adequately serve its veteran patients. The time has come to approach this process more rationally. This legislation would ensure full funding for VA health care by simply changing the way funds are allocated. To be perfectly clear, this bill merely shifts money already being allocated over to a more reliable mechanism.

The American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars support this approach to fully fund the veterans health care system.

These three organizations—representing more than 7 million military veterans—rightly believe that veterans have earned the right to VA medical care through their ''extraordinary sacrifices and service to this Nation.''

We have seen huge numbers of veterans seeking VA care for the first time. I, for one, believe this is a good thing. Others rationalize that as we are at war, we must cut back on VA care. I simply do not understand this logic. We are at war, and therefore we must do everything we can to show our military that VA health care will be there for all veterans who served. To accomplish this goal, we must change the way VA health care is funded.

Although we have continued to make progress on eliminating the long-standing injustice that has affected our disabled retired veterans' retirement pay, we still have work to do.

S. 13 will correct this unfairness by allowing all disabled military retirees to collect both their full military retired and VA disability pay concurrently.

Most military retirees who have a service-connected disability are not permitted to collect both their retirement and disability benefits concurrently. Military retired pay is the promised reward for 20 or more years of uniformed service and is based on length of service. VA disability compensation is unrelated to length of service and is intended to compensate a veteran for a service-connected loss of function.

In order to continue to recruit and retain quality soldiers, sailors, airmen and marines, we must pay attention not only to the present, but also to the future. George Washington said:

> The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive the Veterans of earlier wars were treated and appreciated by their nation.

Our disabled military retirees deserve to receive the retirement pay that they earned and be compensated for their service-connected disabilities. Our young people will wear the uniforms of our Armed Forces only if they believe that their service is appreciated and compensated accordingly.

Along those lines, S. 13 also seeks to ensure that veterans and returning service members can receive the mental health care they might need as a result of their service. The legislation requires that VA employ at least one psychiatrist and treatment team at each medical center that does not currently have one. This legislation would also mandate that VA carry out a community outreach program to let Operation Iraqi Freedom and Operation Enduring Freedom veterans know about the services available to them at VA.

Why is good VA mental health care so important?

Because so often battle wounds do not manifest in physical illness, but in quiet and equally debilitating mental illness. These wounds are revealed as post-traumatic stress disorder with effects that linger and symptoms that can be brought on years after combat.

While hypertension and heart disease afflict vast numbers of veterans, mental illness is not far behind. It might surprise some of my colleagues to know that cancer and depression affect roughly the same number of veterans. But is VA reaching and treating all veterans who need care? This remains very much an open question.

This legislation also seeks to improve access to needed prescription drugs. Many veterans have expressed their desire to bring prescriptions from their Medicare doctors to VA pharmacies to get them filled. Current VA policy requires that nearly all veterans see a VA doctor before such prescriptions are issued. This does not make sense.

The Department's inspector general testified that VA could see savings of $1 billion a year if veterans were allowed to bring their outside prescriptions, because it would obviate the need for VA to re diagnose patients and then re-issue prescriptions that have already been written. S. 13 would allow these veterans to get their prescriptions filled by VA at prices that are far better than in the private sector.

This legislation also seeks to help veterans with their education. S. 13 would exclude MGIB benefits from computation as income when calculating campus based aid, such as Perkins loans. This draws the distinction between a benefit that has been earned, and paid for, by the veterans, and other types of income. This allows the individual applying for financial aid to subtract $1,200 from the expected family contribution for 1 year. This $1,200 represents the money that the individual paid to participate in the MGIB program.

S. 13 also offers an opportunity for enrollment in the MGIB education program for servicemembers who participated in or were eligible to participate in the post-Vietnam era educational assistance program, known as VEAP. This bill would create a 1-year window and requires the individual to pay $2,700, which was the VEAP contribution.

Last year, Congress extended the period of eligibility for education benefits for survivors of servicemembers who were killed during active duty. We would like to further extend this delimiting date for veterans and other dependents. The 10-year period of eligibility would not begin to toll until they began to use the benefit, rather than when they became eligible for the benefit.

Overall, this is a bill to spur dialogue started on the issues that are truly important to our Nation's veterans.

We all need to work harder towards the goal of seeing that the promises made to the men and women who are serving today are met; that their sacrifices were not in vain.

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

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

S. 13

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Fulfilling Our Duty to America's Veterans Act of 2005''.

**TITLE I—HEALTH CARE MATTERS**

**SEC. 100. FINDINGS.**

Congress makes the following findings:

(1) The three largest veterans advocacy groups, the Disabled American Veterans, the American Legion, and the Veterans of Foreign Wars, have called upon Congress to change veterans funding to a mandatory process, stating, ''We believe it is time to guarantee health care funding for all veterans. We believe health care rationing must end. We believe it is time the promise is kept.''.

(2) The May 2003 report of The President's Task Force To Improve Health Care Delivery For Our Nation's Veterans found that ''there is a significant mismatch in VA between demand and available funding—an imbalance that . . . if unresolved, will delay veterans' access to care and could threaten the quality of VA health care.''.

(3) Under the current funding process, the VA has experienced billion-dollar shortfalls every year for the past several years, resulting in waiting lists several months long for appointments with physicians, a substantial disability claims backlog, and policies designed to prevent veterans from obtaining the health care they were promised.

**Subtitle A—Funding Matters**

**SEC. 101. FUNDING TO ADDRESS CHANGES IN POPULATION AND INFLATION.**

(a) IN GENERAL.—Chapter 17 of title 38, United States Code, is amended by inserting after section 1706 the following new section:

**''§ 1706A. Management of health care: funding to address changes in population and inflation**

''(a) By the enactment of this section, Congress and the President intend to ensure access to health care for all veterans. Upon the

enactment of this section, funding for the programs, functions, and activities of the Veterans Health Administration specified in subsection (d) to accomplish this objective shall be provided through a combination of discretionary and mandatory funds. The discretionary amount should be equal to the fiscal year 2005 discretionary funding for such programs, functions, and activities, and should remain unchanged each fiscal year thereafter. The annual level of mandatory amount shall be adjusted according to the formula specified in subsection (c). While this section does not purport to control the outcome of the annual appropriations process, it anticipates cooperation from Congress and the President in sustaining discretionary funding for such programs, functions, and activities in future fiscal years at the level of discretionary funding for such programs, functions, and activities for fiscal year 2005. The success of that arrangement, as well as of the funding formula, are to be reviewed after two years.

''(b) On the first day of each fiscal year, the Secretary of the Treasury shall make available to the Secretary of Veterans Affairs the amount determined under subsection (c) with respect to that fiscal year. Each such amount is available, without fiscal year limitation, for the programs, functions, and activities of the Veterans Health Administration specified in subsection (d). There is hereby appropriated, out of any sums in the Treasury not otherwise appropriated, amounts necessary to implement this section.

''(c)(1) The amount applicable to fiscal year 2006 under this subsection is the amount equal to—

''(A) 130 percent of the amount obligated by the Department during fiscal year 2004 for the purposes specified in subsection (d); minus

''(B) the amount appropriated for those purposes for fiscal year 2005.

''(2) The amount applicable to any fiscal year after fiscal year 2006 under this subsection is the amount equal to the product of the following, minus the amount appropriated for the purposes specified for subsection (d) for fiscal year 2005:

''(A) The sum of—

''(i) the number of veterans enrolled in the Department health care system under section 1705 of this title as of July 1 preceding the beginning of such fiscal year; and

''(ii) the number of persons eligible for health care under chapter 17 of this title who are not covered by clause (i) and who were provided hospital care or medical services under such chapter at any time during the fiscal year preceding such fiscal year.

''(B) The per capita baseline amount, as increased from time to time pursuant to paragraph (3)(B).

''(3)(A) For purposes of paragraph (2)(B), the term 'per capita baseline amount' means the amount equal to—

''(i) the amount obligated by the Department during fiscal year 2005 for the purposes specified in subsection (d); divided by

''(ii) the number of veterans enrolled in the Department health care system under section 1705 of this title as of September 30, 2004.

''(B) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the per capita baseline amount equal to the percentage by which—

''(i) the Consumer Price Index (all Urban Consumers, United States City Average, Hospital and related services, Seasonally Adjusted), published by the Bureau of Labor Statistics of the Department of Labor for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made; exceeds

''(ii) such Consumer Price Index for the 12-month period preceding the 12-month period described in clause (i).

''(d)(1) Except as provided in paragraph (2), the purposes for which amounts are made available pursuant to subsection (b) shall be all programs, functions, and activities of the Veterans Health Administration.

''(2) Amounts made available pursuant to subsection (b) are not available for—

''(A) construction, acquisition, or alteration of medical facilities as provided in subchapter I of chapter 81 of this title (other than for such repairs as were provided for before the date of the enactment of this section through the Medical Care appropriation for the Department); or

''(B) grants under subchapter III of chapter 81 of this title.

''(e) Nothing in this section shall be construed to prevent or limit the authority of Congress to reauthorize provisions relating to veterans health care.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''1706A. Management of health care: funding to address changes in population and inflation.''.

**SEC. 102. COMPTROLLER GENERAL REPORT.**

(a) REQUIREMENT FOR REPORT.—Not later than January 31, 2008, the Comptroller General of the United States shall submit to Congress a report on the extent to which section 1706A of title 38, United States Code (as added by section 101 of this Act), has achieved the objective set forth in subsection (a) of such section 1706A during fiscal years 2006 and 2007.

(b) CONTENT.—The report under subsection (a) shall set forth the following:

(1) The amount appropriated for fiscal year 2005 for the programs, functions, and activities of the Veterans Health Administration specified in subsection (d) of section 1706A of title 38, United States Code (as so added).

(2) The amount appropriated by annual appropriations Acts for each of fiscal years 2006 and 2007 for such programs, functions, and activities.

(3) The amount provided by section 1706A of title 38, United States Code (as so added), for each of fiscal years 2006 and 2007 for such programs, functions, and activities.

(4) An assessment whether the amount described in paragraph (3) for each of fiscal years 2006 and 2007 was appropriate to address the changes in costs to the Veterans Health Administration for such programs, functions, and activities that were attributable to changes in population and in inflation over the course of such fiscal years.

(5) An assessment whether the amount provided by section 1706A of title 38, United States Code (as so added), in each of fiscal years 2006 and 2007, when combined with amounts appropriated by annual appropriations Acts for each of such fiscal years for such programs, functions, and activities, provided adequate funding of such programs, functions, and activities in each such fiscal year.

(6) Such recommendations as the Comptroller General considers appropriate regarding modifications of the formula under subsection (c) of section 1706A of title 38, United States Code (as so added), or any other modifications of law, to better ensure adequate funding of such programs, functions, and activities.

**SEC. 103. CONGRESSIONAL CONSIDERATION OF COMPTROLLER GENERAL RECOMMENDATIONS.**

(a) APPLICABLE PROCEDURE.—The procedure provided under this section shall apply to consideration of a joint resolution described in subsection (b) in the Senate and the House of Representatives.

(b) JOINT RESOLUTION DEFINED.—For purposes of this section, the term ''joint resolution'' means only a joint resolution that is introduced in the House of Representatives by the Speaker of the House of Representatives (or the Speaker's designee) or the Minority Leader (or the Minority Leader's designee), or in the Senate by the Majority Leader (or the Majority Leader's designee) or the Minority Leader (or the Minority Leader's designee), within the 10-day period beginning on the date on which Congress receives the report of the Comptroller General of the United States under section 102, and—

(1) that does not have a preamble;

(2) the matter after the resolving clause of which consists of amendments of title 38, United States Code, or other amendments or modifications of laws administered by the Secretary of Veterans Affairs to implement the recommendations of the Comptroller General in the report under section 102(b)(6); and

(3) the title of which is as follows: ''Joint resolution to ensure adequate funding of health care for veterans.''.

(c) REFERRAL.—A joint resolution described in subsection (b) that is introduced in the House of Representatives shall be referred to the Committee on Veterans' Affairs of the House of Representatives. A joint resolution described in subsection (b) introduced in the Senate shall be referred to the Committee on Veterans' Affairs of the Senate.

(d) DISCHARGE.—If the committee to which a joint resolution described in subsection (b) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the Comptroller General submits to Congress the report under section 102, such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(e) CONSIDERATION.—

(1) MOTION TO PROCEED TO CONSIDERATION.—On or after the third day after the date on which the committee to which such a joint resolution is referred has reported, or has been discharged (under subsection (d)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Member announces to the House concerned the Member's intention to do so). The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business,

or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a joint resolution described in subsection (b) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS FROM DECISIONS OF THE CHAIR.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution described in subsection (b) shall be decided without debate.

(f) CONSIDERATION BY OTHER HOUSE.—

(1) PROCEDURE.—If, before the passage by one House of a joint resolution of that House described in subsection (b), that House receives from the other House a joint resolution described in subsection (b), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a joint resolution described in subsection (b) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) DISPOSITION.—Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(g) RULES OF SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (b), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

## Subtitle B—Mental Health Matters

### SEC. 111. FINDINGS.

Congress makes the following findings:

(1) A study published in the New England Journal of Medicine reported that about one in six soldiers of the Iraq war displays symptoms of post-traumatic stress disorder.

(2) Clinical experts are anticipating an increase in the number of post-traumatic stress disorder cases in light of the increasing duration of military deployment.

(3) 86 of 163 Department of Veterans Affairs Medical Centers have post-traumatic stress disorder treatment programs.

(4) Section 1706 of title 38, United States Code, requires that the Secretary of Veterans Affairs ensure, in accordance with that section, that the Department of Veterans Affairs maintains its capacity to provide for the specialized treatment and rehabilitative needs of disabled veterans within distinct programs or facilities of the Department.

### SEC. 112. POST-TRAUMATIC STRESS DISORDER TREATMENT FOR VETERANS OF SERVICE IN AFGHANISTAN AND IRAQ AND THE WAR ON TERROR.

(a) ENHANCED CAPACITY FOR DEPARTMENT OF VETERANS AFFAIRS.—Using funds available to the Secretary of Veterans Affairs for fiscal year 2006 for ''Medical Care'', the Secretary shall employ at least one psychiatrist and a complementary clinical team at each medical center of the Department of Veterans Affairs in order to conduct a specialized program for the diagnosis and treatment of post-traumatic stress disorder and to employ additional mental health services specialists at the medical center.

(b) OUTREACH AT THE COMMUNITY LEVEL.—

(1) PROGRAM.—The Secretary of Veterans Affairs shall, within the authorities of the Secretary under title 38, United States Code, carry out a program to provide outreach at the community level to veterans who participated in Operation Iraqi Freedom or Operation Enduring Freedom who are or may be suffering from post-traumatic stress disorder.

(2) PROGRAM SITES.—The program shall be carried out on a nation-wide basis through facilities of the Department of Veterans Affairs.

(3) PROGRAM CONTENT.—The program shall provide for individualized case management to be conducted on a one-on-one basis, counseling, education, and group therapy to help participants cope with post-traumatic stress disorder. The program—

(A) shall emphasize early identification of veterans who may be experiencing symptoms of post-traumatic stress disorder; and

(B) shall include group-oriented, peer-to-peer settings for treatment.

### SEC. 113. ARMED FORCES REVIEW OF MENTAL HEALTH PROGRAMS.

(a) REVIEW OF MENTAL HEALTH PROGRAMS.—The Secretary of each military department shall conduct a comprehensive review of the mental health care programs of the Armed Forces under the jurisdiction of that Secretary in order to determine ways to improve the efficacy of such care, including a review of joint Department of Defense and Department of Veterans Affairs clinical guidelines to ensure a seamless delivery of care during transitions from active duty or reserve status to civilian life.

(b) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress a report setting forth the results of such review not later than 90 days after the date of the enactment of this Act.

## Subtitle C—Other Matters

### SEC. 121. AUTHORITY OF DEPARTMENT OF VETERANS AFFAIRS PHARMACIES TO DISPENSE MEDICATIONS TO VETERANS ON PRESCRIPTIONS WRITTEN BY PRIVATE PRACTITIONERS.

(a) FINDINGS.—Congress makes the following findings:

(1) Under longstanding regulations of the Department of Veterans Affairs, most veterans who receive prescriptions for medication from private doctors are forced to complete physicals conducted by Department of Veterans Affairs physicians before the veterans can have their prescriptions filled by a pharmacy. This bureaucratic red tape can prevent veterans from quickly receiving the medical treatment they need.

(2) In December 2000, the Inspector General of the Department of Veterans Affairs reported that eliminating this unnecessary red tape would save the underfunded Department of Veterans Affairs over $1,000,000,000 per year. The report concluded that ''a decision to continue the current policies results in inefficiency and waste that we estimate annually costs the Department over $1,000,000,000 in resources that could be better used in the delivery of healthcare services to veterans.''.

(3) In 2004, the Department of Justice, in a reversal of an earlier legal opinion, stating that the Secretary of Veterans Affairs has the authority to eliminate this rule without further legislative action. The Secretary has failed to take such a step, thus necessitating action by Congress.

(b) AUTHORITY.—Section 1712 of title 38, United States Code, is amended—

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

(2) by inserting after subsection (d) the following new subsection (e):

''(e)(1) The Secretary shall furnish to any medicare-eligible veteran on an out-patient basis such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran.

''(2) In this subsection, the term 'medicare-eligible veteran' means any veteran who—

''(A) is entitled to or enrolled in hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

''(B) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).

''(3) The furnishing of drugs and medicines under this subsection shall be subject to the provisions of section 1722A(b) of this title.''.

(c) COPAYMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 1722A of such title is amended—

(A) in subsection (a)(1), by inserting ''(other than a veteran covered by subsection (b))'' after ''require a veteran'';

(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(C) by inserting after subsection (a) the following new subsection (b):

''(b)(1) In the case of a veteran who is furnished medications on an out-patient basis under section 1712(e) of this title, the Secretary shall require the veteran to pay, at the election of the Secretary, one or more of the following:

''(A) An annual enrollment fee in an amount determined appropriate by the Secretary.

''(B) A copayment for each 30-day supply of such medications in an amount determined appropriate by the Secretary.

''(C) An amount equal to the cost to the Secretary of such medications, as determined by the Secretary.

''(2)(A) In determining the amounts to be paid by a veteran under paragraph (1), and the basis of payment under one or more subparagraphs of that paragraph, the Secretary shall ensure that the total amount paid by veterans for medications under that paragraph in a year is not less than the costs of the Department in furnishing medications to veterans under section 1712(e) of this title during that year, including the cost of purchasing and furnishing medications, and other costs of administering that section.

''(B) The Secretary shall take appropriate actions to ensure, to the maximum extent practicable, that amounts paid by veterans under paragraph (1) in a year are equal to the costs of the Department referred to in subparagraph (A) in that year.

''(3) In determining amounts under paragraph (1), the Secretary may take into account the following:

''(A) Whether or not the medications furnished are generic medications or brand name medications.

''(B) Whether or not the medications are furnished by mail.

''(C) Whether or not the medications furnished are listed on the National Prescription Drug Formulary of the Department.

''(D) Any other matters the Secretary considers appropriate.

''(4) The Secretary may from time to time adjust any amount determined by the Secretary under paragraph (1), as previously adjusted under this paragraph, in order to meet the purpose specified in paragraph (2).''; and

(D) in subsection (d), as so redesignated—

(i) by striking ''subsection (a)'' and inserting ''subsections (a) and (b)''; and

(ii) by striking ''subsection (b)'' and inserting ''subsection (c)''.

(2) DEPOSIT OF COLLECTIONS IN MEDICAL CARE COLLECTIONS FUND.—Paragraph (4) of section 1729A(b) of such title is amended to read as follows:

''(4) Subsection (a) or (b) of section 1722A of this title.''.

(d) CLERICAL AMENDMENTS.—(1) The heading for section 1712 of such title is amended by striking ''**for certain disabled veterans**''.

(2) The table of sections at the beginning of chapter 17 of such title is amended in the item relating to section 1712 by striking ''for certain disabled veterans''.

## TITLE II—CONCURRENT RECEIPT OF RETIRED PAY AND SERVICE-CONNECTED DISABILITY COMPENSATION

### SEC. 201. SHORT TITLE.

This title may be cited as the ''Retired Pay Restoration Act of 2005''.

### SEC. 202. FINDINGS.

Congress makes the following findings:

(1) The United States Government has an essential obligation to provide support and care for men and women who have completed honorable military service in defense of the Nation. In no instance is this obligation more critical than for veterans who were injured or disabled during their military service.

(2) Disability compensation and military retired pay are benefits earned for two distinct reasons. Disability compensation is provided to veterans for disabilities resulting from their military service to the Nation as an expression of the Nation's gratitude and as recompense for their sacrifice. Military retired pay is earned by members of the Armed Forces for the devotion of 20 or more years of their lives to the military service of the Nation.

(3) Until 2002, Federal law prohibited disabled veterans from concurrently receiving both disability compensation and retirement pay. The prohibition against concurrent receipt was a gross violation of the Government's commitment to veterans.

(4) Despite recent legislative advances, over 1,500,000 disabled veterans continue to be prohibited from receiving both military retirement and disability payments concurrently.

### SEC. 203. FULL PAYMENT OF BOTH RETIRED PAY AND COMPENSATION TO DISABLED MILITARY RETIREES.

(a) RESTORATION OF FULL RETIRED PAY BENEFITS.—Section 1414 of title 10, United States Code, is amended to read as follows:

**''§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: payment of retired pay and veterans' disability compensation**

''(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—Except as provided in subsection (b), a member or former member of the uniformed services who is entitled to retired pay (other than as specified in subsection (c)) and who is also entitled to veterans' disability compensation is entitled to be paid both without regard to sections 5304 and 5305 of title 38.

''(b) SPECIAL RULE FOR CHAPTER 61 CAREER RETIREES.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

''(c) EXCEPTION.—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title at the time of the member's retirement.

''(d) DEFINITIONS.—In this section:

''(1) The term 'retired pay' includes retainer pay, emergency officers' retirement pay, and naval pension.

''(2) The term 'veterans' disability compensation' has the meaning given the term 'compensation' in section 101(13) of title 38.''.

(b) REPEAL OF COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—Section 1413a of such title is repealed.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of such title is amended by striking the items relating to sections 1413a and 1414 and inserting the following:

''1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: payment of retired pay and veterans' disability compensation.''.

### SEC. 204. EFFECTIVE DATE; PROHIBITION ON RETROACTIVE BENEFITS.

(a) IN GENERAL.—The amendments made by section 202 shall take effect on—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) the first day of the fiscal year that begins in the calendar year in which this Act is enacted, if later than the date specified in paragraph (1).

(b) RETROACTIVE BENEFITS.—No benefits may be paid to any person by reason of section 1414 of title 10, United States Code, as amended by section 202(a), for any period before the effective date applicable under subsection (a).

## TITLE III—SEAMLESS TRANSITION FROM MILITARY SERVICE TO VETERANS STATUS

### SEC. 301. FINDINGS.

Congress makes the following findings:

(1) In its final report, the President's Task Force To Improve Health Care Delivery For Our Nation's Veterans found that ''. . . increased collaboration between the Departments [of Defense and Veterans Affairs] for the transfer of personnel and health information is needed. Within VA, broader sharing of the information received from the DOD and individual veterans is required so that veterans are not met at every turn with the question, 'Who are you and what do you want?' A 'seamless transition' from military service to veteran status is especially critical in the context of health care, where readily available, accurate, and current medical information must be accessible to health care providers''.

(2) The Task Force put forward a series of seven recommendations designed to create a seamless transition from military service to veteran status. Nearly two years after the submittal of its final report, few of the recommendations have been adopted.

(3) Leading nonpartisan veterans' advocates, including the American Legion, Veterans of Foreign Wars, Disabled American Veterans, and the Military Officers Association of America, support the adoption of the recommendations made by the Task Force to create a seamless transition from military service to veteran status.

### SEC. 302. REPORT ON DEVELOPMENT OF INTEROPERABLE ELECTRONIC MEDICAL RECORDS.

Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress a report on the status of the development of interoperable electronic medical records for members of the Armed Forces and veterans that are utilizable by both the Department of Defense and the Department of Veterans Affairs.

### SEC. 303. EXCHANGE OF MEDICAL RECORDS FOR SEAMLESS TRANSITION IN THE PROVISION OF HEALTHCARE SERVICES.

The Secretary of Health and Human Services shall modify section 164.512(k)(1) of title 45, Code of Federal Regulations, to provide that the Department of Defense and the Department of Veterans Affairs may exchange protected health information of members of the Armed Forces and veterans in a manner that, as determined jointly by the Secretary of Health and Human Services, the Secretary of Defense, and the Secretary of Veterans Affairs, facilitates a seamless transition between the provision of health care services by the Department of Defense to members of the Armed Forces and the provision of health care services by the Department of Veterans Affairs to veterans who require such services after their separation or retirement from the Armed Forces.

### SEC. 304. ENHANCEMENT OF PRESEPARATION PHYSICAL EXAMINATION REQUIREMENTS.

Section 1145 of title 10, United States Code, is amended—

(1) in subsection (a), by striking paragraph (4);

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(3) by inserting after subsection (c) the following new subsection (d):

''(d) PRESEPARATION PHYSICAL.—(1) The Secretary concerned shall require a member of the armed forces to be separated from active duty to undergo a physical examination before that separation.

''(2) The physical examination of a member under this subsection shall be conducted before the member receives preseparation counseling under section 1142 of this title.

''(3)(A) The physical examinations conducted under this subsection shall be comprehensive and, to the maximum extent practicable, uniform throughout the armed forces.

''(B) The purpose of a physical examination conducted for a member under this subsection shall be—

''(i) to determine the immediate health care needs, if any, of the member as of separation and the ongoing health care needs, if any, of the member after separation; and

''(ii) to identify any illness, injury, or other medical conditions that may make the member eligible for benefits as a veteran under the laws administered by the Secretary of Veterans Affairs.

''(C) The Secretary of Defense shall prescribe in regulations the requirements for physical examinations conducted under this subsection.

''(4) The results of the physical examination of a member under this subsection shall be included on the Form DD214 of the member (or any successor form).

''(5) The Secretary concerned shall transmit in electronic form to the Secretary of Veterans Affairs the results of each physical examination conducted by such Secretary under this subsection.''.

### SEC. 305. ENHANCEMENT OF PRESEPARATION COUNSELING REQUIREMENTS.

Section 1142(b) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (3) through (10) as paragraphs (4) through (11), respectively; and

(2) by striking paragraph (2) and inserting the following new paragraphs:

''(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the health care and other benefits to which the member may be entitled under the laws administered by the Secretary of Veterans Affairs, including compensation and vocational rehabilitation benefits in the case of a member being medically separated or being retired under chapter 61 of this title, which shall be taken into account the preseperation physical examination of the member conducted under section 1145(d) of this title.

''(3) In the case of a member who, as determined pursuant to the preseperation physical examination conducted under section 145(d) of this title, may be entitled to compensation or pensions benefits under the laws administered by the Secretary of Veterans Affairs, a referral (to be provided with the assistance of the Secretary of Veterans Affairs) for a compensation and pension examination by the Secretary of Veterans Affairs.''.

**SEC. 306. EPIDEMIOLOGICAL STUDIES.**

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs may, during the five-year period beginning on October 1, 2005, jointly carry out such epidemioligical studies relating to veterans' health conditions that develop as a result of occupational exposure during military service as such Secretaries consider appropriate.

(b) FUNDING.—

(1) DEPARTMENT OF DEFENSE.—Of the amount authorized to be appropriated for fiscal year 2006 for the Department of Defense for the Defense Health Program, $2,500,000 shall be available for the epidemiological studies authorized by subsection (a).

(2) DEPARTMENT OF VETERANS AFFAIRS.—Of the amount appropriated for fiscal year 2006 for the Department of Veterans Affairs for Medical Care, $2,500,000 shall be available for the epidemiological studies authorized by subsection (a).

(3) AVAILABILITY.—Amounts available under this subsection shall be available without fiscal year limitation.

**SEC. 307. INFORMATION SHARING.**

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop protocols to facilitate the sharing of information between the Department of Defense and the Department of Veterans Affairs on the matters referred to in subsection (c) with respect to each member of the Armed Forces.

(b) PURPOSE.—The purpose of the protocols is to facilitate determinations by the Department of Veterans Affairs of the existence and extent of a connection any illness or injury experienced by a former member of the Armed Forces after separation from the Armed Forces and the exposure of the member to toxic or hazardous substances in the course of the member's duties or assignments as a member of the Armed Forces.

(c) COVERED MATTERS.—The matters referred to in this subsection with respect to a member of the Armed Forces are as follows:

(1) The duties and assignments of the member, including the location of such duties and assignments.

(2) Any exposures of the member in the course of such duties and assignments to toxic or hazardous substances.

(3) Any illness or injury of the member incurred or aggravated in the course of such duties and assignments.

(d) ELEMENTS OF PROTOCOLS.—The protocols on the sharing of information developed under subsection (a) shall include the following:

(1) Mechanisms to ensure that the Department of Veterans Affairs receives information to facilitate the timely and accurate assessment of the illnesses or injuries of a member of the Armed Forces that may have been incurred or aggravated by the members's exposure to toxic or hazardous substances during service in the Armed Forces.

(2) Mechanisms that provide, to the maximum extent practicable consistent with the national security interests of the United States, for the declassification of information necessary to achieve the purpose of the protocols.

(3) Procedures to ensure that information is shared under the protocols as a matter of routine operations of the Department of Defense and the Department of Veterans Affairs.

(e) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress a report on the protocols developed under subsection (a). The report shall include such recommendations for legislative or administrative action as the Secretaries consider appropriate.

(f) FUNDING.—

(1) DEPARTMENT OF DEFENSE.—Amounts authorized to be appropriated for fiscal year 2006 for the Department of Defense for operation and maintenance, defense-wide, shall be available for the development of protocols under subsection (a).

(2) DEPARTMENT OF VETERANS AFFAIRS.—Amounts authorized to be appropriated for fiscal year 2006 for the Department of Veterans Affairs shall be available for the development of protocols under subsection (a).

**SEC. 308. COORDINATION OF LONG-TERM RESEARCH ON HEALTH CARE.**

(a) DEPARTMENT OF VETERANS AFFAIRS REPRESENTATIVE ON ARMED FORCE EPIDEMIOLOGICAL BOARD.—

(1) IN GENERAL.—The Secretary of Defense shall appoint to the Armed Forces Epidemiological Board, as an ex officio member, an officer of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs for the purpose of this subsection.

(2) PURPOSE.—The purpose of the appointment under this subsection is to ensure that the Armed Forces Epidemiological Board considers and takes into account the views and recommendations of the Department of Veterans Affairs in providing advice to the Assistant Secretary of Defense for Health Affairs and the surgeons general of the Armed Forces.

(b) DEPARTMENT OF VETERANS AFFAIRS REPRESENTATIVE ON DEPARTMENT OF DEFENSE SAFETY AND OCCUPATIONAL HEALTH COMMITTEE.—

(1) IN GENERAL.—The Secretary of Defense shall appoint to the Department of Defense Safety and Occupational Health Committee, as an ex officio member, an officer of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs for the purpose of this subsection.

(2) PURPOSE.—The purpose of the appointment under paragraph (1) is to ensure that the Department of Defense and the Department of Veterans Affairs establish and maintain effective collaboration on matters relating to occupational safety and health of current and former members of the Armed Forces.

(c) ANNUAL REPORT ON FORCE HEALTH PROTECTION.—Not later than March 1 each year, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress each year a report on the efforts of the Department of Defense and Department of Veterans Affairs, respectively, during the preceding calendar year, to accomplish the following:

(1) The identification of illnesses and injuries incurred or aggravated by members of the Armed Forces during service in the Armed Forces through exposure to occupational hazards and other toxic and hazardous substances.

(2) The treatment of members of the Armed Forces and veterans for illnesses and injuries described in paragraph (1).

(3) The conduct of epidemiological studies on the health consequences of the exposure of members of the Armed Forces to occupational hazards and other toxic and hazardous substances during service in the Armed Forces.

(4) The development of guidance and other information on policies and practices intended to prevent, reduce, or mitigate the exposure of members of the Armed Forces to occupational hazards and other toxic and hazardous substances during service in the Armed Forces.

## TITLE IV—INCREASED GOVERNMENT COMMITMENT TO VETERANS' EDUCATION

**SEC. 401. SHORT TITLE.**

This title may be cited as the ''Montgomery GI Bill for the 21st Century Act''.

**SEC. 402. FINDINGS.**

Congress makes the following findings:

(1) 2004 marked the 60th anniversary of the Servicemen's Readjustment Act of 1944, better known as the G.I. Bill. Out of an eligible population of 15,500,000 veterans, nearly 8,000,000 received education or training as a result of this legislation, one of the most successful Federal Government programs in United States history.

(2) Since Congress first enacted the G.I. Bill, veterans' benefits have been updated to keep pace with changing times. Over 21,000,000 veterans have now received educational assistance through the G.I. Bill and its successors.

(3) Congress has a duty to ensure that the VA can continue to offer an education assistance program that robustly supports veterans' efforts to obtain higher education and make a successful transition from military to civilian life.

**SEC. 403. EXCLUSION OF BASIC PAY CONTRIBUTIONS FOR PARTICIPATION IN BASIC EDUCATIONAL ASSISTANCE IN CERTAIN COMPUTATIONS ON STUDENT FINANCIAL AID.**

(a) EXCLUSION.—Subchapter II of chapter 30 of title 38, United States Code, is amended by adding at the end the following new section:

**''§ 3020A. Exclusion of basic pay contributions in certain computations on student financial aid**

''(a) IN GENERAL.—The expected family contribution computed under section 475, 476, or 477 of the Higher Education Act of 1965 (20 U.S.C. 1087oo, 1087pp, 1087qq) for a covered student shall be decreased by $1,200 for the applicable year.

''(b) DEFINITIONS.—In this section:

''(1) The term 'academic year' has the meaning given the term in section 481(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(2)).

''(2) The term 'applicable year' means the first academic year for which a student uses entitlement to basic educational assistance under this chapter.

''(3) The term 'covered student' means any individual entitled to basic educational assistance under this chapter whose basic pay or voluntary separation incentives was or were subject to reduction under section 3011(b), 3012(c), 3018(c), 3018A(b), or 3018B(b) of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3020 the following new item:

''3020A. Exclusion of basic pay contributions in certain computations on student financial aid.''.

**SEC. 404. OPPORTUNITY FOR ENROLLMENT IN BASIC EDUCATIONAL ASSISTANCE PROGRAM OF CERTAIN INDIVIDUALS WHO PARTICIPATED OR WERE ELIGIBLE TO PARTICIPATE IN POST-VIETNAM ERA VETERANS EDUCATIONAL ASSISTANCE PROGRAM.**

(a) OPPORTUNITY FOR ENROLLMENT.—Section 3018C(e) of title 38, United States Code, is amended—

(1) in paragraph (1), by inserting ''or (3)'' after ''paragraph (2)'';

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively;

(3) by inserting after paragraph (2) the following new paragraph (3):

''(3) A qualified individual referred to in paragraph (1) is also an individual who meets each of the following requirements:

''(A) The individual is a participant in the educational benefits program under chapter 32 of this title as of the date of the enactment of the Montgomery GI Bill for the 21st Century Act, or was eligible to participate in such program, but had not participated in that program or any other educational benefits program under this title, as of that date.

''(B) The individual meets the requirements of subsection (a)(3).

''(C) The individual, when discharged or released from active duty, is discharged or released therefrom with an honorable discharge.'';

(4) in paragraph (5), as so redesignated, by striking ''paragraph (3)(A)(ii)'' and inserting ''paragraph (4)(A)(ii)''; and

(5) in paragraph (6), as so redesignated, by inserting '', or individuals eligible to participate in that program who have not participated in that program or any other educational benefits program under this title,'' after ''chapter 32 of this title''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

**''§ 3018C. Opportunity to enroll: certain VEAP participants; certain individuals eligible for participation in VEAP''.**

(2) The table of sections at the beginning of chapter 30 of such title is amended by striking the item relating to section 3018C and inserting the following new item:

''3018C. Opportunity to enroll: certain VEAP participants; certain individuals eligible for participation in VEAP.''.

**SEC. 405. COMMENCEMENT OF 10-YEAR DELIMITING PERIOD FOR VETERANS, SURVIVORS, AND DEPENDENTS WHO ENROLL IN TRAINING PROGRAM.**

(a) VETERANS.—Section 3031 of title 38, United States Code, is amended—

(1) in subsection (a), by striking ''through (g), and subject to subsection (h)'' and inserting ''through (h), and subject to subsection (i)'';

(2) by redesignating subsection (h) as subsection (i); and

(3) by inserting after subsection (g) the following new subsection (h):

''(h) In the case of an individual eligible for educational assistance under this chapter who, during the 10-year period described in subsection (a) of this section, enrolls in a program of training under this chapter, the period during which the individual may use the individual's entitlement to educational assistance under this chapter expires on the last day of the 10-year period beginning on the first day of the individual's pursuit of such program of training.''.

(b) ELIGIBLE CHILDREN.—Subsection (a) of section 3512 of such title is amended—

(1) in paragraph (6)(B), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(8) if the person enrolls in a program of special restorative training under subchapter V of this chapter, such period shall begin on the first day of the person's pursuit of such program of special restorative training.''.

(c) ELIGIBLE SURVIVING SPOUSES.—Subsection (b) of such section is amended by adding at the end the following new paragraph:

''(3) Notwithstanding the provisions of paragraph (1) of this subsection, any eligible person (as defined in section 3501(a)(1)(B) or (D)(ii) of this title) who, during the 10-year period described in paragraph (1) of this subsection, enrolls in a program of special restorative training under subchapter V of this chapter may be afforded educational assistance under this chapter during the 10-year period beginning on the first day of the individual's pursuit of such program of special restorative training.''.

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By Mr. BINGAMAN (for himself, Mr. REID, Mr. KENNEDY, Mr. CORZINE, Mr. DURBIN, Mr. REED, Mr. SCHUMER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Ms. STABENOW, Mr. LAUTENBERG, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. INOUYE, Mr. ROCKEFELLER, Mr. SARBANES, and Mr. DAYTON):

S. 15. A bill to improve education for all students, and for other purposes; to the Committee on Finance

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 15

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Quality Education for All Act''.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:


Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—STRENGTHENING HEAD START AND CHILD CARE PROGRAMS

SUBTITLE A—INCREASING ACCESS TO HEAD START PROGRAMS

Sec. 101. Authorization of appropriations.
Sec. 102. Strengthening Indian and migrant and seasonal Head Start programs.
Sec. 103. Expanding Early Head Start programs.
Sec. 104. Participation in Head Start programs.

SUBTITLE B—ENHANCING THE SCHOOL READINESS OF HEAD START CHILDREN

Sec. 111. School readiness standards.
Sec. 112. Staff.

SUBTITLE C—EXPANDING ACCESS TO QUALITY, AFFORDABLE CHILD CARE

Sec. 121. Authorization of appropriations.

SUBTITLE D—STRENGTHENING THE QUALITY OF CHILD CARE

Sec. 131. State plan requirements relating to training.
Sec. 132. Strengthening the quality of child care.

TITLE II—PROVIDING SAFE, RELIABLE TRANSPORTATION FOR RURAL SCHOOL CHILDREN

Sec. 201. Findings and purpose.
Sec. 202. Definitions.
Sec. 203. Grant program.
Sec. 204. Authorization of appropriations.

TITLE III—SENSE OF THE SENATE REGARDING FULLY FUNDING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT BY 2011

Sec. 301. Findings.
Sec. 302. Sense of the Senate regarding authorization of appropriations.

TITLE IV—IMPROVEMENT OF ELEMENTARY AND SECONDARY EDUCATION

SUBTITLE A—PUBLIC SCHOOL CHOICE, SUPPLEMENTAL EDUCATIONAL SERVICES, AND TEACHER QUALITY

Sec. 401. Public school choice capacity.
Sec. 402. Supplemental educational services.
Sec. 403. Qualifications for teachers and paraprofessionals.

SUBTITLE B—ADEQUATE YEARLY PROGRESS DETERMINATIONS

Sec. 421. Review of adequate yearly progress determinations for schools for the 2002–2003 school year.
Sec. 422. Review of adequate yearly progress determinations for local educational agencies for the 2002–2003 school year.
Sec. 423. Definitions.

SUBTITLE C—TECHNICAL ASSISTANCE

Sec. 451. Technical assistance.

TITLE V—IMPROVING ASSESSMENT AND ACCOUNTABILITY

Sec. 501. Grants for increasing data capacity for purposes of assessment and accountability.
Sec. 502. Grants for assessment of children with disabilities and children who are limited English proficient.
Sec. 503. Reports on student enrollment and graduation rates.
Sec. 504. Civil rights.

TITLE VI—SENSE OF THE SENATE REGARDING FUNDING FOR ELEMENTARY AND SECONDARY EDUCATION

Sec. 601. Sense of the Senate.

TITLE VII—PROVIDING A ROADMAP FOR FIRST GENERATION COLLEGE FOR STUDENTS

Sec. 701. Expansion of TRIO and GEARUP.

TITLE VIII—COLLEGE TUITION RELIEF FOR STUDENTS AND THEIR FAMILIES THROUGH PELL GRANTS

Sec. 801. Pell Grants tax tables hold harmless.
Sec. 802. Sense of the Senate regarding increasing the maximum Pell Grant.
Sec. 803. Establishment of a Pell demonstration program.

TITLE IX—TUITION FREE COLLEGE FOR MATHEMATICS, SCIENCE, AND SPECIAL EDUCATION TEACHERS

Sec. 901. Purpose.
Sec. 902. Tuition free college for mathematics, science, and special education teachers.
Sec. 903. Offset for tuition free college for mathematics, science, and special education teachers.

TITLE X—MAKING COLLEGE AFFORDABLE FOR ALL STUDENTS

Sec. 1001. Expansion of deduction for higher education expenses.
Sec. 1002. Credit for interest on higher education loans.
Sec. 1003. Hope and Lifetime Learning credits to be refundable.

## TITLE I—STRENGTHENING HEAD START AND CHILD CARE PROGRAMS

### Subtitle A—Increasing Access to Head Start Programs

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Section 639(a) of the Head Start Act (42 U.S.C. 9834(a)) is amended by striking ''such sums'' and all that follows and inserting the following: ''$8,570,000,000 for fiscal year 2006, $10,445,000,000 for fiscal year 2007, $12,384,000,000 for fiscal year 2008, $14,334,000,000 for fiscal year 2009, and $16,332,000,000 for fiscal year 2010.''.

**SEC. 102. STRENGTHENING INDIAN AND MIGRANT AND SEASONAL HEAD START PROGRAMS.**

Section 640(a)(2) of the Head Start Act (42 U.S.C. 9835(a)(2)) is amended by striking subparagraph (A) and inserting the following:

''(A) Indian Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs, except that the Secretary shall reserve for each fiscal year for use by Indian Head Start and migrant and seasonal Head Start programs (referred to in this subparagraph as 'covered programs'), on a nationwide basis, a sum that is the total of not less than 4 percent of the amount appropriated under section 639(a) for that fiscal year (for Indian Head Start programs), and not less than 5 percent of that appropriated amount (for migrant and seasonal Head Start programs), except that—

''(i) if reserving the specified percentages for covered programs and would reduce the number of children served by Head Start programs, relative to the number of children served on the date of enactment of the Quality Education for All Act, taking into consideration an appropriate adjustment for inflation, the Secretary shall reserve percentages that approach, as closely as practicable, the specified percentages and that do not cause such a reduction; and

''(ii) notwithstanding any other provision of this subparagraph, the Secretary shall reserve for each fiscal year for use by Indian Head Start programs and by migrant and seasonal Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian Head Start programs and by migrant and seasonal Head Start programs, respectively, for the previous fiscal year;''.

**SEC. 103. EXPANDING EARLY HEAD START PROGRAMS.**

Section 640(a)(6) of the Head Start Act (42 U.S.C. 9835(a)(6)) is amended—

(1) in subparagraph (A), by striking ''7.5 percent for fiscal year 1999'' and all that follows and inserting ''12 percent for fiscal year 2006, 14 percent for fiscal year 2007, 16 percent for fiscal year 2008, 18 percent for fiscal year 2009, and 20 percent for fiscal year 2010, of the amount appropriated pursuant to section 639(a).'';

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

**SEC. 104. PARTICIPATION IN HEAD START PROGRAMS.**

Section 645 of the Head Start Act (42 U.S.C. 9840) is amended—

(1) in subsection (a)(1)(A), by inserting ''130 percent of'' after ''below''; and

(2) by adding at the end the following:

''(e) After demonstrating a need through a community needs assessment, a Head Start agency may apply to the Secretary to convert part-day sessions, particularly consecutive part-day sessions, into full-day sessions.''.

### Subtitle B—Enhancing the School Readiness of Head Start Children

**SEC. 111. SCHOOL READINESS STANDARDS.**

Section 641A(a)(1)(B)(ii) of the Head Start Act (42 U.S.C. 9836(a)(1)(B)(ii)) is amended by striking ''at a minimum'' and all that follows and inserting the following: ''at a minimum, develop and demonstrate—

''(I) language skills, including an expanded use of vocabulary;

''(II) interest in and appreciation of books, reading, and writing (either alone or with others), phonological and phonemic awareness, and varied modes of expression and communication;

''(III) premathematics knowledge and skills, including knowledge and skills relating to aspects of classification, seriation, numbers, spatial relations, and time;

''(IV) cognitive abilities related to academic achievement;

''(V) abilities related to social and emotional development;

''(VI) gross and fine motor skills; and

''(VII) in the case of children with limited English proficiency, abilities related to progress toward acquisition of the English language.''.

**SEC. 112. STAFF.**

(a) STAFF QUALIFICATIONS AND DEVELOPMENT.—Section 648A of the Head Start Act (42 U.S.C. 9843a) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking ''not later than September 30, 2003'' and all that follows through ''programs have'' and inserting ''not later than the date determined under subparagraph (D) for a Head Start region, each Head Start agency in the region with a center-based program shall ensure that all classrooms in the program have at least 1 teacher who has'';

(ii) in clause (i), strike ''an associate, baccalaureate,'' and insert ''a baccalaureate''; and

(iii) in clause (ii), strike ''an associate, baccalaureate,'' and insert ''a baccalaureate''; and

(B) by striking subparagraph (B) and inserting the following:

''(B) TEMPORARY REQUIREMENT.—Until the date determined under subparagraph (D) for a Head Start region, the Secretary shall ensure that at least 50 percent of all Head Start teachers in the region in center-based programs have—

''(i) an associate, baccalaureate, or advanced degree in early childhood education; or

''(ii) an associate, baccalaureate, or advanced degree in a field related to early childhood education, with experience in teaching preschool children.

''(C) REQUIREMENT FOR NEW HEAD START TEACHERS.—Not later than 3 years after the date of enactment of the Quality Education for All Act, the Secretary shall require that all teachers hired nationwide in center-based programs of Head Start agencies following the date of the requirement—

''(i) have an associate, baccalaureate, or advanced degree in early childhood education;

''(ii) have an associate, baccalaureate, or advanced degree in a field related to early childhood education, with experience in teaching preschool children; or

''(iii) be enrolled, or enroll not later than 1 year after the date of hire, in a program of study leading to an associate degree in early childhood education.

''(D) APPROPRIATE DATE.—The Secretary shall determine an appropriate date for Head Start agencies in each Head Start region to reach the result described in subparagraph (A), but in no case shall such a date be later than 8 years after the date of enactment of Quality Education for All Act.

''(E) PROGRESS.—

''(i) REQUIREMENT.—The Secretary shall require Head Start agencies with center-based programs to demonstrate continuing and consistent progress each year to reach the results described in subparagraphs (A) and (C).

''(ii) PLAN.—Each State shall establish a plan for the Head Start agencies with center-based programs in the State to reach the results described in subparagraphs (A) and (C).

''(iii) PROGRESS.—Each Head Start agency shall prepare and submit to the Secretary and the Governor of the State a report indicating the number and percentage of its teachers in center-based programs with child development associate credentials or associate, baccalaureate, or advanced degrees in early childhood education or a field related to early childhood education. The Secretary shall compile all such reports and submit a summary of the compiled reports to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives.'';

(2) in subsection (a)(3), by striking ''(2)(A)'' and inserting ''(2)(B)''; and

(3) by adding at the end the following:

''(f) PRE-LITERACY AND LANGUAGE TRAINING.—To support local efforts to enhance early language and pre-literacy development of children in Head Start programs, and to provide the children with high-quality oral language skills and environments that are rich in literature, in which to acquire early language and pre-literacy skills, each Head Start agency shall ensure that all of the agency's Head Start teachers receive ongoing training in language and emergent literacy. Such training shall also include information regarding appropriate curricula and assessments to improve instruction and learning. Such training shall include training in methods to promote phonological and phonemic awareness and vocabulary development in an age-appropriate and culturally and linguistically appropriate manner.

''(g) PROFESSIONAL DEVELOPMENT PLANS.—Each Head Start agency and center shall create, in consultation with employees of the agency or center (including family service workers), a professional development plan for employees who provide direct services to children, including a plan for teachers, to meet the requirements set forth in subsection (a).''.

(b) ATTRACTING AND RETAINING HIGH-QUALITY HEAD START TEACHERS; TRIBAL COLLEGE OR UNIVERSITY-HEAD START PARTNERSHIP PROGRAM.—

(1) PROGRAM.—The Head Start Act is amended by inserting after section 648A (42 U.S.C. 9843a) the following:

**''SEC. 648B. ATTRACTING AND RETAINING HIGH-QUALITY HEAD START TEACHERS.**

''(a) IN GENERAL.—The Secretary shall make grants to eligible Head Start agencies to enable the agencies to reach the results described in subparagraphs (A) and (C) of section 648A(a)(2). The Secretary shall make the grants from allotments determined under subsection (b).

''(b) ALLOTMENTS.—From the funds made available under section 639(c) for a fiscal year and not reserved under subsection (d), the Secretary shall allot to each Head Start agency an amount that bears the same relationship to such funds as the amount received by the agency under section 640 for that fiscal year bears to the amount received by all Head Start agencies under section 640 for that fiscal year.

''(c) SALARY PLAN.—A Head Start agency that receives a grant under this section shall develop and carry out a plan to raise the average salaries of teachers in the agency's Head Start programs. In developing the plan, the agency shall take into consideration the training, level of education, and experience of the teachers, and the average salaries of

prekindergarten and kindergarten teachers employed by the local educational agency for the school district in which the Head Start agency is located, with similar training, level of education, and experience.

''(d) SALARIES IN HIGH-COST AREAS.—The Secretary may reserve and use a portion of the funds available under section 639(c) to assist Head Start agencies located in high-cost areas to help reduce the discrepancy between such average salaries of such teachers and such average salaries of such prekindergarten and kindergarten teachers.

**''SEC. 648C. TRIBAL COLLEGE OR UNIVERSITY-HEAD START PARTNERSHIP PROGRAM.**

''(a) TRIBAL COLLEGE OR UNIVERSITY-HEAD START PARTNERSHIP PROGRAM.—

''(1) GRANTS.—The Secretary is authorized to award grants, of not less than 5 years duration, to Tribal Colleges and Universities to—

''(A) implement education programs that include tribal culture and language and increase the number of associate, baccalaureate, and graduate degrees in early childhood education and related fields that are earned by Indian Head Start agency staff members, parents of children served by such an agency, and members of the tribal community involved;

''(B) develop and implement the programs under subparagraph (A) in technology-mediated formats; and

''(C) provide technology literacy programs for Indian Head Start agency staff members and children and families of children served by such an agency.

''(2) STAFFING.—The Secretary shall ensure that the American Indian Programs Branch of the Head Start Bureau of the Department of Health and Human Services shall have staffing sufficient to administer the programs under this section and to provide appropriate technical assistance to Tribal Colleges and Universities receiving grants under this section.

''(b) APPLICATION.—Each Tribal College or University desiring a grant under this section shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a certification that the Tribal College or University has established a partnership with 1 or more Indian Head Start agencies for the purpose of conducting the activities described in subsection (a).

''(c) DEFINITIONS.—In this section:

''(1) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

''(2) TRIBAL COLLEGE OR UNIVERSITY.—The term 'Tribal College or University' means an institution—

''(A) defined by such term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)); and

''(B) determined to be accredited or a candidate for accreditation by a nationally recognized accrediting agency or association.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 2006 and such sums as may be necessary for each of fiscal years 2007 through 2010.''.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 639 of the Head Start Act (42 U.S.C. 9834) is amended—

(A) in subsection (a), by inserting ''(other than section 648B)'' after ''this subchapter''; and

(B) by adding at the end the following:

''(c) There are authorized to be appropriated to carry out section 648B $387,000,000 for fiscal year 2006, $496,000,000 for fiscal year 2007, $608,000,000 for fiscal year 2008, $723,000,000 for fiscal year 2009, and $841,000,000 for fiscal year 2010.''.

(3) CONFORMING AMENDMENTS.—Section 640 of the Head Start Act (42 U.S.C. 9835) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking ''section 639'' and inserting ''section 639(a)'';

(ii) in paragraph (2)—

(I) in the matter preceding subparagraph (A), by inserting ''pursuant to section 639(a)'' after ''appropriated'';

(II) in subparagraph (B), in the matter following clause (ii), by inserting ''pursuant to section 639(a)'' after ''appropriated''; and

(III) in subparagraph (C), by inserting ''pursuant to section 639(a)'' after ''appropriated'' each place it appears; and

(iii) in paragraph (4), in the matter preceding subparagraph (A), by inserting ''pursuant to section 639(a)'' after ''appropriated''; and

(B) in subsection (g)(1), by inserting ''pursuant to section 639(a)'' after ''appropriated'' each place it appears.

## Subtitle C—Expanding Access to Quality, Affordable Child Care

**SEC. 121. AUTHORIZATION OF APPROPRIATIONS.**

Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''is'' and inserting ''are''; and

(2) by striking ''subchapter'' and all that follows and inserting ''subchapter $3,100,000,000 for fiscal year 2006, $4,100,000,000 for fiscal year 2007, $5,100,000,000 for fiscal year 2008, $6,100,000,000 for fiscal year 2009, and $7,100,000,000 for fiscal year 2010.''.

## Subtitle D—Strengthening the Quality of Child Care

**SEC. 131. STATE PLAN REQUIREMENTS RELATING TO TRAINING.**

Section 658E(c) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)) is amended by adding at the end the following:

''(6) TRAINING IN EARLY LEARNING AND CHILDHOOD DEVELOPMENT.—The State plan shall describe any training requirements that are in effect within the State that are designed to enable child care providers to promote the social, emotional, physical, and cognitive development of children and that are applicable to child care providers that provide services for which assistance is made available under this subchapter in the State.''.

**SEC. 132. STRENGTHENING THE QUALITY OF CHILD CARE.**

Section 658G of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e) is amended to read as follows:

**''SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.**

''(a) IN GENERAL.—

''(1) RESERVATION.—Each State that receives funds appropriated under section 639(a) for a fiscal year shall reserve and use not less than 6 percent of the funds for activities provided directly, or through grants or contracts with resource and referral organizations or other appropriate entities, that are designed to improve the quality of child care services.

''(2) ACTIVITIES.—The funds reserved under paragraph (1) may only be used to—

''(A) develop and implement voluntary guidelines on pre-reading and language skills and activities, for child care programs in the State, that are aligned with State standards for kindergarten through grade 12 or the State's general goals for school preparedness;

''(B) support activities and provide technical assistance in child care settings to enhance early learning for young children, to promote literacy, and to foster school preparedness;

''(C) offer training, professional development, and educational opportunities for child care providers that relate to the use of developmentally appropriate and age-appropriate curricula, and early childhood teaching strategies, that are scientifically based and aligned with the social, emotional, physical, and cognitive development of children, including—

''(i) developing and operating distance learning child care training infrastructures;

''(ii) developing model technology-based training courses;

''(iii) offering training for caregivers in informal child care settings; and

''(iv) offering training for child care providers who care for infants and toddlers and children with special needs;

''(D) engage in programs designed to increase the retention and improve the competencies of child care providers, including wage incentive programs and initiatives that establish tiered payment rates for providers that meet or exceed child care services guidelines, as defined by the State;

''(E) evaluate and assess the quality and effectiveness of child care programs and services offered in the State to young children on improving overall school preparedness; and

''(F) carry out other activities determined by the State to improve the quality of child care services provided in the State and for which measurement of outcomes relating to improved child safety, child well-being, or school preparedness is possible.

''(b) CERTIFICATION.—For each fiscal year beginning after September 30, 2005, the State shall annually submit to the Secretary a certification in which the State certifies and demonstrates that the State was in compliance with subsection (a) during the preceding fiscal year and describes how the State used funds made available to carry out this subchapter to comply with subsection (a) during that preceding fiscal year.''.

## TITLE II—PROVIDING SAFE, RELIABLE TRANSPORTATION FOR RURAL SCHOOL CHILDREN

**SEC. 201. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) school transportation issues have concerned parents, local educational agencies, lawmakers, the National Highway Traffic Safety Administration, the National Transportation Safety Board, and the Environmental Protection Agency for years;

(2) millions of children face potential future health problems because of exposure to noxious fumes emitted from older school buses;

(3) the Environmental Protection Agency established the Clean School Bus USA program to replace 129,000 of the oldest diesel buses that cannot be retrofitted in an effort to help children and the environment by improving air quality;

(4) unfortunately, many rural local educational agencies are unable to participate in that program because of the specialized fuels needed to sustain a clean bus fleet;

(5) many rural local educational agencies are operating outdated, unsafe school buses that are failing inspections because of automotive flaws, resulting in the depletion of the school bus fleets of the local educational agencies; and

(6) many rural local educational agencies are unable to afford to buy newer, safer buses.

(b) PURPOSE.—The purpose of this title is to establish within the Department of Education a Federal cost-sharing program to assist rural local educational agencies with older, unsafe school bus fleets in purchasing newer, safer school buses.

**SEC. 202. DEFINITIONS.**

In this title:

(1) RURAL LOCAL EDUCATIONAL AGENCY.—The term ''rural local educational agency'' means a local educational agency, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), with respect to which—

(A) each county in which a school served by the local educational agency is located has a total population density of fewer than 10 persons per square mile;

(B) all schools served by the local educational agency are designated with a school locale code of 7 or 8, as determined by the Secretary; or

(C) all schools served by the local educational agency have been designated, by official action taken by the legislature of the State in which the local educational agency is located, as rural schools for purposes relating to the provision of educational services to students in the State.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(3) SCHOOL BUS.—The term ''school bus'' means a vehicle the primary purpose of which is to transport students to and from school or school activities.

**SEC. 203. GRANT PROGRAM.**

(a) IN GENERAL.—From amounts appropriated under subsection (e) for a fiscal year, the Secretary shall provide grants, on a competitive basis, to rural local educational agencies to pay the Federal share of the cost of purchasing new school buses.

(b) APPLICATION.—

(1) IN GENERAL.—Each rural local educational agency that seeks to receive a grant under this title shall submit to the Secretary for approval an application at such time, in such manner, and accompanied by such information (in addition to information required under paragraph (2)) as the Secretary may require.

(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

(A) documentation that, of the total number of school buses operated by the rural local educational agency, not less than 50 percent of the school buses are in need of repair or replacement;

(B) documentation of the number of miles that each school bus operated by the rural local educational agency traveled in the most recent 9-month academic year;

(C) documentation that the rural local educational agency is operating with a reduced fleet of school buses;

(D) a certification from the rural local educational agency that—

(i) authorizes the application of the rural local educational agency for a grant under this title; and

(ii) describes the dedication of the rural local educational agency to school bus replacement programs and school transportation needs (including the number of new school buses needed by the rural local educational agency); and

(E) an assurance that the rural local educational agency will pay the non-Federal share of the cost of the purchase of new school buses under this title from non-Federal sources.

(c) PRIORITY.—In providing grants under this title, the Secretary shall give priority to rural local educational agencies that, as determined by the Secretary—

(1) are transporting students in a bus manufactured before 1977;

(2) have a grossly depleted fleet of school buses; or

(3) serve a school that is required, under section 1116(b)(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(9)), to provide transportation to students to enable the students to transfer to another public school served by the rural local educational agency.

(d) USE OF FUNDS.—School buses purchased with grant funds awarded under subsection (a) shall be in compliance with proposed air quality regulations and standards of the Environmental Protection Agency for 2006.

(e) PAYMENTS; FEDERAL SHARE.—

(1) PAYMENTS.—The Secretary shall pay to each rural local educational agency having an application approved under this section the Federal share described in paragraph (2) of the cost of purchasing such number of new school buses as is specified in the approved application.

(2) FEDERAL SHARE.—The Federal share of the cost of purchasing a new school bus under this title shall be 75 percent.

**SEC. 204. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this title $50,000,000 for fiscal year 2006 and such sums as may be necessary for each of fiscal years 2007 through 2010.

## TITLE III—SENSE OF THE SENATE REGARDING FULLY FUNDING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT BY 2011

**SEC. 301. FINDINGS.**

(a) FINDINGS.—The Senate finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the predecessor to the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the educational needs of millions of children with disabilities were not being fully met because—

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced such families to find services outside the public school system.

(3) The Individuals with Disabilities Education Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) The implementation of the Individuals with Disabilities Education Act has been impeded by the Federal Government's failure to honor the commitment it made 30 years ago to provide States with 40 percent of the excess costs of special education.

(5) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

(6) Congress passed authorizing language to fully fund the Individuals with Disabilities Education Act and should appropriate such sums as authorized.

(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

**SEC. 302. SENSE OF THE SENATE REGARDING AUTHORIZATION OF APPROPRIATIONS.**

It is the sense of the Senate that for the purpose of carrying out the Federal Government's commitment to children, parents, and the States, there should be authorized to be appropriated—

(1) $14,648,647,143 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2006, and there should be appropriated $4,058,901,319 for fiscal year 2006, which should become available for obligation on July 1, 2006, and should remain available through September 30, 2007, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $14,648,647,143, then the amount should be reduced by the difference between $14,648,647,143 and the maximum amount available for awarding grants under section 611(a)(2) of such Act;

(2) $16,938,917,714 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2007, and there should be appropriated $6,349,171,890 for fiscal year 2007, which should become available for obligation on July 1, 2007, and should remain available through September 30, 2008, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $16,938,917,714, then the amount should be reduced by the difference between $16,938,917,714 and the maximum amount available for awarding grants under section 611(a)(2) of such Act;

(3) $19,229,188,286 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2008, and there should be appropriated $8,639,442,462 for fiscal year 2008, which should become available for obligation on July 1, 2008, and should remain available through September 30, 2009, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $19,229,188,286, then the amount should be reduced by the difference between $19,229,188,286 and the maximum amount available for awarding grants under section 611(a)(2) of such Act;

(4) $21,519,458,857 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2009, and there should be appropriated $10,929,713,033 for fiscal year 2009, which should become available for obligation on July 1, 2009, and should remain available through September 30, 2010, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $21,519,458,857, then the amount should be reduced by the difference between $21,519,458,857 and the maximum amount available for awarding grants under section 611(a)(2) of such Act;

(5) $23,809,729,429 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2010, and there should be appropriated $13,219,983,605 for fiscal year 2010, which should become available for obligation on July 1, 2010, and should remain available through September 30, 2011, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $23,809,729,429, then the amount

should be reduced by the difference between $23,809,729,429 and the maximum amount available for awarding grants under section 611(a)(2) of such Act;

(6) $26,100,000,000 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2011, and there should be appropriated $15,510,254,176 for fiscal year 2011, which should become available for obligation on July 1, 2011, and should remain available through September 30, 2012, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $26,100,000,000, then the amount should be reduced by the difference between $26,100,000,000 and the maximum amount available for awarding grants under section 611(a)(2) of such Act; and

(7) the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act for fiscal year 2012 and each succeeding fiscal year, and there should be appropriated for each such year an amount equal to the maximum amount available for awarding grants under section 611(a)(2) of such Act for the fiscal year for which the determination is made minus $10,589,745,824, which should become available for obligation on July 1 of the fiscal year for which the determination is made and should remain available through September 30 of the succeeding fiscal year.

## TITLE IV—IMPROVEMENT OF ELEMENTARY AND SECONDARY EDUCATION

### Subtitle A—Public School Choice, Supplemental Educational Services, and Teacher Quality

**SEC. 401. PUBLIC SCHOOL CHOICE CAPACITY.**

(a) SCHOOL CAPACITY.—Section 1116(b)(1)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(1)(E)) is amended—

(1) in clause (i), by striking ''In the case'' and inserting ''Subject to clauses (ii) and (iii), in the case'';

(2) by redesignating clause (ii) as clause (iii);

(3) by inserting after clause (i) the following:

''(ii) SCHOOL CAPACITY.—The obligation of a local educational agency to provide the option to transfer to students under clause (i) is subject to all applicable State and local health and safety code requirements regarding facility capacity.''; and

(4) in clause (iii) (as redesignated by paragraph (2)), by inserting ''and subject to clause (ii),'' after ''public school,''.

(b) GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.—

(1) IN GENERAL.—Subpart 1 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) is amended by adding at the end the following:

**''SEC. 1120C. GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.**

''(a) PROGRAM AUTHORIZED.—From funds appropriated under subsection (g), the Secretary is authorized to award grants to local educational agencies experiencing overcrowding in the schools served by the local educational agencies, for the construction and renovation of safe, healthy, high-performance school buildings.

''(b) APPLICATION.—Each local educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may require.

''(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to local educational agencies—

''(1) who have documented difficulties in meeting the public school choice requirements of paragraph (1)(E), (5)(A), (7)(C)(i), or (8)(A)(i) of section 1116(b), or section 1116(c)(10)(C)(vii); and

''(2) with the highest number of schools at or above capacity.

''(d) AWARD BASIS.—From funds remaining after awarding grants under subsection (c), the Secretary shall award grants to local educational agencies that are experiencing overcrowding in the schools served by the local educational agencies.

''(e) PREVAILING WAGES.—Any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction funded by a grant awarded under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor under subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the Davis-Bacon Act).

''(f) DEFINITIONS.—In this section:

''(1) AT OR ABOVE CAPACITY.—The term 'at or above capacity', in reference to a school, means a school in which 1 additional student would increase the average class size of the school above the average class size of all schools in the State in which the school is located.

''(2) HEALTHY, HIGH-PERFORMANCE SCHOOL BUILDING.—The term 'healthy, high-performance school building' has the meaning given such term in section 5586.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $250,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.''.

(2) TABLE OF CONTENTS.—The table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C.6301 note) is amended by inserting after the item relating to section 1120B the following:

''Sec. 1120C. Grants for school construction and renovation.''.

**SEC. 402. SUPPLEMENTAL EDUCATIONAL SERVICES.**

Section 1116(e) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(e)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (B), by striking the semicolon and inserting '', including criteria that—

''(i) ensure that personnel delivering supplemental educational services to students have adequate qualifications; and

''(ii) may, at the State's discretion, ensure that personnel delivering supplemental educational services to students are teachers that are highly qualified, as such term is defined in section 9101;'';

(B) in subparagraph (D), by striking ''and'' after the semicolon;

(C) in subparagraph (E), by striking the period and inserting ''; and''; and

(D) by adding at the end the following:

''(F) ensure that the list of approved providers of supplemental educational services described in subparagraph (C) includes a choice of providers that have sufficient capacity to provide effective services for children who are limited English proficient and children with disabilities.'';

(2) in paragraph (5)(C)—

(A) by striking ''applicable''; and

(B) by inserting before the period '', and acknowledge in writing that, as an approved provider in the relevant State educational agency program of providing supplemental educational services, the provider is deemed to be a recipient of Federal financial assistance'';

(3) by redesignating paragraphs (6), (7), (8), (9), (10), (11), and (12) as paragraphs (7), (8), (9), (10), (11), (12), and (13), respectively;

(4) by inserting after paragraph (5) the following:

''(6) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a local educational agency from being considered by a State educational agency as a potential provider of supplemental educational services under this subsection, if such local educational agency meets the criteria adopted by the State educational agency in accordance with paragraph (5).'';

(5) in paragraph (13) (as redesignated by paragraph (3))—

(A) in subparagraph (B)—

(i) in clause (ii), by striking ''and'' after the semicolon;

(ii) in clause (iii), by striking ''and'' after the semicolon; and

(iii) by adding at the end the following:

''(iv) may employ teachers who are highly qualified, as such term is defined in section 9101; and

''(v) pursuant to its inclusion on the relevant State educational agency's list described in paragraph (4)(C), is deemed to be a recipient of Federal financial assistance; and''; and

(B) in subparagraph (C)—

(i) in the matter preceding clause (i), by striking ''are'';

(ii) in clause (i)—

(I) by inserting ''are'' before ''in addition''; and

(II) by striking ''and'' after the semicolon;

(iii) in clause (ii), by striking the period and inserting ''; and''; and

(iv) by adding at the end the following:

''(iii) if provided by providers that are included on the relevant State educational agency's list described in paragraph (4)(C), shall be deemed to be programs or activities of the relevant State educational agency.''; and

(6) by adding at the end the following:

''(14) CIVIL RIGHTS.—In providing supplemental educational services under this subsection, no State educational agency or local educational agency may, directly or through contractual, licensing, or other arrangements with a provider of supplemental educational services, engage in any form of discrimination prohibited by—

''(A) title VI of the Civil Rights Act of 1964;

''(B) title IX of the Education Amendments of 1972;

''(C) section 504 of the Rehabilitation Act of 1973;

''(D) titles II and III of the Americans with Disabilities Act;

''(E) the Age Discrimination Act of 1975;

''(F) regulations promulgated under the authority of the laws listed in subparagraphs (A) through (E); or

''(G) other Federal civil rights laws.''.

**SEC. 403. QUALIFICATIONS FOR TEACHERS AND PARAPROFESSIONALS.**

(a) HIGH OBJECTIVE UNIFORM STATE STANDARD OF EVALUATION.—Section 1119 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6319) is amended—

(1) in subsection (a)(2)—

(A) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and indenting as appropriate;

(B) by striking ''(2) STATE PLAN.—As part'' and inserting the following:

''(2) STATE PLAN.—

''(A) IN GENERAL.—As part''; and

(C) by adding at the end the following:

''(B) AVAILABILITY OF STATE STANDARDS.—Each State educational agency shall make available to teachers in the State the high objective uniform State standard of evaluation, as described in section 9101(23)(C)(ii), for the purpose of meeting the teacher qualification requirements established under this section.'';

(2) by redesignating subsections (e), (f), (g), (h), (i), (j), (k), and (l) as subsections (f), (g), (h), (i), (j), (k), (l), and (m), respectively;

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

''(e) STATE RESPONSIBILITIES.—Each State educational agency shall ensure that local educational agencies in the State make available all options described in subparagraphs (A) through (C) of subsection (c)(1) to each new or existing paraprofessional for the purpose of demonstrating the qualifications of the paraprofessional, consistent with the requirements of this section.''; and

(4) in subsection (l) (as redesignated by paragraph (2)), by striking ''subsection (l)'' and inserting ''subsection (m)''.

(b) DEFINITION OF HIGHLY QUALIFIED TEACHERS.—Section 9101(23)(B)(ii) is amended—

(1) in subclause (I), by striking ''or'' after the semicolon;

(2) in subclause (II), by striking ''and'' after the semicolon; and

(3) by adding at the end the following:

''(III) in the case of a middle school teacher, passing a State-approved middle school generalist exam when the teacher receives a license to teach middle school in the State;

''(IV) obtaining a State middle school or secondary school social studies certificate that qualifies the teacher to teach history, geography, economics, civics, and government in middle schools or in secondary schools, respectively, in the State; or

''(V) obtaining a State middle school or secondary school science certificate that qualifies the teacher to teach earth science, biology, chemistry, and physics in middle schools or secondary schools, respectively, in the State; and''.

(c) ENSURING HIGHLY QUALIFIED TEACHERS.—

(1) REQUIREMENT.—The Secretary of Education shall improve coordination among the teacher quality programs authorized under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), and the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), to provide a unified effort in strengthening the American teaching workforce and ensuring highly qualified teachers.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Education shall submit a report to the relevant committees of Congress, that shall be made available on the website of the Department of Education, on efforts to coordinate programs pursuant to paragraph (1).

## Subtitle B—Adequate Yearly Progress Determinations

### SEC. 421. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR SCHOOLS FOR THE 2002–2003 SCHOOL YEAR.

(a) IN GENERAL.—The Secretary shall require each local educational agency to provide each school served by the agency with an opportunity to request a review of a determination by the agency that the school did not make adequate yearly progress for the 2002–2003 school year.

(b) FINAL DETERMINATION.—Not later than 30 days after receipt of a request by a school for a review under this section, a local educational agency shall issue and make publicly available a final determination on whether the school made adequate yearly progress for the 2002–2003 school year.

(c) EVIDENCE.—In conducting a review under this section, a local educational agency shall—

(1) allow the principal of the school involved to submit evidence on whether the school made adequate yearly progress for the 2002–2003 school year; and

(2) consider that evidence before making a final determination under subsection (b).

(d) STANDARD OF REVIEW.—In conducting a review under this section, a local educational agency shall revise, consistent with the applicable State plan under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311), the local educational agency's original determination that a school did not make adequate yearly progress for the 2002–2003 school year if the agency finds that the school made such progress, taking into consideration—

(1) the amendments made to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698) (relating to accountability for the academic achievement of students with the most significant cognitive disabilities); or

(2) any regulation or guidance that, subsequent to the date of such original determination, was issued by the Secretary relating to—

(A) the assessment of limited English proficient children;

(B) the inclusion of limited English proficient children as part of the subgroup described in section 1111(b)(2)(C)(v)(II)(dd) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(v)(II)(dd)) after such children have obtained English proficiency; or

(C) any requirement under section 1111(b)(2)(I)(ii) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(I)(ii)).

(e) EFFECT OF REVISED DETERMINATION.—

(1) IN GENERAL.—If pursuant to a review under this section a local educational agency determines that a school made adequate yearly progress for the 2002–2003 school year, upon such determination—

(A) any action by the Secretary, the State educational agency, or the local educational agency that was taken because of a prior determination that the school did not make such progress shall be terminated; and

(B) any obligations or actions required of the local educational agency or the school because of the prior determination shall cease to be required.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), a determination under this section shall not affect any obligation or action required of a local educational agency or school under the following:

(A) Section 1116(b)(13) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(13)) (requiring a local educational agency to continue to permit a child who transferred to another school under such section to remain in that school until completion of the highest grade in the school).

(B) Section 1116(e)(9) of the Elementary and Secondary Education Act of 1965 (as redesignated by section 402(3)) (20 U.S.C. 6316(e)(9)) (requiring a local educational agency to continue to provide supplemental educational services under such section until the end of the school year).

(3) SUBSEQUENT DETERMINATIONS.—In determining whether a school is subject to school improvement, corrective action, or restructuring as a result of not making adequate yearly progress, the Secretary, a State educational agency, or a local educational agency may not take into account a determination that the school did not make adequate yearly progress for the 2002–2003 school year if such determination was revised under this section and the school received a final determination of having made adequate yearly progress for the 2002–2003 school year.

(f) NOTIFICATION.—The Secretary—

(1) shall require each State educational agency to notify each school served by the agency of the school's ability to request a review under this section; and

(2) not later than 30 days after the date of the enactment of this section, shall notify the public by means of the Department of Education's website of the review process established under this section.

### SEC. 422. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR LOCAL EDUCATIONAL AGENCIES FOR THE 2002–2003 SCHOOL YEAR.

(a) IN GENERAL.—The Secretary shall require each State educational agency to provide each local educational agency in the State with an opportunity to request a review of a determination by the State educational agency that the local educational agency did not make adequate yearly progress for the 2002–2003 school year.

(b) APPLICATION OF CERTAIN PROVISIONS.—Except as inconsistent with, or inapplicable to, this section, the provisions of section 421 shall apply to review by a State educational agency of a determination described in subsection (a) in the same manner and to the same extent as such provisions apply to review by a local educational agency of a determination described in section 421(a).

### SEC. 423. DEFINITIONS.

In this subtitle:

(1) The term ''adequate yearly progress'' has the meaning given to that term in section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)).

(2) The term ''local educational agency'' means a local educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) receiving funds under part A of title I of such Act (20 U.S.C. 6311 et seq.).

(3) The term ''Secretary'' means the Secretary of Education.

(4) The term ''school'' means an elementary school or a secondary school (as those terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) served under part A of title I of such Act (20 U.S.C. 6311 et seq.).

(5) The term ''State educational agency'' means a State educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) receiving funds under part A of title I of such Act (20 U.S.C. 6311 et seq.).

## Subtitle C—Technical Assistance

### SEC. 451. TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Part F of title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7941) is amended—

(1) in the part heading, by inserting ''**AND TECHNICAL ASSISTANCE**'' after ''**EVALUATIONS**''; and

(2) by adding at the end the following:

### ''SEC. 9602. TECHNICAL ASSISTANCE.

''The Secretary shall ensure that the technical assistance provided by, and the research developed and disseminated through, the Institute of Education Sciences and other offices or agencies of the Department provide educators and parents with the needed information and support for identifying and using educational strategies, programs, and practices, including strategies, programs, and practices available through the clearinghouses supported under the Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) and other federally supported clearinghouses, that have been successful in improving educational opportunities and achievement for all students.''.

(b) TABLE OF CONTENTS.—The table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 note) is amended by inserting after the item relating to section 9601 the following:

''Sec. 9602. Technical assistance.''.

**TITLE V—IMPROVING ASSESSMENT AND ACCOUNTABILITY**

**SEC. 501. GRANTS FOR INCREASING DATA CAPACITY FOR PURPOSES OF ASSESSMENT AND ACCOUNTABILITY.**

(a) PROGRAM AUTHORIZED.—From funds appropriated for a fiscal year, the Secretary may award grants, on a competitive basis, to State educational agencies—

(1) to enable the State educational agencies to develop or increase the capacity of data systems for assessment and accountability purposes, including the collection of graduation rates; and

(2) to award subgrants to increase the capacity of local educational agencies to upgrade, create, or manage longitudinal data systems for the purpose of measuring student academic progress and achievement.

(b) STATE APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) STATE USE OF FUNDS.—Each State educational agency that receives a grant under this section shall use—

(1) not more than 20 percent of the grant funds for the purpose of—

(A) increasing the capacity of, or creating, State databases to collect, disaggregate, and report information related to student achievement, enrollment, and graduation rates for assessment and accountability purposes; and

(B) reporting, on an annual basis, for the elementary schools and secondary schools within the State, on—

(i) the enrollment data from the beginning of the academic year;

(ii) the enrollment data from the end of the academic year; and

(iii) the twelfth grade graduation rates; and

(2) not less than 80 percent of the grant funds to award subgrants to local educational agencies within the State to enable the local educational agencies to carry out the authorized activities described in subsection (e).

(d) LOCAL APPLICATION.—Each local educational agency desiring a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Each such application shall include, at a minimum, a demonstration of the local educational agency's ability to put a longitudinal data system in place.

(e) LOCAL AUTHORIZED ACTIVITIES.—Each local educational agency that receives a subgrant under this section shall use the subgrant funds to increase the capacity of the local educational agency to upgrade or manage longitudinal data systems consistent with the uses in subsection (c)(1), by—

(1) purchasing database software or hardware;

(2) hiring additional staff for the purpose of managing such data;

(3) providing professional development or additional training for such staff; and

(4) providing professional development or training for principals and teachers on how to effectively use such data to implement instructional strategies to improve student achievement and graduation rates.

(f) DEFINITIONS.—In this section:

(1) GRADUATION RATE.—The term ''graduation rate'' means the percentage that—

(A) the total number of students who—

(i) graduate from a secondary school with a regular diploma (which shall not include the recognized equivalent of a secondary school diploma or an alternative degree) in an academic year; and

(ii) graduated on time by progressing 1 grade per academic year; represents of

(B) the total number of students who entered the secondary school in the entry level academic year applicable to the graduating students.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(3) STATE EDUCATIONAL AGENCY AND LOCAL EDUCATIONAL AGENCY.—The terms ''State educational agency'' and ''local educational agency'' have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $100,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.

**SEC. 502. GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.**

(a) GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.—Part E of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6491 et seq.) is amended by adding at the end the following:

**''SEC. 1505. GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.**

''(a) GRANTS AUTHORIZED.—From amounts authorized to be appropriated under subsection (e) for a fiscal year, the Secretary shall award grants, on a competitive basis, to State educational agencies, or to consortia of State educational agencies, to enable the State educational agencies or consortia to collaborate with institutions of higher education, research institutions, or other organizations—

''(1) to design and improve State academic assessments for students who are limited English proficient and students with disabilities; and

''(2) to ensure the most accurate, valid, and reliable means to assess academic content standards and student academic achievement standards for students who are limited English proficient and students with disabilities.

''(b) AUTHORIZED ACTIVITIES.—A State educational agency or consortium that receives a grant under this section shall use the grant funds to carry out 1 or more of the following activities:

''(1) Developing alternate assessments for students with disabilities, consistent with section 1111 and the amendments made on December 9, 2003, to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698) (relating to accountability for the academic achievement of students with the most significant cognitive disabilities), including—

''(A) the alignment of such assessments, as appropriate and consistent with such amendments, with—

''(i) State student academic achievement standards and State academic content standards for all students; or

''(ii) alternate State student academic achievement standards that reflect the intended instructional construct for students with disabilities;

''(B) activities to ensure that such assessments do not reflect the disabilities, or associated characteristics, of the students that are extraneous to the intent of the measurement;

''(C) the development of an implementation plan for pilot tests for such assessments, in order to determine the level of appropriateness and feasibility of full-scale administration; and

''(D) activities that provide for the retention of all feasible standardized features in the alternate assessments.

''(2) Developing alternate assessments that meet the requirements of section 1111 for students who are limited English proficient, including—

''(A) the alignment of such assessments with State student academic achievement standards and State academic content standards for all students;

''(B) the development of parallel native language assessments or linguistically modified assessments for limited English proficient students that meet the requirements of section 1111(b)(3)(C)(ix)(III);

''(C) the development of an implementation plan for pilot tests for such assessments, in order to determine the level of appropriateness and feasibility of full-scale administration; and

''(D) activities that provide for the retention of all feasible standardized features in the alternate assessments.

''(3) Developing, modifying, or revising State policies and criteria for appropriate accommodations to ensure the full participation of students who are limited English proficient and students with disabilities in State academic assessments, including—

''(A) developing a plan to ensure that assessments provided with accommodations are fully included and integrated into the accountability system, for the purpose of making the determinations of adequate yearly progress required under section 1116;

''(B) ensuring the validity, reliability, and appropriateness of such accommodations, such as—

''(i) a modification to the presentation or format of the assessment;

''(ii) the use of assistive devices;

''(iii) an extension of the time allowed for testing;

''(iv) an alteration of the test setting or procedures;

''(v) the administration of portions of the test in a method appropriate for the level of language proficiency of the test taker;

''(vi) the use of a glossary or dictionary; and

''(vii) the use of a linguistically modified assessment;

''(C) ensuring that State policies and criteria for appropriate accommodations take into account the form or program of instruction provided to students, including the level of difficulty, reliability, cultural difference, and content equivalence of such form or program;

''(D) ensuring that such policies are consistent with the standards prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

''(E) developing a plan for providing training on the use of accommodations to school instructional staff, families, students, and other appropriate parties.

''(4) Developing universally designed assessments that can be accessible to all students, including—

''(A) examining test item or test performance for students with disabilities and students who are limited English proficient, to determine the extent to which the test item or test is universally designed;

''(B) using think aloud and cognitive laboratory procedures, as well as item statistics, to identify test items that may pose particular problems for students with disabilities or students who are limited English proficient;

''(C) developing and implementing a plan to ensure that developers and reviewers of test items are trained in the principles of universal design; and

''(D) developing computer-based applications of universal design principles.

''(c) APPLICATION.—Each State educational agency, or consortium of State educational agencies, desiring to apply for a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

''(1) information regarding the institutions of higher education, research institutions, or other organizations that are collaborating with the State educational agency or consortium, in accordance with subsection (a);

''(2) in the case of a consortium of State educational agencies, the designation of 1 State educational agency as the fiscal agent for the receipt of grant funds;

''(3) a description of the process and criteria by which the State educational agency will identify students that are unable to participate in general State content assessments and are eligible to take alternate assessments, consistent with the amendments made to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698);

''(4) in the case of a State educational agency or consortium carrying out the activity described in subsection (b)(1)(A), a description of how the State educational agency plans to fulfill the requirement of subsection (b)(1)(A);

''(5) in the case of a State educational agency or consortium carrying out the activities described in paragraphs (1), (2), and (4) of subsection (b), information regarding the proposed techniques for the development of alternate assessments, including a description of the technical adequacy of, technical aspects of, and scoring for such assessments;

''(6) a plan for providing training for school instructional staff, families, students, and other appropriate parties on the use of alternate assessments; and

''(7) information on how the scores of students participating in alternate assessments will be reported to the public and to parents.

''(d) EVALUATION AND REPORTING REQUIREMENTS.—Each State educational agency receiving a grant under this section shall submit an annual report to the Secretary describing the activities carried out under the grant and the result of such activities, including—

''(1) details on the effectiveness of the activities supported under this section in helping students with disabilities, or students who are limited English proficient, better participate in State assessment programs; and

''(2) information on the change in achievement, if any, of students with disabilities and students who are limited English proficient, as a result of a more accurate assessment of such students.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.''.

(b) TABLE OF CONTENTS.—The table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 note) is amended by inserting after the item relating to section 1504 the following:

''Sec. 1505. Grants for assessment of children with disabilities and children who are limited English proficient.''.

**SEC. 503. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES.**

(a) STUDENT ENROLLMENT AND GRADUATION RATES.—Part E of title I of the Elementary and Secondary Education Act of 1965 (as amended by section 502) (20 U.S.C. 6491 et seq.) is amended by adding at the end the following:

**''SEC. 1506. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES.**

''(a) IN GENERAL.—The Secretary shall collect from each State educational agency, local educational agency, and school, on an annual basis, the following data:

''(1) The number of students enrolled in each of grades 7 through 12 at the beginning of the most recent school year.

''(2) The number of students enrolled in each of grades 7 through 12 at the end of the most recent school year.

''(3) The graduation rate for the most recent school year.

''(4) The data described in paragraphs (1) through (3), disaggregated by the groups of students described in section 1111(b)(2)(C)(v)(II).

''(b) ANNUAL REPORT.—The Secretary shall report the information collected under subsection (a) on an annual basis.''.

(b) TABLE OF CONTENTS.—The table of contents of the Elementary and Secondary Education Act of 1965 (as amended by section 502(b)) (20 U.S.C. 6301 note) is amended by inserting after the item relating to section 1505 the following:

''Sec. 1506. Reports on student enrollment and graduation rates.''.

**SEC. 504. CIVIL RIGHTS.**

Section 9534 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7914) is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting before subsection (b) (as redesignated by paragraph (1)) the following:

''(a) PROHIBITION OF DISCRIMINATION.—Discrimination on the basis of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act is prohibited.''.

## TITLE VI—SENSE OF THE SENATE REGARDING FUNDING FOR ELEMENTARY AND SECONDARY EDUCATION

**SEC. 601. SENSE OF THE SENATE.**

(a) FINDINGS.—The Senate finds the following:

(1) Congress enacted, with bipartisan support, and the President signed into law the No Child Left Behind Act of 2001 (Public Law 107–210; 115 Stat. 1425), that reauthorized the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.). The new law required States to set high standards for learning and required schools to implement reforms to help improve student achievement. In return, Congress and the President pledged to make sure schools would have resources to carry out the reforms as called for in the new law.

(2) $22,750,000,000 is needed to fund part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) in fiscal year 2006, as promised pursuant to the No Child Left Behind Act of 2001 (Public Law 107–210; 115 Stat. 1425).

(3) $25,000,000,000 is needed to fund part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) in fiscal year 2007, as promised pursuant to the No Child Left Behind Act of 2001 (Public Law 107–210; 115 Stat. 1425).

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) it is in the best interest of the Nation that all students have access to a high-quality elementary and secondary education; and

(2) part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) should be funded as promised pursuant to the No Child Left Behind Act of 2001 (Public Law 107–210; 115 Stat. 1425).

## TITLE VII—PROVIDING A ROADMAP FOR FIRST GENERATION COLLEGE FOR STUDENTS

**SEC. 701. EXPANSION OF TRIO AND GEARUP.**

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 402A(f), by striking ''$700,000,000 for fiscal year 1999'' and inserting ''$1,000,000,000 for fiscal year 2006''; and

(2) by striking section 404H and inserting the following:

**''SEC. 404H. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated to carry out this chapter $400,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 4 succeeding fiscal years.''.

## TITLE VIII—COLLEGE TUITION RELIEF FOR STUDENTS AND THEIR FAMILIES THROUGH PELL GRANTS

**SEC. 801. PELL GRANTS TAX TABLES HOLD HARMLESS.**

Notwithstanding any other provision of law, the annual updates to the allowance for State and other taxes in the tables used in the Federal Need Analysis Methodology to determine a student's expected family contribution for the award year 2005–2006 under part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk et seq.), published in the Federal Register on Thursday, December 23, 2004 (69 Fed. Reg. 76926), shall not apply to a student to the extent the updates will reduce the amount of Federal student assistance for which the student is eligible.

**SEC. 802. SENSE OF THE SENATE REGARDING INCREASING THE MAXIMUM PELL GRANT.**

(a) FINDINGS.—The Senate makes the following findings:

(1) Increasing the percentage of individuals who obtain a postsecondary education has become increasingly important, not just to the individual beneficiary, but to the Nation as a whole. The growth and continued expansion of the Nation's economy is heavily dependent on an educated and highly skilled workforce.

(2) The opportunity to gain a postsecondary education also is important to the Nation as a means to help advance the American ideals of progress and equality.

(3) The Federal Government plays an invaluable role in making student financial aid available to ensure that qualified students are able to attend college, regardless of their financial means. Since the inception of the Pell Grant program in 1973, nearly 80,000,000 grants have helped low- and middle-income students go to college, enrich their lives, and become productive members of society.

(4) Nationwide, almost 63 percent of secondary school graduates continue on to higher education immediately after completing secondary school. This degree of college participation would not exist without the Federal investment in student aid, especially the Pell Grant program. More than 4,000,000 low- and middle-income students receive Pell Grants; 95 percent of whom have a family income of not more than $40,000.

(5) In the next 10 years, the number of undergraduate students enrolled in the Nation's colleges and universities will increase by 15 percent to more than 15,000,000 students. Many of these students will be the first in their families to attend college. The continued investment in the Pell Grant program is essential if college is to remain an achievable part of the American dream.

(6) Increasing the maximum Pell Grant to $5,100 would allow more than 430,000 additional students to benefit from the program.

(7) Increasing the maximum Pell Grant to $5,100 would result in 200,000 new Pell Grant recipients.

(8) Pell Grant recipients are more likely to graduate with student loan debt and to amass more debt than other student borrowers. Increasing the maximum Pell Grant to $5,100 will help remedy this disparity.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the maximum Pell Grant should be increased to $5,100 during award year 2006–2007; and

(2) the maximum Pell Grant amount set by Congress should be the amount eligible students receive.

**SEC. 803. ESTABLISHMENT OF A PELL DEMONSTRATION PROGRAM.**

(a) FINDINGS.—Congress finds that:

(1) A student remains eligible to receive a Federal Pell Grant as long as the student is income-eligible and has not received a bachelor's degree.

(2) By encouraging persistence and degree acquisition in a timely manner, the Federal Government, in effect, saves money—

(A) by reducing the courses that do not lead to a degree; and

(B) by helping students get the financial benefits of a college degree as soon as possible.

(b) PELL DEMONSTRATION PROGRAM.—

(1) AUTHORIZATION.—The Secretary of Education shall establish a demonstration program to facilitate the ability of low-income students to complete the students' degree within 150 percent of the time expected to complete such degree.

(2) GRANTS.—The Secretary of Education shall award competitive grants to institutions of higher education to enable students who are eligible to receive Federal Pell Grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.) to enroll in courses in the summer at such institutions to expedite the students' graduation from the institutions.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $500,000,000 for the period of fiscal years 2006 through 2008.

## TITLE IX—TUITION FREE COLLEGE FOR MATHEMATICS, SCIENCE, AND SPECIAL EDUCATION TEACHERS

**SEC. 901. PURPOSE.**

It is the purpose of this title to make public college tuition free for future mathematics, science, and special education teachers and to provide additional assistance to students eligible to receive a Federal Pell Grant under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.).

**SEC. 902. TUITION FREE COLLEGE FOR MATHEMATICS, SCIENCE, AND SPECIAL EDUCATION TEACHERS.**

(a) ADDITIONAL AMOUNTS FOR TEACHERS IN MATHEMATICS, SCIENCE, AND SPECIAL EDUCATION.—

(1) FFEL LOANS.—Section 428J(c)(3) of the Higher Education Act of 1965 (20 U.S.C. 1078–10(c)(3)) is amended by striking ''$17,500'' and inserting ''$23,000''.

(2) DIRECT LOANS.—Section 460(c)(3) of the Higher Education Act of 1965 (20 U.S.C. 1087j(c)(3)) is amended by striking ''$17,500'' and inserting ''$23,000''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to eligible individuals who are new borrowers on or after October 1, 1998.

**SEC. 903. OFFSET FOR TUITION FREE COLLEGE FOR MATHEMATICS, SCIENCE, AND SPECIAL EDUCATION TEACHERS.**

(a) SPECIAL ALLOWANCES.—

(1) IN GENERAL.—Section 438(b)(2)(B) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(B)) is amended—

(A) in clause (iv), by striking ''or refunded after September 30, 2004, and before January 1, 2006,'' and inserting ''or refunded on or after the date of enactment of the Taxpayer-Teacher Protection Act of 2004,''; and

(B) by striking clause (v) and inserting the following:

''(v) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, or paragraph (4), as the case may be, for loans—

''(I) originated, transferred, or purchased on or after the date of enactment of the Taxpayer-Teacher Protection Act of 2004;

''(II) financed by an obligation that has matured, been retired, or defeased on or after the date of enactment of the Taxpayer-Teacher Protection Act of 2004;

''(III) which the special allowance was determined under such subparagraphs or paragraph, as the case may be, on or after the date of enactment of the Taxpayer-Teacher Protection Act of 2004;

''(IV) for which the maturity date of the obligation from which funds were obtained for such loans was extended on or after the date of enactment of the Taxpayer-Teacher Protection Act of 2004; or

''(V) sold or transferred to any other holder on or after the date of enactment of the Taxpayer-Teacher Protection Act of 2004.''.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to abrogate a contractual agreement between the Federal Government and a student loan provider.

(b) AVAILABLE FUNDS FROM REDUCED EXPENDITURES.—

(1) IN GENERAL.—Any funds available to the Secretary of Education as a result of reduced expenditures under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1) secured by the enactment of subsection (a) shall first be used by the Secretary for loan cancellation and loan forgiveness for teachers under sections 428J and 460 of the Higher Education Act of 1965 (20 U.S.C. 1078–10, 1087j), as amended by section 902 of this Act.

(2) REMAINING FUNDS.—

(A) IN GENERAL.—Any such funds remaining after carrying out paragraph (1) shall be used by the Secretary of Education to make payments to each nonprofit lender in an amount that bears the same relation to the remaining funds as the amount the nonprofit lender receives for fiscal year 2005 under section 438(b)(2)(B) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(B)) bears to the total amount received by nonprofit lenders for fiscal year 2005 under such section.

(B) DEFINITION OF NONPROFIT LENDER.—In this paragraph the term ''nonprofit lender'' means an eligible lender (as defined in section 435(d) of the Higher Education Act of 1965 (20 U.S.C.1085(d)) that—

(i) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) is a nonprofit entity as defined by applicable State law; and

(iii) meets the following requirements:

(I) The nonprofit lender does not confer a salary or benefits to any employee of the nonprofit lender in an amount that is in excess of the salary and benefits provided to the Secretary of Education by the Department of Education.

(II) The nonprofit lender does not maintain an ongoing relationship whereby the nonprofit lender passes on revenue directly or indirectly through lease, securitization, resale, or any other financial instrument to a for-profit entity or to shareholders.

(III) The nonprofit lender does not offer benefits to a borrower in a manner directly or indirectly predicated on such borrower's participation—

(aa) in a program under part B or D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq.); or

(bb) with any particular lender.

(IV) The nonprofit lender certifies that the nonprofit lender uses the payment received pursuant to subparagraph (A) to confer grant or scholarship benefits to students who are eligible to receive Federal Pell Grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.).

(V) The nonprofit lender is subject to public oversight through either a State charter, or through not less than 50 percent of the nonprofit lender's board of directors consisting of State appointed representatives.

(VI) The nonprofit lender does not engage in the marketing of the relative value of programs under part B of title IV of the Higher Education Act of 1965 as compared to programs under part D of title IV of the Higher Education Act of 1965, nor does the nonprofit lender engage in the marketing of loans or programs offered by for-profit lenders. This subclause shall not be construed to prohibit the nonprofit lender from conferring basic information on lenders under part B of title IV of the Higher Education Act of 1965 and the related benefits offered by such nonprofit lenders.

## TITLE X—MAKING COLLEGE AFFORDABLE FOR ALL STUDENTS

**SEC. 1001. EXPANSION OF DEDUCTION FOR HIGHER EDUCATION EXPENSES.**

(a) AMOUNT OF DEDUCTION.—Subsection (b) of section 222 of the Internal Revenue Code of 1986 (relating to deduction for qualified tuition and related expenses) is amended to read as follows:

''(b) LIMITATIONS.—

''(1) DOLLAR LIMITATIONS.—

''(A) IN GENERAL.—Except as provided in paragraph (2), the amount allowed as a deduction under subsection (a) with respect to the taxpayer for any taxable year shall not exceed the applicable dollar limit.

''(B) APPLICABLE DOLLAR LIMIT.—The applicable dollar limit for any taxable year shall be determined as follows:

| ''Taxable year: | Applicable dollar amount: |
|---|---|
| 2005 and 2006 | $6,000 |
| 2007 and 2008 | $8,000 |
| 2009 and 2010 | $10,000 |
| 2011 and thereafter | $12,000. |

''(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—The amount which would (but for this paragraph) be taken into account under subsection (a) shall be reduced (but not below zero) by the amount determined under subparagraph (B).

''(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph equals the amount which bears the same ratio to the amount which would be so taken into account as—

''(i) the excess of—

''(I) the taxpayer's modified adjusted gross income for such taxable year, over

''(II) $65,000 ($130,000 in the case of a joint return), bears to

''(ii) $15,000 ($30,000 in the case of a joint return).

''(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

''(i) without regard to this section and sections 199, 911, 931, and 933, and

''(ii) after the application of sections 86, 135, 137, 219, 221, and 469.

For purposes of the sections referred to in clause (ii), adjusted gross income shall be determined without regard to the deduction allowed under this section.

''(D) INFLATION ADJUSTMENTS.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, both of the dollar amounts in subparagraph (B)(i)(II) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.''.

(b) QUALIFIED TUITION AND RELATED EXPENSES OF ELIGIBLE STUDENTS.—

(1) IN GENERAL.—Section 222(a) of the Internal Revenue Code of 1986 (relating to allowance of deduction) is amended by inserting ''of eligible students'' after ''expenses''.

(2) DEFINITION OF ELIGIBLE STUDENT.—Section 222(d) of such Code (relating to definitions and special rules) is amended by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2) ELIGIBLE STUDENT.—The term 'eligible student' has the meaning given such term by section 36(b)(3).''.

(c) DEDUCTION MADE PERMANENT.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to the amendments made by section 431 of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 2004.

**SEC. 1002. CREDIT FOR INTEREST ON HIGHER EDUCATION LOANS.**

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

**''SEC. 25C. INTEREST ON HIGHER EDUCATION LOANS.**

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

''(b) MAXIMUM CREDIT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the credit allowed by subsection (a) for the taxable year shall not exceed $1,500.

''(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000 ($100,000 in the case of a joint return), the amount which would (but for this paragraph) be allowable as a credit under this section shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so allowable as such excess bears to $20,000 ($40,000 in the case of a joint return).

''(B) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined without regard to sections 199, 222, 911, 931, and 933.

''(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after 2005, the $50,000 and $100,000 amounts referred to in subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting '2004' for '1992'.

''(D) ROUNDING.—If any amount as adjusted under subparagraph (C) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

''(c) DEPENDENTS NOT ELIGIBLE FOR CREDIT.—No credit shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

''(d) LIMIT ON PERIOD CREDIT ALLOWED.—A credit shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

''(e) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED EDUCATION LOAN.—The term 'qualified education loan' has the meaning given such term by section 221(d)(1).

''(2) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

''(f) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any amount taken into account for any deduction under any other provision of this chapter.

''(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

''(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Interest on higher education loans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any qualified education loan (as defined in section 25C(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act, but only with respect to any loan interest payment due after December 31, 2004.

**SEC. 1003. HOPE AND LIFETIME LEARNING CREDITS TO BE REFUNDABLE.**

(a) CREDIT TO BE REFUNDABLE.—Section 25A of the Internal Revenue Code of 1986 (relating to Hope and Lifetime Learning credits) is hereby moved to subpart C of part IV of subchapter A of chapter 1 of such Code (relating to refundable credits) and inserted after section 35.

(b) TECHNICAL AMENDMENTS.—

(1) Section 36 of such Code is redesignated as section 37.

(2) Section 25A of such Code (as moved by subsection (a)) is redesignated as section 36.

(3) Paragraph (1) of section 36(a) of such Code (as redesignated by paragraph (2)) is amended by striking ''this chapter'' and inserting ''this subtitle''.

(4) Subparagraph (B) of section 72(t)(7) of such Code is amended by striking ''section 25A(g)(2)'' and inserting ''section 36(g)(2)''.

(5) Subparagraph (A) of section 135(d)(2) of such Code is amended by striking ''section 25A'' and inserting ''section 36''.

(6) Section 221(d) of such Code is amended—

(A) by striking ''section 25A(g)(2)'' in paragraph (2)(B) and inserting ''section 36(g)(2)'',

(B) by striking ''section 25A(f)(2)'' in the matter following paragraph (2)(B) and inserting ''section 36(f)(2)'', and

(C) by striking ''section 25A(b)(3)'' in paragraph (3) and inserting ''section 36(b)(3)''.

(7) Section 222 of such Code is amended—

(A) by striking ''section 25A'' in subparagraph (A) of subsection (c)(2) and inserting ''section 36'',

(B) by striking ''section 25A(f)'' in subsection (d)(1) and inserting ''section 36(f)'', and

(C) by striking ''section 25A(g)(2)'' in subsection (d)(1) and inserting ''section 36(g)(2)''.

(8) Section 529 of such Code is amended—

(A) by striking ''section 25A(g)(2)'' in subclause (I) of subsection (c)(3)(B)(v) and inserting ''section 36(g)(2)'',

(B) by striking ''section 25A'' in subclause (II) of subsection (c)(3)(B)(v) and inserting ''section 36'', and

(C) by striking ''section 25A(b)(3)'' in clause (i) of subsection (e)(3)(B) and inserting ''section 36(b)(3)''.

(9) Section 530 of such Code is amended—

(A) by striking ''section 25A(g)(2)'' in subclause (I) of subsection (d)(2)(C)(i) and inserting ''section 36(g)(2)'',

(B) by striking ''section 25A'' in subclause (II) of subsection (d)(2)(C)(i) and inserting ''section 36'', and

(C) by striking ''section 25A(g)(2)'' in clause (iii) of subsection (d)(4)(B) and inserting ''section 36(g)(2)''.

(10) Subsection (e) of section 6050S of such Code is amended by striking ''section 25A'' and inserting ''section 36''.

(11) Subparagraph (J) of section 6213(g)(2) of such Code is amended by striking ''section 25A(g)(1)'' and inserting ''section 36(g)(1)''.

(12) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ''or from section 36 of such Code''.

(13) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 36 and inserting the following:

''Sec. 36. Hope and Lifetime Learning credits.

''Sec. 37. Overpayments of tax.''.

(14) The table of sections for subpart A of such part IV is amended by striking the item relating to section 25A.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

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By Mr. KENNEDY (for himself, Mr. REID, Ms. STABENOW, Mr. CORZINE, Mr. SCHUMER, Ms. MIKULSKI, Mr. AKAKA, Mr. INOUYE, Mr. LEVIN, Mr. KERRY, Mr. LAUTENBERG, Mr. ROCKEFELLER, Mr. DODD, Mr. PRYOR, and Mr. DURBIN):

S. 16. A bill to reduce to the cost of quality health care coverage and improve the availability of health care coverage for all Americans; to the Committee on Finance.

Mr. KENNEDY. Mr. President, it's an honor to join our Democratic Leader and so many of our colleagues in introducing the Affordable Health Care Act.

This legislation states our strong commitment as Democrats to end the crisis in health care that affects every family. It's a down payment on our commitment to quality, affordable health care for every American, and we

will not rest until that goal is achieved.

The worsening crisis in health care is caused by skyrocketing costs, declining insurance coverage, and less security for every family. Businesses—especially small businesses—find it increasingly difficult to provide decent coverage for their employees. Companies struggling with foreign competition are at an every-larger competitive disadvantage because of their constantly rising costs.

Last year, the percentage of the Nation's gross domestic product devoted to health was 15.5%, the highest in our history. Since 2000, annual spending on health care has risen from $1.3 trillion to $1.7 trillion, an increase of almost half a trillion dollars in just four years.

Even worse, insurance premiums have soared by 59 percent during those four years. The cost of insurance for a family has risen by almost $3,000. Last year, the cost of the premiums for family coverage averaged $10,000, and was much higher for many families.

Drug costs are also out of control. According to current data, they rose 47 percent in the first three years of the Bush Administration. Too many patients are cutting the pills their doctors prescribe in half or going without them altogether, because they can't afford the drugs they need to treat or prevent disease.

Even Medicare premiums are out of control. The largest premium increase in Medicare's history went into effect just three weeks ago. Since President Bush took office, Medicare premiums have climbed by 72 percent. Senior citizens, with an average income of $15,000, now have to pay almost $1,000 a year for their Part B premiums under Medicare. The recent report of the Medicare trustees included the stunning revelation that Medicare cost sharing and premiums will soon eat up more than 40 percent of the total Social Security benefit of the typical 85 year old.

As a proportion of Gross Domestic Product spent on health care, America is first in the world by a large margin. We spend 30 percent more than the Swiss who are number two, a third more than the Germans, fifty percent more than the French and the Canadians, and seventy-eight percent more than the Japanese.

These extraordinarily high levels of health spending might be justified if they produced dramatically better health care for the American people. But they don't. Among the world's leading industrialized countries, the United States ranks 22nd in average life expectancy and 25th in infant mortality.

We also face a worsening crisis of the uninsured. Since President Bush took office, the number of uninsured Americans has increased by a shameful million a year. Today, 45 million Americans have no coverage. Between 2001 and 2004, five million jobs offering health insurance were lost.

Even these figures understate the problem. Over a two-year period, 82 million Americans—one out of every three non-elderly Americans—will be uninsured for a significant period of time.

Tragically, eight and a half million children are uninsured and may well be denied the opportunity for a healthy start in life that should be the birthright of every child. Even people who have health insurance today cannot count on it being there for them tomorrow. No American family is more than one pink slip or one employer decision away from being uninsured.

The uninsured are vulnerable not only to unaffordable costs, but to substandard or health care or no care at all. In any given year, one-third of the uninsured go without needed medical care. Two hundred seventy thousand children suffering from asthma never see a doctor. Three hundred fifty thousand children with recurrent earaches never see a doctor. Three hundred fifty thousand children with severe sore throats never see a doctor.

Twenty-seven thousand uninsured women are diagnosed with breast cancer each year. They are twice as likely as insured women not to receive medical treatment until their cancer has spread too far, and they are 50 percent more likely to die of the disease.

Thirty-two thousand Americans with heart disease go without life-saving and life-enhancing bypass surgery or angioplasty—because they are uninsured.

The bottom line is that whether the disease is AIDS or mental illness or cancer or heart disease or diabetes, the uninsured are left out and left behind. In hospital and out, young or old, black or brown or white, they receive less care, suffer more, and are 25 percent more likely to die prematurely than those who have insurance.

Even for those with insurance, the quality of health care is often needlessly compromised. Recent events cast serious doubt on the FDA's ability to respond promptly when drugs it has approved turn out to have dangerous side effects. By some estimates, tens of thousands of unnecessary deaths have resulted.

The lack of coordination in our system results in duplicative, costly, and often counterproductive tests and procedures. The Midwest Business Group on Health estimates that the cost of poor quality care to employers providing health insurance coverage is $2,000 per worker, and it's paid in the form of higher insurance premiums. A recent study found that for many serious illnesses, patients are as likely to receive substandard care as they are to receive care meeting accepted professional standards.

In the face of this massive crisis in health care, the Administration and Congress have been missing in action for too long. The Bush Administration and the Republican leadership in Congress defend the special interests that profit from the status quo and ignore the suffering of the millions of families victimized by their neglect.

Reports suggest in fact that the Administration's new budget will propose to cut Medicaid, which provides health care for more than 50 million of the poorest of the poor. The deficit must be addressed—but it was created by the Administration's tax breaks for the wealthy, and the poor and the sick should not have to bear the burden of reducing it. That's the wrong priority and the wrong values.

The legislation we are offering today will not solve all these problems, but it is a good start, and we are committed to finishing the job.

The Affordable Health Care Act guarantees that every child in America will have quality health care coverage.

It reduces health costs substantially, by making FDA-approved drugs available at the same fair prices available to Canadians and Europeans, rather than the inflated prices charged to U.S. patients.

It takes a giant step toward adoption of modern information technology in health care, which has the potential to dramatically improve the quality of care and dramatically reduce its cost—by as much as $140 billion a year. It also improves quality by giving the FDA additional authority to monitor the safety of approved drugs.

It addresses the special burden faced by small businesses by offering tax credits to reduce the premiums they pay to cover their employees. It also establishes a demonstration program in 25 cities to see if a successful program in Michigan to expand insurance coverage for small businesses can be replicated elsewhere. Finally, our bill includes a sense of the Senate resolution to put Congress firmly on record against destructive cuts in Medicaid.

Affordable health care is a high priority for every family, and it should be an equally high priority for this Congress. We face a crisis, and it is time to act. Senate Democrats are committed to guaranteeing the basic right to health care for all Americans, and when we say ''all'', we mean ''all''.

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

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

S. 16

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Affordable Health Care Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MAKING PRESCRIPTION DRUGS MORE SAFE AND AFFORDABLE

Subtitle A—Access to Prescription Drugs

Sec. 101. Findings.

Sec. 102. Repeal of certain section regarding importation of prescription drugs.

Sec. 103. Importation of prescription drugs; waiver of certain import restrictions.

Sec. 104. Additional waivers regarding personal importation; enforcement policies of Secretary.
Sec. 105. Disposition of certain drugs denied admission into United States.
Sec. 106. Civil actions regarding property.
Sec. 107. Wholesale distribution of drugs; Statements regarding prior sale, purchase, or trade.
Sec. 108. Repeal of importation exemption under Controlled Substances Import and Export Act.
Sec. 109. Effect on administration practices.
Subtitle B—Ensuring Drug Safety
Sec. 121. Drug safety.
Sec. 122. Report by GAO on drug safety.
TITLE II—MODERNIZING THE HEALTH CARE SYSTEM
Sec. 201. Amendment to the Public Health Service Act.
Sec. 202. Standardized measures of quality health care and data collection.
TITLE III—MAKING HEALTH CARE MORE AFFORDABLE FOR CHILDREN AND PREGNANT WOMEN
Subtitle A—Covering all Children
Sec. 300. Findings.
CHAPTER 1—EXPANDED COVERAGE OF CHILDREN UNDER MEDICAID AND SCHIP
Sec. 301. State option to receive 100 percent fmap for medical assistance for children in poverty in exchange for expanded coverage of children in working poor families under title XXI.
Sec. 302. Elimination of cap on SCHIP funding for States that expand eligibility for children.
CHAPTER 2—STATE OPTIONS FOR INCREMENTAL CHILD COVERAGE EXPANSIONS
Sec. 311. State option to enroll low-income children of State employees in SCHIP.
Sec. 312. State option for passive renewal of eligibility for children under medicaid and SCHIP.
CHAPTER 3—TAX INCENTIVES FOR HEALTH INSURANCE COVERAGE OF CHILDREN
Sec. 321. Refundable credit for health insurance coverage of children.
Sec. 322. Forfeiture of personal exemption for any child not covered by health insurance.
CHAPTER 4—MISCELLANEOUS
Sec. 331. Requirement for group market health insurers to offer dependent coverage option for workers with children.
Sec. 332. Effective date.
Subtitle B—Covering Pregnant Women
Sec. 351. State option to expand or add coverage of pregnant women under the medicaid program and State Children's Health Insurance Program.
Sec. 352. Optional coverage of legal immigrants under the medicaid program and SCHIP.
Sec. 353. Promoting cessation of tobacco use under the medicaid program.
Sec. 354. Promoting cessation of tobacco use under the maternal and child health services block grant program.
Sec. 355. State option to provide family planning services and supplies to individuals with incomes that do not exceed a State's income eligibility level for medical assistance.
Sec. 356. State option to extend the postpartum period for provision of family planning services and supplies.
Sec. 357. State option to provide wraparound SCHIP coverage to children who have other health coverage.
Sec. 358. Innovative outreach programs.
Subtitle C—Affirming the Importance of Medicaid
Sec. 361. Sense of the Senate.
TITLE IV—REDUCING HEALTH CARE COSTS FOR SMALL EMPLOYERS
Subtitle A—Tax Relief
Sec. 401. Refundable credit for small business employee health insurance expenses.
Subtitle B—Three-Share Program
Sec. 421. Three-share programs.

## TITLE I—MAKING PRESCRIPTION DRUGS MORE SAFE AND AFFORDABLE

### Subtitle A—Access to Prescription Drugs

**SEC. 101. FINDINGS.**

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American seniors alone will spend $1,800,000,000,000 on pharmaceuticals over the next 10 years; and

(6) allowing open pharmaceutical markets could save American consumers at least $38,000,000,000 each year.

**SEC. 102. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.**

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

**SEC. 103. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.**

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 102, is further amended by inserting after section 803 the following:

**"SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.**

"(a) IMPORTATION OF PRESCRIPTION DRUGS.—

"(1) IN GENERAL.—The Secretary shall in accordance with this section provide by regulation that, in the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

"(A) the limitation on importation that is established in section 801(d)(1) is waived; and

"(B) the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

"(2) IMPORTERS.—A qualifying drug may not be imported under paragraph (1) unless—

"(A) the drug is imported by a pharmacy or a wholesaler that is a registered importer; or

"(B) the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

"(3) RULE OF CONSTRUCTION.—This section shall apply only with respect to a drug that is imported or offered for import into the United States—

"(A) by a registered importer; or

"(B) from a registered exporter to an individual.

"(4) DEFINITIONS.—

"(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

"(i) The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

"(ii) The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

"(iii) The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

"(B) QUALIFYING DRUG.—For purposes of this section, the term 'qualifying drug' means a prescription drug, other than any of the following:

"(i) A controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"(ii) A biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262).

"(iii) An infused drug, including a peritoneal dialysis solution.

"(iv) An intravenously injected drug.

"(v) A drug that is inhaled during surgery.

"(C) OTHER DEFINITIONS.—For purposes of this section:

"(i) The term 'exporter' means a person that is in the business of exporting a drug from Canada to individuals in the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

"(ii) The term 'importer' means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

"(iii) The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

"(iv) The term 'pharmacy' means a person that—

"(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

"(II) employs 1 or more pharmacists.

"(v) The term 'prescription drug' means a drug that is described in section 503(b)(1).

"(vi) The term 'wholesaler'—

"(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

"(II) does not include a person authorized to import drugs under section 801(d)(1).

"(D) PERMITTED COUNTRY.—The term 'permitted country' means—

"(i) Australia;

"(ii) Canada;

"(iii) a member country of the European Union as of January 1, 2003;

"(iv) Japan;

"(v) New Zealand; and

"(vi) Switzerland.

"(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

"(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a 'registrant') submits to the Secretary a registration containing the following:

"(A) The name of the registrant and an identification of all places of business of the

registrant that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the registrant.

''(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

''(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of exported drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

''(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the sources of exported drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation from Canada; and maintenance of records and samples).

''(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

''(D) An agreement by the registrant to—

''(i) notify the Secretary of a recall or withdrawal of a drug distributed in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

''(ii) provide for the return to the registrant of such drug; and

''(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

''(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

''(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

''(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

''(H) An agreement by the registrant to notify the Secretary of—

''(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

''(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

''(I) In the case of an exporter—

''(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

''(ii) An agreement to post a bond, payable to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsections (g) or (i), that is equal in value to the lesser of—

''(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

''(II) $1,000,000.

''(J) Such other provisions as the Secretary may require to protect the public health while permitting—

''(i) the importation by pharmacies, groups of pharmacies, wholesalers as registered importers of qualifying drugs under subsection (a); and

''(ii) importation by individuals of qualifying drugs under subsection (a).

''(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

''(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(G) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

''(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website accordingly.

''(4) SUSPENSION AND TERMINATION.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

''(i) Subject to clause (ii), if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with all registration conditions, the Secretary may suspend the registration.

''(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not meet the criteria under subsection (g)(2)(A), or has exported a qualifying drug to an individual in violation of subsection (i)(1)(F), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

''(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported to the United States only if there is compliance with the following:

''(1) The drug was manufactured in an establishment—

''(A) required to register under subsection (h) or (i) of section 510; or

''(B) inspected by the Secretary as provided by this section.

''(2) The establishment is located in the United States or in any foreign country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug was manufactured for distribution in a foreign country that is not a permitted country).

''(3) The exporter or importer obtained the drug—

''(A) directly from the establishment; or

''(B) directly from an entity that, by contract with the exporter or importer—

''(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

''(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

''(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

''(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

''(4) The foreign country from which the importer will import the drug is a permitted country.

''(5) The foreign country from which the exporter will export the drug is Canada.

''(6) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

''(7) The exporter or importer retains a sample of each lot of the drug sufficient for testing by the Secretary.

''(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

''(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

''(A) the exporter agrees to permit the Secretary—

''(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

''(ii) to have access, including on a day-to-day basis, to—

''(I) records of the exporter that relate to the export of such drugs, including financial records; and

''(II) samples of such drugs;

''(iii) to carry out the duties described in paragraph (3); and

''(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

''(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary not less than every 3 weeks on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

''(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence—

''(A) shall be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

''(B) may include anti-counterfeiting or track-and-trace technologies.

''(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

''(A) Verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which may be accomplished by the use of anticounterfeiting or track-and-trace technologies, if available.

''(B) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

''(C) Monitoring the affixing of markings under paragraph (2).

''(D) Inspect as the Secretary determines is necessary the warehouses and other facilities of other parties in the chain of custody of qualifying drugs.

''(E) Determine whether the exporter is in compliance with all other registration conditions.

''(4) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

''(A) As authorized under section 704, inspect not less than every 3 weeks, the places of business of the importer that relate to the receipt and distribution of a qualifying drug, including each warehouse or other facility owned or controlled by, or operated for, the importer at which qualifying drugs are received or from which they are distributed to pharmacies.

''(B) During the inspections under subparagraph (A), verify the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which may be accomplished by the use of anticounterfeiting or track-and-trace technologies, if available.

''(C) Inspect as the Secretary determines is necessary the warehouses and other facilities of other parties in the chain of custody of qualifying drugs.

''(D) Determine whether the importer is in compliance with all other registration conditions.

''(e) IMPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the importer involved pays to the Secretary in accordance with this subsection a fee on a semiannual basis, with the first fee due on the date that is 6 months after the date on which the registration of the importer under subsection (b) is first approved by the Secretary.

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—The Secretary shall ensure that the aggregate total of fees collected under paragraph (2) for a fiscal year from all importers is sufficient, and no more than necessary, to pay the costs of administering this section with respect to registered importers for a fiscal year, including—

''(i) inspection of the facilities of importers under subsection (d)(4);

''(ii) reviewing qualifying drugs offered for import to importers; and

''(iii) determining the compliance of importers with registration conditions.

''(B) LIMITATION.—The aggregate total of fees collected under paragraph (2) shall not exceed 1 percent of the total price of drugs imported annually to the United States by registered importers under this section.

''(C) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), a fee under paragraph (2) for an importer shall be an amount that is a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of drugs imported by importers under this section.

''(D) ADJUSTMENT OF FEE.—The Secretary shall annually adjust the fees under paragraph (2) to ensure that the fees accurately reflect the actual costs referred to in subparagraph (A) and do not exceed, in the aggregate, 1 percent of the total price of drugs imported annually to the United States under this section.

''(4) USE OF FEES.—Subject to appropriations Acts, fees collected by the Secretary under paragraphs (1) and (2) are available only to the Secretary and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(f) EXPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of $10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the exporter involved pays to the Secretary in accordance with this subsection a fee on a semiannual basis, with the first fee due on the date that is 6 months after the date on which the registration of the exporter under subsection (b) is first approved by the Secretary.

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—The Secretary shall ensure that the aggregate total of fees collected under paragraph (2) for a fiscal year from all exporters is sufficient, and not more than necessary, to pay the costs of administering this section with respect to registered exporters for a fiscal year, including—

''(i) monitoring foreign facilities under subsection (d);

''(ii) developing, implementing, and maintaining under such subsection a system to mark shipments to indicate compliance with all registration conditions; and

''(iii) conducting under such subsection inspections within the United States to determine compliance with conditions under subsections (h) and (i).

''(B) LIMITATION.—The aggregate total of fees collected under paragraph (2) shall not exceed 1 percent of the total price of drugs imported annually to the United States by registered exporters under this section.

''(C) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), a fee under paragraph (2) for an exporter shall be an amount that is a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of drugs exported by exporters under this section.

''(D) ADJUSTMENT OF FEE.—The Secretary shall annually adjust the fees under paragraph (2) to ensure that the fees accurately reflect the actual costs referred to in subparagraph (A) and do not exceed, in the aggregate, 1 percent of the total price of drugs imported annually to the United States under this section.

''(4) USE OF FEES.—Subject to appropriations Acts, fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(g) COMPLIANCE WITH SECTION 801(a).—

''(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

''(2) SECTION 505; APPROVAL STATUS.—

''(A) IN GENERAL.—For purposes of administrative and judicial procedure, there is a presumption that a drug proposed for export or import under subsection (a) is an approved drug under section 505(b) if the following criteria are met:

''(i) The drug proposed for export or import is in compliance with subsection (c).

''(ii) The drug proposed for export or import has the same active ingredient or ingredients, route of administration, dosage form, and strength, according to information provided by the labeling of the drug proposed for export or import, as a drug (referred to in this subsection as a 'U.S. label drug') that—

''(I) is manufactured by or for the person that manufactures the drug proposed for export or import; and

''(II) is approved under section 505(b).

''(B) IMPORTATION.—Subject to subparagraphs (D) and (E), a drug meeting the criteria described in subparagraph (A) may, in accordance with the other subsections of this section, be imported into the United States.

''(C) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

''(i) IN GENERAL.—The person that manufactures a drug that may be imported under subsection (a) shall in accordance with this paragraph submit to the Secretary a notice that—

''(I) includes each difference in the drug from a condition established in the approved application for the U.S. label drug beyond the variations provided for in the application, any difference in labeling, the date on which the drug with such difference was, or will be, introduced for commercial distribution in a permitted country, and such additional information as the Secretary may require; or

''(II) states that there is no difference in the drug from a condition established in the approved application for the U.S. label drug beyond the variations provided for in the application and differences in labeling.

''(ii) INFORMATION REGARDING FOREIGN GOVERNMENT.—A notice under clause (i)(I) shall with respect to the permitted country that

approved the drug for commercial distribution, or with respect to which such approval is sought, include the following:

''(I) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the drug from a condition established in the approved application for the U.S. label drug.

''(II) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

''(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

''(I) the information provided in the notice is complete and true; and

''(II) a copy of the notice has been provided to the Federal Trade Commission and to the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (referred to in this subsection as the 'Assistant Attorney General').

''(iv) FEE.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Subject to appropriations Acts, fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

''(v) TIMING OF SUBMISSION OF NOTICES.—

''(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than 120 days before the drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the drug with the difference begin less than 120 days after the country requires the difference.

''(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary not later than the day on which the drug with the difference is introduced for commercial distribution in a permitted country.

''(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (F) applies shall be submitted to the Secretary on the date that the drug is first introduced for commercial distribution in a permitted country and annually thereafter.

''(vi) REVIEW BY SECRETARY.—

''(I) IN GENERAL.—In this paragraph, the difference in a drug that may be imported under subsection (a) from the U.S. label drug shall be treated by the Secretary as if it was a manufacturing change to the U.S. label drug under section 506A.

''(II) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

''(III) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection by the Secretary of the establishment in which the drug is manufactured, such inspection shall be authorized by section 704.

''(vii) PUBLICATION OF INFORMATION ON NOTICES.—

''(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration, the Secretary shall readily make available to the public a list of notices submitted under clause (i).

''(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

''(aa) a notice is under review;

''(bb) the Secretary has ordered that importation of the drug from a permitted country cease; or

''(cc) the importation of the drug is permitted under subsection (a).

''(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

''(D) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (C)(i) that includes a difference that would, under section 506A(c) or (d)(3)(B)(i), require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the Assistant Attorney General that the notice has been submitted with respect to the drug involved.

''(ii) If the Secretary has not made a determination whether a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

''(I) order that the importation of the drug involved from the permitted country cease for the period in which the Secretary completes review of the notice; and

''(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the Attorney General of the order.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

''(II) notify the permitted country that approved the drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the Assistant Attorney General of the determination.

''(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall vacate the order under clause (ii), if any, permit importation of the drug under subsection (a), and promptly notify registered exporters, registered importers, the Federal Trade Commission, and the Assistant Attorney General of the determination.

''(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (C)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the drug involved continues in effect.

''(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall order that the importation of the drug involved from the permitted country cease, shall notify the permitted country that approved the drug for commercial distribution of the determination, and shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the Assistant Attorney General of the determination.

''(F) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of a notice under subparagraph (C)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

''(i) may not order that the importation of the drug involved cease; and

''(ii) shall promptly notify registered exporters and registered importers.

''(G) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

''(i) IN GENERAL.—A person who manufactures a U.S. label drug shall submit an application under section 505(b) for a drug that is manufactured for distribution in a permitted country by or for the person that manufactures the U.S. label drug if—

''(I) there is no drug for export from at least half of the permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the U.S. label drug; and

''(II) each active ingredient of the drug is related to an active ingredient of the U.S. label drug, as defined in clause (v).

''(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

''(I) request approval of the drug for the indication or indications for which the U.S. label drug is approved under section 505;

''(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

''(III) include a right of reference to the application under section 505(b) for the U.S. label drug; and

''(IV) include such additional information as the Secretary may require.

''(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on which the information referred to in clause (ii)(II) is submitted to the government of the permitted country.

''(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the Assistant Attorney General of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

''(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

''(I) the same; or

''(II) different salts, esters, or complexes of the same moiety.

''(3) SECTION 502; LABELING.—

''(A) IMPORTATION BY REGISTERED IMPORTER.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug

shall be considered to be in compliance with section 502 if the drug bears—

''(I) a copy of the labeling approved for the drug under section 505, without regard to whether the copy bears the trademark involved;

''(II) the name of the manufacturer and location of the manufacturer;

''(III) the lot number assigned by the manufacturer; and

''(IV) the name, location, and registration number of the importer.

''(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

''(B) IMPORTATION BY INDIVIDUAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 if the drug bears a label providing the directions for use by the consumer, and bears a copy of any special labeling that would be required by the Secretary had the drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears the trademark involved. The Secretary shall provide to the registered exporter involved a copy of the special labeling, upon request of the exporter.

''(4) SECTION 501; STANDARDS FOR REFUSING ADMISSION.—

''(A) IN GENERAL.—For purposes of administrative and judicial procedure, there is a presumption that a drug proposed for export or import under subsection (a) is in compliance with section 501 if the drug is in compliance with subsection (c).

''(B) STANDARDS FOR REFUSING ADMISSION.—A qualifying drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

''(i) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

''(ii) The Secretary becomes aware that—

''(I) the drug may be counterfeit;

''(II) the drug may have been prepared, packed, or held under insanitary conditions; or

''(III) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

''(iii) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

''(iv) The Secretary has under section 505(e) withdrawn approval of the drug.

''(v) The manufacturer of the drug has instituted a recall of the drug.

''(vi) If the qualifying drug is exported from a registered exporter to an individual and 1 or more of the following applies:

''(I) The shipping container for such drug does not bear the markings required under subsection (d)(2).

''(II) The markings on the shipping container appear to be counterfeit.

''(III) The shipping container or markings appear to have been tampered with.

''(h) LICENSING AS PHARMACIST.—A registration condition is that the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

''(1) the exporter is authorized under Canadian law to dispense prescription drugs; and

''(2) the exporter employs persons that are licensed under Canadian law to dispense prescription drugs in sufficient number to dispense safely the qualifying drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such qualifying drugs to individuals.

''(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION FROM CANADA.—

''(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

''(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

''(i) is valid under applicable Federal and State laws; and

''(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

''(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of Canada as a condition of dispensing the drug to the individual.

''(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

''(i) to indicate that the prescription, and the equivalent document in Canada, have been filled; and

''(ii) to prevent a duplicative filling by another pharmacist.

''(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

''(E) The quantity of the drug does not exceed a 90-day supply.

''(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an 'ineligible subpart H drug' if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

''(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

''(j) MAINTENANCE OF RECORDS AND SAMPLES.—A registration condition is that the importer or exporter involved shall—

''(1) maintain records required under this section for not less than 2 years; and

''(2) maintain samples of each lot of a drug required under this section for not less than 2 years.

''(k) DRUG RECALLS.—

''(1) MANUFACTURERS.—A person that manufactures a prescription drug imported from a permitted country under this section shall promptly inform the Secretary—

''(A) if the drug is recalled or withdrawn from the market in a permitted country;

''(B) how the drug may be identified, including lot number; and

''(C) the reason for the recall or withdrawal.

''(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

''(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of prescription drugs in the country; or

''(B) monitor recalls and withdrawals of prescription drugs in the country using any information that is available to the public in any media.

''(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a prescription drug in a permitted country.''.

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

''(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

''(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

''(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

''(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

''(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(C) or in an application required under section 804(g)(2)(G), or the failure to submit such a notice or application.

''(4) The importation of a drug in violation of a requirement under section 804.''; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

''(6) Notwithstanding subsection (a), any person that knowingly violates section 301(aa) (3) or (4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.''.

(c) IMPLEMENTATION.—

(1) RULEMAKING.—

(A) IN GENERAL.—

(i) PROMULGATION BY SECRETARY.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section. Such rule shall be developed and promulgated by the Secretary without providing general notice of proposed rulemaking. Not later than 1 year after the date on which the interim rule is promulgated, the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule, to the extent that such provisions are not modified.

(ii) EFFECT OF RULES.—The rules promulgated under clause (i) shall permit the importation of prescription drugs—

(I) from registered exporters by individuals effective on the date of the promulgation of the interim rule;

(II) from Canada by registered importers effective on the date of the promulgation of the interim rule; and

(III) from Australia, a member country of the European Union as of January 1, 2003, Japan, New Zealand, or Switzerland by registered importers on the date that is 1 year after the date of the enactment of this Act.

(B) CERTAIN EXPORTERS.—The interim rule under subparagraph (A) shall provide that, in the review of registrations submitted under subsection (b) of the section 804 referred to in such subparagraph, registrations submitted by entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of the enactment of this Act will have priority during the period in which the interim rule

under subparagraph (A) is in effect. During such period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) DRUGS FOR IMPORT FROM CANADA.—The notices with respect to drugs to be imported from Canada that are required under subsection (g)(2)(C)(i)(I) of such section 804 and that require approval under subsection (g)(2)(D) or (E) of such section 804 shall be submitted to the Secretary not later than 30 days after the date of enactment of this Act. The notices with respect to drugs to be imported from Canada that are required under subsection (g)(2)(C)(i) of such section 804 and that do not require approval under subsection (g)(2)(D) or (E) of such section 804 shall be submitted to the Secretary not later than 90 days after the date of enactment of this Act.

(D) DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notices with respect to drugs to be imported from Australia, a member country of the European Union as of January 1, 2003, Japan, New Zealand, or Switzerland that are required under subsection (g)(2)(C)(i)(I) of such section 804 and that require approval under subsection (g)(2)(D) or (E) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act. The notices with respect to drugs to be imported from such countries that are required under subsection (g)(2)(C)(i)(II) of such section 804 and that do not require approval under subsection (g)(2)(D) or (E) of such section 804 shall be submitted to the Secretary not later than 270 days after the date of enactment of this Act.

(2) PERSONAL IMPORTATION FROM CANADA.—Until the expiration of the 60-day period beginning on the date on which the interim rule under paragraph (1)(A) is promulgated, an individual may import a prescription drug from Canada for personal use or for the use of a family member of the individual (rather than for resale), subject to compliance with the following conditions:

(A) The drug is not—

(i) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(ii) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262);

(iii) an infused drug, including a peritoneal dialysis solution;

(iv) an intravenously injected drug;

(v) a drug that is inhaled during surgery; or

(vi) a drug approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval) with restrictions under section 520 of such part to assure safe use.

(B) The drug is dispensed by a person licensed in Canada to dispense such drugs.

(C) The drug is accompanied by a copy of the prescription for the drug, which prescription—

(i) is valid under applicable Federal and State laws; and

(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

(D) The drug is accompanied by a copy of the document that was required in Canada as a condition of dispensing the drug to the individual.

(E) The copies referred to in subparagraphs (C) and (D) are marked in a manner sufficient—

(i) to indicate that the prescription, and the equivalent document in Canada, have been filled; and

(ii) to prevent a duplicative filling by another pharmacist.

(F) The quantity of the drug does not exceed a 90-day supply.

(3) FACILITATION OF CANADIAN IMPORTS.—Not less than 15 days after the enactment of this Act and until the expiration of the 60-day period that begins on the date on which the interim rule under paragraph (1)(A) is promulgated, the Secretary shall, through the Internet website of the Food and Drug Administration, make readily available to the public a list of persons licensed in Canada to dispense prescription drugs who are willing to export drugs under paragraph (2) to individuals in the United States.

(4) EFFECT OF PROVISIONS.—The amendments made in subsection (d), section 6, and section 7 of this Act shall have no effect with respect to imports made under paragraph (2).

(d) AMENDMENT OF CERTAIN PROVISION.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

''(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

''(1) the drug has been refused admission because the drug was not a lawful import under section 804;

''(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

''(3) the individual may under section 804 lawfully import certain prescription drugs from Canadian exporters registered with the Secretary; and

''(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration.''.

(e) ANTICOMPETITIVE PRACTICES RELATING TO IMPORTING AND EXPORTING DRUGS TO THE UNITED STATES.—

(1) IN GENERAL.—The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding at the end the following:

**''SEC. 27. RESTRAINT OF TRADE REGARDING PRESCRIPTION DRUGS.**

''(a) IN GENERAL.—It shall be unlawful for any person engaged in commerce, directly or indirectly to—

''(1) charge a higher price for prescription drugs sold to a registered exporter or other person that exports prescription drugs to the United States under section 804 of the Federal Food, Drug, and Cosmetic Act than the price that is charged to another person that is in the same country and that does not export prescription drugs into the United States under section 804 of such Act;

''(2) charge a higher price for prescription drugs sold to a registered importer or other person that distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act than the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act, or that does not distribute, sell, or use such drugs;

''(3) deny supplies of prescription drugs to a registered exporter or other person that exports prescription drugs to the United States under section 804 of such Act or to a registered importer or other person that distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act;

''(4) publicly, privately, or otherwise refuse to do business with a registered exporter or other person that exports prescription drugs to the United States under section 804 of such Act or with a registered importer or other person that distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act;

''(5) specifically restrict supplies of prescription drugs to a registered exporter or other person that exports prescription drugs to the United States under section 804 of such Act or to a registered importer or other person that distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act;

''(6) fail to submit a notice under subsection (g)(2)(C)(i) of section 804 of such Act, fail to submit such a notice on or before the date specified in subsection (g)(2)(C)(v) of section 804 of such Act, submit such a notice that makes a materially false, fictitious, or fraudulent statement, or fail to provide promptly any information requested by the Secretary of Health and Human Services to review such a notice;

''(7) fail to submit an application required under subsection (g)(2)(G) of section 804 of such Act, fail to submit such an application on or before the date specified in subsection (g)(2)(G)(ii) of section 804 of such Act, submit such an application that makes a materially false, fictitious, or fraudulent statement, or fail to provide promptly any information requested by the Secretary of Health and Human Services to review such an application;

''(8) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and a prescription drug for distribution in Australia, Canada, a member country of the European Union as of January 1, 2003, Japan, New Zealand, or Switzerland for the purpose of restricting importation of the drug to the United States under section 804 of such Act;

''(9) refuse to allow an inspection authorized under section 804 of such Act of an establishment that manufactures a prescription drug that is offered for import under such section;

''(10) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a prescription drug offered for import under section 804 to good manufacturing practice under such Act; or

''(11) engage in any other action that the Federal Trade Commission determines to unfairly restrict competition under section 804 of such Act.

''(b) PRESUMPTION.—A difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and a prescription drug for distribution in Australia, Canada, a member country of the European Union as of January 1, 2003, Japan, New Zealand, or Switzerland made after January 1, 2004, shall be presumed to be for the purpose of restricting importation of the drug to the United States under section 804 of the Federal Food, Drug, and Cosmetic Act unless—

''(1) the person manufacturing the drug for distribution in the United States proves that the difference was required by the country in which the drug is distributed;

''(2) the Secretary of Health and Human Services, acting through the Commissioner

of Food and Drug, determines that the difference was necessary to improve the safety or efficacy of the drug; or

''(3) the person manufacturing the drug for distribution in the United States has given notice to the Secretary of Health and Human Services under subsection (g)(2)(C)(i) of section 804 of such Act that the drug for distribution in the United States is not different from a drug for distribution in not fewer than half of those countries.

''(c) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge that a person has violated paragraph (1), (2), (3), (4), or (5) of subsection (a) that the higher prices charged for prescription drugs sold to a person, the denial of supplies of prescription drugs to a person, the refusal to do business with a person, or the specific restriction or delay of supplies to a person is not based, in whole or in part, on—

''(1) the person exporting or importing prescription drugs to the United States under section 804 of the Federal Food, Drug, and Cosmetic Act; or

''(2) the person distributing, selling, or using prescription drugs imported to the United States under section 804 of such Act.

''(d) DEFINITIONS.—In this section:

''(1) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug that is described in section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)).

''(2) REGISTERED IMPORTER.—The term 'registered importer' has the meaning given such term in section 804 of the Federal Food, Drug, and Cosmetic Act.

''(3) REGISTERED EXPORTER.—The term 'registered exporter' has the same meaning as in section 804 of the Federal Food, Drug, and Cosmetic Act.''.

(2) APPLICABILITY OF AMENDMENTS TO IMPORTATION UNDER THE PHARMACEUTICAL MARKET ACCESS AND FAIR TRADE ACT OF 2004.—

(A) PERSONAL IMPORTATION FROM CANADA.—Paragraphs (1) through (5) and (11) of subsection (a) of section 27 of the Clayton Act (15 U.S.C. et seq.) (as amended by paragraph (1)) shall apply with respect to the importation of drugs from Canada under subsection (c)(2).

(B) NOTICES RESPECTING DRUG FOR IMPORT.—Paragraph (6) of subsection (a) of section 27 of the Clayton Act (15 U.S.C. et seq.) (as amended by paragraph (1)) shall apply with respect to notices required under section 804(g)(2)(C)(i) of the Federal Food Drug and Cosmetic Act (21 U.S.C. 384(g)(2)(C)(i)) that are not submitted by the dates required under subsections (c)(1)(C) and (D).

(f) EXHAUSTION.—

(1) IN GENERAL.—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.''.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

**SEC. 104. ADDITIONAL WAIVERS REGARDING PERSONAL IMPORTATION; ENFORCEMENT POLICIES OF SECRETARY.**

(a) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by adding at the end the following:

''(p)(1) Waivers under this subsection are in addition to, and independent of, the waiver pursuant to section 804(a)(2)(B).

''(2) With respect to the standards referred to in subsection (d)(1), the Secretary shall establish by regulation a waiver of such standards in the case of the importation by an individual of a drug into the United States in the following circumstances:

''(A) The drug was dispensed to the individual while the individual was in the United States, the drug was dispensed by a pharmacist or by a practitioner licensed by law to administer the drug, and the individual traveled from the United States with the drug.

''(B) The individual is entering the United States and the drug accompanies the individual at the time of entry.

''(C) The drug does not appear to the Secretary to be adulterated.

''(D) The quantity of the drug does not exceed a 90-day supply.

''(E) The drug is accompanied by a statement that the individual seeks to import the drug into the United States under a personal importation waiver.

''(F) Such additional standards as the Secretary determines to be appropriate to protect the public health.

''(3) With respect to the standards referred to in subsections (a) and (d)(1), the Secretary shall establish by regulation a waiver of such standards in the case of the importation by an individual of a drug into the United States in the following circumstances:

''(A) The drug was dispensed to the individual while the individual was in a foreign country, and the drug was dispensed in accordance with the laws and regulations of such country.

''(B) The individual is entering the United States and the drug accompanies the individual at the time of entry.

''(C) The drug is approved for commercial distribution in the foreign country in which the drug was obtained.

''(D) The drug does not appear to the Secretary to be adulterated.

''(E) The quantity of the drug does not exceed—

''(i) a 90-day supply if the drug is dispensed in Australia, Canada, a member country of the European Union as of January 1, 2003, Japan, New Zealand, or Switzerland; or

''(ii) a 14-day supply otherwise.

''(F) The drug is accompanied by a statement that the individual seeks to import the drug into the United States under a personal importation waiver.

''(G) Such additional standards as the Secretary determines to be appropriate to protect the public health.

''(q) The Secretary may not administer any enforcement policy that has the effect of permitting the importation of a prescription drug into the United States in violation of this Act or section 351 of the Public Health Service Act.''.

(b) ADDITIONAL WAIVER.—This Act and the amendments made by this Act shall not be construed as limiting the authority of the Secretary of Health and Human Services to establish a waiver of the standards referred to in section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) with respect to the importation by an individual of a drug into the United States that does not meet such standards, provided that such waiver is no more permissive than the guidance, as in effect on January 1, 2004, that is provided in the item numbered 2 (relating to a specific situation, consisting of conditions (a) through (d)) under the heading ''Drugs, Biologics, and Devices'' in chapter 9 of the FDA/ORA Regulatory Procedures Manual (relating to import operations/actions), in the subchapter relating to coverage of personal importations.

**SEC. 105. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.**

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 102, is further amended by adding at the end the following section:

**''SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.**

''(a) IN GENERAL.—The Secretary of Homeland Security shall refuse admission to a shipment of drugs that is imported or offered for import into the United States if the shipment has a declared value of less than $10,000 and the drugs are in violation of any standard referred to in section 801(a) or 801(d)(1), including any drugs imported or offered for import under enforcement policies prohibited under section 801(q).

''(b) IMPORTATION UNDER SECTION 804.—In the case of a drug that under section 804 is imported or offered for import from a registered exporter, the reference in subsection (a) to standards referred to in section 801(a) or 801(d)(1) shall be considered a reference to standards referred to in section 804(g)(4)(B).

''(c) DESTRUCTION OF VIOLATIVE SHIPMENTS.—Drugs refused admission under subsection (a) or (b) shall be destroyed, subject to subsection (e). Section 801(b) does not authorize the delivery of the drugs pursuant to the execution of a bond, and the drugs may not be exported.

''(d) CERTAIN PROCEDURES.—

''(1) IN GENERAL.—The refusal of admission and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

''(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to subsection (a) or (b) are identified and refused admission and destroyed.

''(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

''(f) RULE OF CONSTRUCTION.—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than $10,000.''.

(b) PROCEDURES.—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

**SEC. 106. CIVIL ACTIONS REGARDING PROPERTY.**

Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following subsection:

''(g)(1) If a person is alienating or disposing of property, or intends to alienate or dispose of property, that is obtained as a result of or is traceable to a drug imported in violation of section 801(a) or 801(d), the Attorney General may commence a civil action in any Federal court—

''(A) to enjoin such alienation or disposition of property; or

''(B) for a restraining order to—

''(i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and

''(ii) appoint a temporary receiver to administer such restraining order.

''(2) Proceedings under paragraph (1) shall be carried out in the same manner as applies under section 1345 of title 18, United States Code.''.

**SEC. 107. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.**

(a) STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''and who is not the manufacturer or an authorized distributor of record of such drug'';

(B) by striking ''to an authorized distributor of record or''; and

(C) by striking subparagraph (B) and inserting the following:

''(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

''(C)(i) The Secretary may by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as 'alternative requirements') to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the drug with equal certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

''(ii) If the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition supersedes such clause (i).'';

(2) in paragraph (2)(A), by adding at the end the following: ''The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.''; and

(3) in paragraph (3), by striking ''and subsection (d)—'' in the matter preceding subparagraph (A) and all that follows through ''the term 'wholesale distribution' means'' in subparagraph (B) and inserting the following: ''and subsection (d), the term 'wholesale distribution' means''.

(b) CONFORMING AMENDMENT.—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

''(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

''(5) For purposes of this subsection, the term 'authorized distributors of record' means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.''.

**SEC. 108. REPEAL OF IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.**

Section 1006 of the Controlled Substances Import and Export Act (21 U.S.C. 956) is repealed.

**SEC. 109. EFFECT ON ADMINISTRATION PRACTICES.**

Notwithstanding any provision of this Act (and the amendments made by this Act), nothing in this Act (or the amendments made by this Act) shall be construed to change, limit, or restrict the practices of the Food and Drug Administration or the Bureau of Customs and Border Protection in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use.

**Subtitle B—Ensuring Drug Safety**

**SEC. 121. DRUG SAFETY.**

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 506C the following:

**''SEC. 507. DRUG SAFETY.**

''(a) PHASE IV STUDIES.—

''(1) IN GENERAL.—The Secretary may require that the sponsor of a drug that is approved or licensed under section 505(c) or under section 351 of the Public Health Service Act conduct one or more studies, to be completed by a date after approval or licensing of such drug specified by the Secretary, that confirms or refutes an empirical or theoretical hypothesis of a significant safety issue with the drug, raised with respect to the drug or the class of the drug, found in—

''(A) the MedWatch post-market surveillance system;

''(B) a clinical or epidemiological study; or

''(C) the scientific literature.

''(b) SUPPLEMENTS.—The sponsor of a drug that is approved or licensed under section 505(c) or under section 351 of the Public Health Service Act shall promptly submit the results of a study required under subsection (a) as a supplement to the application for the drug.

''(c) PUBLIC DISCLOSURE.—The Secretary shall, not less than every quarter, make public each study required under subsection (a), including a description of, and the reason for, the study, the required completion date, and whether the study has been completed, through—

''(1) a notice in the Federal Register; and

''(2) a database that shall be readily accessible to the public through the Internet site of the Food and Drug Administration.

''(d) CIVIL PENALTIES.—

''(1) IN GENERAL.—The Secretary may order the sponsor of a drug that is approved or licensed under section 505(c) or under section 351 of the Public Health Service Act to pay a civil penalty, subject to paragraph (2), if, after providing an opportunity for an informal hearing, the Secretary determines that—

''(A) the sponsor has failed to complete a study required under subsection (a) by the date specified by the Secretary; and

''(B) there is no legitimate reason for such failure.

''(2) AMOUNT OF PENALTIES.—The civil penalty order under paragraph (1) may be assessed for each day the completion of a required study of a drug is delayed in an amount that is not more than 3 times the gross revenue received by the sponsor for the average sales of the drug in a day.

''(3) RECORDS RELATING TO GROSS REVENUE.—When provided an opportunity for an informal hearing under paragraph (1), a drug sponsor shall provide to the Secretary all records relating to the gross revenues received by the sponsor for average sales of the drug in a day.

''(4) PROCEDURE.—The provisions of paragraphs (3) (other than subparagraph (A)), (4), and (5) of section 303(f) shall apply to a violation under subsection (a) in the same manner as such provisions apply to a violation of a requirement of this Act that relates to devices.''.

(b) RESOURCES.—In addition to fees that may be available to the Office of Drug Safety under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), there is authorized to be appropriated for the Office of Drug Safety within the Center for Drug Evaluation and Research of the Food and Drug Administration—

(1) $30,000,000 for fiscal year 2006;

(2) $40,000,0000 for fiscal year 2007;

(3) $50,000,000 for fiscal year 2008;

(4) $60,000,000 for fiscal year 2009; and

(5) $70,00,000 for fiscal year 2010.

**SEC. 122. REPORT BY GAO ON DRUG SAFETY.**

(a) IN GENERAL.—The Government Accountability Office shall provide for the conduct of a study concerning measures to increase the safety of prescription drugs, including—

(1) whether Federal funding levels are adequate to ensure drug safety and whether the uncertainty associated with the Federal budgetary process hampers planning;

(2) whether the lack of permanent leadership at the Food and Drug Administration has contributed to problems in decision-making and in transmitting information to the public concerning the safety of drugs;

(3) whether prolonged and rampant vacancies within the Food and Drug Administration have contributed to the ability of the Food and Drug Administration to properly examine drug safety;

(4) whether conflicts of interest exist that unduly bias approvals or later reviews of drug safety;

(5) whether employees of the Food and Drug Administration have been improperly threatened or face any barriers to raising concerns about drug safety;

(6) whether the procedure of the Food and Drug Administration for notifying the public of possible drug safety issues is appropriate and complied with;

(7) whether further measures or authorities are necessary to ensure the safety of drugs; and

(8) other matters determined appropriate.

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the Government Accountability Office shall prepare and submit to the appropriate committees of Congress a report concerning the results of the study conducted under subsection (a). Such report shall include a proposal (including legislative language) for improving the safety of prescription drugs.

**TITLE II—MODERNIZING THE HEALTH CARE SYSTEM**

**SEC. 201. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.**

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end thereof the following:

**''TITLE XXIX—HEALTH CARE INFORMATION TECHNOLOGY**

**''SEC. 2901. DEFINITIONS.**

''In this title:

''(1) COVERAGE AREA.—The term 'coverage area' means the boundaries of a local health information infrastructure.

''(2) DIRECTOR.—The term 'Director' means the Director of the Office of Health Information Technology.

''(3) HEALTH CARE PROVIDER.—The term 'health care provider' means a hospital, skilled nursing facility, home health entity, health care clinic, community health center, group practice (as defined in section

1877(h)(4) of the Social Security Act, including practices with only 1 physician), and any other facility or clinician determined appropriate by the Director.

''(4) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means a computerized system that—

''(A) is consistent with the standards developed pursuant to section 2903;

''(B) permits the secure electronic transmission of information to other health care providers and public health entities; and

''(C) includes—

''(i) an electronic health record (EHR) that provides access in real-time to the patient's complete medical record;

''(ii) a personal health record (PHR) through which an individual (and anyone authorized by such individual) can maintain and manage their health information;

''(iii) computerized provider order entry (CPOE) technology that permits the electronic ordering of diagnostic and treatment services, including prescription drugs;

''(iv) decision support to assist physicians in making clinical decisions by providing electronic alerts and reminders to improve compliance with best practices, promote regular screenings and other preventive practices, and facilitate diagnoses and treatments;

''(v) error notification procedures so that a warning is generated if an order is entered that is likely to lead to a significant adverse outcome for the patient; and

''(vi) tools to allow for the collection, analysis, and reporting of data on adverse events, near misses, and the quality of care provided to the patient.

''(5) LOCAL HEALTH INFORMATION INFRASTRUCTURES.—The term 'local health information infrastructure' means an independent organization of health care entities established for the purpose of linking health information systems to electronically shared information. A local health information infrastructure may not be a single business entity.

''(6) OFFICE.—The term 'Office' means the Office of Health Information Technology established under section 2902.

**"SEC. 2902. OFFICE OF HEALTH INFORMATION TECHNOLOGY.**

''(a) ESTABLISHMENT.—There is established within the executive office of the President an Office of Health Information Technology. The Office shall be headed by a Director to be appointed by the President. The Director shall report directly to the President.

''(b) PURPOSE.—It shall be the purpose of the Office to—

''(1) improve the quality and increase the efficiency of health care delivery through the use of health information technology;

''(2) provide national leadership relating to, and encourage the adoption of, health information technology;

''(3) direct all health information technology activities within the Federal Government; and

''(4) facilitate the interaction between the Federal Government and the private sector relating to health information technology development and use.

''(c) DUTIES AND RESPONSIBILITIES.—The Office shall be responsible for the following:

''(1) NATIONAL STRATEGY.—The Office shall develop a national strategy for improving the quality and enhancing the efficiency of health care through the improved use of health information technology and the creation of a National Health Information Infrastructure.

''(2) FEDERAL LEADERSHIP.—The Office shall—

''(A) serve as the principle advisor to the President concerning health information technology;

''(B) direct all health information technology activity within the Federal Government, including approving or disapproving agency policies submitted under paragraph (3);

''(C) work with public and private health information technology stakeholders to implement the national strategy described in paragraph (1); and

''(D) ensure that health information technology is utilized as fully as practicable in carrying out health surveillance efforts.

''(3) AGENCY POLICIES.—

''(A) IN GENERAL.—The Office shall, in accordance with this paragraph, approve or disapprove the policies of Federal departments or agencies with respect to any policy proposed to be implemented by such agency or department that would significantly affect that agency or department's use of health information technology.

''(B) SUBMISSION OF PROPOSAL.—The head of any Federal Government agency or department that desires to implement any policy with respect to such agency or department that would significantly affect that agency or department's use of health information technology shall submit an implementation proposal to the Office at least 60 days prior to the proposed date of the implementation of such policy.

''(C) APPROVAL OR DISAPPROVAL.—Not later than 60 days after the date on which a proposal is received under subparagraph (B), the Office shall determine whether to approve the implementation of such proposal. In making such determination, the Office shall consider whether the proposal is consistent with the national strategy described in paragraph (1). If the Office fails to make a determination within such 60-day period, such proposal shall be deemed to be approved.

''(D) FAILURE TO APPROVE.—Except as otherwise provided for by law, a proposal submitted under subparagraph (B) may not be implemented unless such proposal is approved or deemed to be approved under subparagraph (C).

''(4) COORDINATION.—The Office shall—

''(A) encourage the development and adoption of clinical, messaging, and decision support health information data standards, pursuant to the requirements of section 2903;

''(B) ensure the maintenance and implementation of the data standards described in subparagraph (A);

''(C) oversee and coordinate the health information technology efforts of the Federal Government;

''(D) ensure the compliance of the Federal Government with Federally adopted health information technology data standards;

''(E) ensure that the Federal Government consults and collaborates on decision making with respect to health information technology with the private sector and other interested parties; and

''(F) in consultation with private sector, adopt certification and testing criteria to determine if electronic health information systems interoperate.

''(5) COMMUNICATION.—The Office shall—

''(A) act as the point of contact for the private sector with respect to the use of health information technology; and

''(B) work with the private sector to collect and disseminate best health information technology practices.

''(6) EVALUATION AND DISSEMINATION.—The Office shall coordinate with the Agency for Health Research and Quality and other Federal agencies to—

''(A) evaluate and disseminate information relating to evidence of the costs and benefits of health information technology and to whom those costs and benefits accrue;

''(B) evaluate and disseminate information on the impact of health information technology on the quality and efficiency of patient care; and

''(C) review Federal payment structures and differentials for health care providers that utilize health information technology systems.

''(7) TECHNICAL ASSISTANCE.—The Office shall utilize existing private sector quality improvement organizations to—

''(A) promote the adoption of health information technology among healthcare providers; and

''(B) provide technical assistance concerning the implementation of health information technology to healthcare providers.

''(8) FEDERAL REIMBURSEMENT.—

''(A) IN GENERAL.—Not later than 6 months after the date of enactment of this title, the Office shall make recommendations to the President and the Secretary of Health and Human Services on changes to Federal reimbursement and payment structures that would encourage the adoption of information technology (IT) to improve health care quality and safety.

''(B) PLAN.—Not later than 90 days after receiving recommendations under subparagraph (A), the Secretary shall provide to the relevant Committees of Congress a report that provides, with respect to each recommendation, a plan for the implementation, or an explanation as to why implementation is inadvisable, of such recommendations. The Office shall continue to monitor federally funded and supported information technology and quality initiatives (including the initiatives authorized in this title), and periodically update recommendations to the President and the Secretary.

''(d) RESOURCES.—The President shall make available to the Office, the resources, both financial and otherwise, necessary to enable the Director to carry out the purposes of, and perform the duties and responsibilities of the Office under, this section.

''(e) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Director, the head of any Federal agency is authorized to detail, without reimbursement from the Office, any of the personnel of such agency to the Office to assist it in carrying out its duties under this section. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

**"SEC. 2903. PROMOTING THE INTEROPERABILITY OF HEALTH CARE INFORMATION TECHNOLOGY SYSTEMS.**

''(a) DEVELOPMENT, AND FEDERAL GOVERNMENT ADOPTION, OF STANDARDS.—

''(1) ADOPTION.—

''(A) IN GENERAL.—Not later than 2 years after the date of the enactment of this title, the Director, in collaboration with the Consolidated Health Informatics Initiative (or a successor organization to such Initiative), shall provide for the adoption by the Federal Government of national data and communication health information technology standards that promote the efficient exchange of data between varieties of provider health information technology systems. In carrying out the preceding sentence, the Director may adopt existing standards. Except as otherwise provided for in this title, standards adopted under this section shall be voluntary for private sector entities.

''(B) GRANTS OR CONTRACTS.—The Director may utilize grants or contracts to provide for the private sector development of standards for adoption by the Federal Government under subparagraph (A).

''(C) DEFINITION.—In this paragraph, the term 'provide for' means that the Director shall promulgate, and each Federal agency or department shall adopt, regulations to ensure that each such agency or department complies with the requirements of subsection (b).

''(2) REQUIREMENTS.—The standards developed and adopted under paragraph (1) shall be designed to—

''(A) enable health information technology to be used for the collection and use of clinically specific data;

''(B) promote the interoperability of health care information across health care settings;

''(C) facilitate clinical decision support through the use of health information technology; and

''(D) ensure the privacy and confidentiality of medical records.

''(3) PUBLIC PRIVATE PARTNERSHIP.—Consistent with activities being carried out on the date of enactment of this title, including the Consolidated Health Informatics Initiative (or a successor organization to such Initiative), health information technology standards shall be adopted by the Director under paragraph (1) at the conclusion of a collaborative process that includes consultation between the Federal Government and private sector health care and information technology stakeholders.

''(4) PRIVACY AND SECURITY.—The regulations promulgated by the Secretary under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and sections 261, 262, 263, and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) with respect to the privacy, confidentiality, and security of health information shall apply to the implementation of programs and activities under this title.

''(5) PILOT TESTS.—To the extent practical, the Director shall pilot test the health information technology data standards developed under paragraph (1) prior to their implementation under this section.

''(6) DISSEMINATION.—

''(A) IN GENERAL.—The Director shall ensure that the standards adopted under paragraph (1) are widely disseminated to interested stakeholders.

''(B) LICENSING.—To facilitate the dissemination and implementation of the standards developed and adopted under paragraph (1), the Director may license such standards, or utilize other means, to ensure the widespread use of such standards.

''(b) IMPLEMENTATION OF STANDARDS.—

''(1) PURCHASE OF SYSTEMS BY THE SECRETARY.—Effective beginning on the date that is 1 year after the adoption of the technology standards pursuant to subsection (a), the Secretary shall not purchase any health care information technology system unless such system is in compliance with the standards adopted under subsection (a), nor shall the Director approve any proposal pursuant to section 2902(c)(3) unless such proposal utilizes systems that are in compliance with the standards adopted under subsection (a).

''(2) RECIPIENTS OF FEDERAL FUNDS.—Effective on the date described in paragraph (1), no appropriated funds may be used to purchase a health care information technology system unless such system is in compliance with applicable standards adopted under subsection (a).

''(c) MODIFICATION OF STANDARDS.—The Director shall provide for ongoing oversight of the health information technology standards developed under subsection (a) to—

''(1) identify gaps or other shortcomings in such standards; and

''(2) modify such standards when determined appropriate or develop additional standards, in collaboration with standard setting organizations.

**''SEC. 2904. LOAN GUARANTEES FOR THE ADOPTION OF HEALTH INFORMATION TECHNOLOGY.**

''(a) IN GENERAL.—The Director shall guarantee payment of the principal of and the interest on loans made to eligible entities to enable such entities—

''(1) to implement local health information infrastructures to facilitate the development of interoperability across health care settings to improve quality and efficiency; or

''(2) to facilitate the purchase and adoption of health information technology to improve quality and efficiency.

''(b) ELIGIBILITY.—To be eligible to receive a loan guarantee under subsection (a) an entity shall—

''(1) with respect to an entity desiring a loan guarantee—

''(A) under subsection (a)(1), be a coalition of entities that represent an independent consortium of health care stakeholders within a community that—

''(i) includes—

''(I) physicians (as defined in section 1881(r)(1) of the Social Security Act);

''(II) hospitals; and

''(III) group health plans or other health insurance issuers (as such terms are defined in section 2791); and

''(ii) may include any other health care providers; or

''(B) under subsection (a)(2) be a health care provider;

''(2) to the extent practicable, adopt the national health information technology standards adopted under section 2903;

''(3) provide assurances that the entity shall submit to the Director regular reports on the activities carried out under the loan guarantee, including—

''(A) a description of the financial costs and benefits of the project involved and of the entities to which such costs and benefits accrue;

''(B) a description of the impact of the project on health care quality and safety; and

''(C) a description of any reduction in duplicative or unnecessary care as a result of the project involved;

''(4) provide assurances that not later than 30 days after the development of the standard quality measures pursuant to section 2906, the entity shall submit to the Director regular reports on such measures, including provider level data and analysis of the impact of information technology on such measures;

''(5) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require.

''(c) USE OF FUNDS.—Amounts received under a loan guarantee under subsection (a) shall be used—

''(1) with respect to a loan guarantee described in subsection (a)(1)—

''(A) to develop a plan for the implementation of a local health information infrastructure under this section;

''(B) to establish systems for the sharing of data in accordance with the national health information technology standards developed under section 2903;

''(C) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a local health care information infrastructure; and

''(D) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols;

''(2) with respect to a loan guarantee described in subsection (a)(2)—

''(A) to develop a plan for the purchase and installation of health information technology;

''(B) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a national or local health care information infrastructure; and

''(C) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols; and

''(3) to carry out any other activities determined appropriate by the Director.

''(d) SPECIAL CONSIDERATIONS FOR CERTAIN ENTITIES.—In awarding loan guarantees under this section, the Director shall give special consideration to eligible entities that—

''(1) provide service to low-income and underserved populations; and

''(2) agree to electronically submit the information described in paragraphs (3) and (4) of subsection (b) on a daily basis.

''(e) SPECIAL CONSIDERATIONS FOR LOCAL HEALTH INFORMATION INFRASTRUCTURES.—In awarding loan guarantees under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

''(1) include at least 50 percent of the patients living in the designated coverage area;

''(2) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

''(3) link local health information infrastructures.

''(f) AREAS OF SPECIFIC INTEREST.—In awarding loan guarantees under this section, the Director shall include—

''(1) entities with a coverage area that includes an entire State; and

''(2) entities with a multi-state coverage area.

''(g) ADMINISTRATIVE PROVISIONS.—

''(1) AGGREGATE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the aggregate amount of principal of loans guaranteed under subsection (a) with respect to an eligible entity may not exceed $5,000,000. In any 12-month period the amount disbursed to an eligible entity under this section (by a lender under a guaranteed loan) may not exceed $5,000,000.

''(B) EXCEPTION.—The cumulative total of the principal of the loans outstanding at any time to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriation Acts.

''(2) PROTECTION OF FEDERAL GOVERNMENT.—

''(A) IN GENERAL.—The Director may not approve an application for a loan guarantee under this section unless the Director determines that—

''(i) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such percent per annum on the principal obligation outstanding as the Director determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States; and

''(ii) the loan would not be available on reasonable terms and conditions without the enactment of this section.

''(B) RECOVERY.—

''(i) IN GENERAL.—The United States shall be entitled to recover from the applicant for a loan guarantee under this section the amount of any payment made pursuant to such loan guarantee, unless the Director for good cause waives such right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the loan was made.

''(ii) MODIFICATION OF TERMS.—Any terms and conditions applicable to a loan guarantee under this section may be modified by the Director to the extent the Director determines it to be consistent with the financial interest of the United States.

''(3) DEFAULTS.—The Director may take such action as the Director deems appropriate to protect the interest of the United States in the event of a default on a loan guaranteed under this section, including taking possession of, holding, and using real property pledged as security for such a loan guarantee.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2011.

''(2) AVAILABILITY.—Amounts appropriated under subparagraph (A) shall remain available for obligation until expended.

**''SEC. 2905. GRANTS FOR THE PURCHASE OF HEALTH INFORMATION TECHNOLOGY.**

''(a) IN GENERAL.—The Director may award competitive grants to eligible entities—

''(1) to implement local health information infrastructures to facilitate the development of interoperability across health care settings; or

''(2) to facilitate the purchase and adoption of health information technology.

''(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a) an entity shall—

''(1) demonstrate financial need to the Director;

''(2) with respect to an entity desiring a grant—

''(A) under subsection (a)(1), represent an independent consortium of health care stakeholders within a community that—

''(i) includes—

''(I) physicians (as defined in section 1881(r)(1) of the Social Security Act);

''(II) hospitals; and

''(III) group health plans or other health insurance issuers (as such terms are defined in section 2791); and

''(ii) may include any other health care providers; or

''(B) under subsection (a)(2) be a health care provider that provides health care services to low-income and underserved populations;

''(3) adopt the national health information technology standards developed under section 2903;

''(4) provide assurances that the entity shall submit to the Director regular reports on the activities carried out under the loan guarantee, including—

''(A) a description of the financial costs and benefits of the project involved and of the entities to which such costs and benefits accrue;

''(B) a description of the impact of the project on health care quality and safety; and

''(C) a description of any reduction in duplicative or unnecessary care as a result of the project involved;

''(5) provide assurances that not later than 30 days after the development of the standard quality measures pursuant to section 2906, the entity shall submit to the Director regular reports on such measures, including provider level data and analysis of the impact of information technology on such measures;

''(6) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

''(7) agree to provide matching funds in accordance with subsection (g).

''(c) USE OF FUNDS.—Amounts received under a grant under subsection (a) shall be used to—

''(1) with respect to a grant described in subsection (a)(1)—

''(A) to develop a plan for the implementation of a local health information infrastructure under this section;

''(B) to establish systems for the sharing of data in accordance with the national health information technology standards developed under section 2903;

''(C) to implement, enhance, or upgrade a comprehensive, electronic health information technology system; and

''(D) to maintain adequate security and privacy protocols;

''(2) with respect to a grant described in subsection (a)(2)—

''(A) to develop a plan for the purchase and installation of health information technology;

''(B) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a national or local health care information infrastructure; and

''(C) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols;

''(3) maintain adequate security and privacy protocols; and

''(4) carry out any other activities determined appropriate by the Director.

''(d) SPECIAL CONSIDERATIONS FOR CERTAIN ENTITIES.—In awarding grants under this section, the Director shall give special consideration to eligible entities that—

''(1) provide service to low-income and underserved populations; and

''(2) agree to electronically submit the information described in paragraphs (4) and (5) of subsection (b).

''(e) SPECIAL CONSIDERATIONS FOR LOCAL HEALTH INFORMATION INFRASTRUCTURES.—In awarding grants under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

''(1) include at least 50 percent of the patients living in the designated coverage area;

''(2) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

''(3) link local health information infrastructures;

''(f) AREAS OF SPECIFIC INTEREST.—In awarding grants under this section, the Director shall include—

''(1) entities with a coverage area that includes an entire State; and

''(2) entities with a multi-state coverage area.

''(g) MATCHING REQUIREMENT.—

''(1) IN GENERAL.—The Director may not make a grant under this section to an entity unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the infrastructure program for which the grant was awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to not less than 20 percent of such costs ($1 for each $5 of Federal funds provided under the grant).

''(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required under paragraph (1) may be in cash or in kind, fairly evaluated, including equipment, technology, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2011.

''(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available for obligation until expended.''.

**SEC. 202. STANDARDIZED MEASURES OF QUALITY HEALTH CARE AND DATA COLLECTION.**

Title XXIX of the Public Health Service Act, as added by section 201, is amended by adding at the end the following:

**''SEC. 2906. STANDARDIZED MEASURES OF QUALITY HEALTH CARE.**

''(a) IN GENERAL.—

''(1) COLLABORATION.—The Secretary of Health and Human Services, the Secretary of Defense, and the Secretary of Veterans Affairs (referred to in this section as the 'Secretaries'), in consultation with the Quality Interagency Coordination Taskforce (as established by Executive Order on March 13, 1998), the Institute of Medicine, the Joint Commission on Accreditation of Healthcare Organizations, the National Committee for Quality Assurance, the American Health Quality Association, the National Quality Forum, the Medicare Payment Advisory Committee, and other individuals and organizations determined appropriate by the Secretaries, shall establish uniform health care quality measures to assess the effectiveness, timeliness, patient-centeredness, efficiency, equity, and safety of care delivered across all federally supported health delivery programs.

''(2) DEVELOPMENT OF MEASURES.—Not later than 18 months after the date of enactment of this title, the Secretaries shall develop standardized sets of quality measures for each of the 20 priority areas for improvement in health care quality as identified by the Institute of Medicine in their report entitled 'Priority Areas for National Action' in 2003, or other such areas as identified by the Secretaries in order to assist beneficiaries in making informed choices about health plans or care delivery systems. The selection of appropriate quality indicators under this subsection shall include the evaluation criteria formulated by clinical professionals, consumers, and data collection experts.

''(3) PILOT TESTING.—Each federally supported health delivery program may conduct a pilot test of the quality measures developed under paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

''(b) PUBLIC REPORTING REQUIREMENTS.—The Secretaries, working collaboratively, shall establish public reporting requirements for clinicians, institutional providers, and health plans in each of the federally supported health delivery program described in subsection (a). Such requirements shall provide that the entities described in the preceding sentence shall report to the appropriate Secretary on the measures developed under subsection (a).

''(c) FULL IMPLEMENTATION.—The Secretaries, working collaboratively, shall implement all sets of quality measures and reporting systems developed under subsections (a) and (b) by not later than the date that is 1 year after the date on which the measures are developed under subsection (a)(2).

''(d) REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall—

''(1) submit to Congress a report that details the collaborative efforts carried out under subsection (a), the progress made on standardizing quality indicators throughout the Federal Government, and the state of quality measurement for priority areas that links data to the report submitted under paragraph (2) for the year involved; and

''(2) submit to Congress a report that details areas of clinical care requiring further research necessary to establish effective clinical treatments that will serve as a basis for additional quality indicators.

''(e) COMPARATIVE QUALITY REPORTS.—Beginning not later than 3 years after the date of enactment of this title, in order to make comparative quality information available to health care consumers, including members of health disparity populations, health professionals, public health officials, researchers, and other appropriate individuals and entities, the Secretaries shall provide for the pooling, analysis, and dissemination of quality measures collected under this section. Nothing in this section shall be construed as modifying the privacy standards under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

''(f) ONGOING EVALUATION OF USE.—The Secretary of Health and Human Services shall ensure the ongoing evaluation of the use of the health care quality measures established under this section.

''(g) EVALUATION AND REGULATIONS.—

''(1) EVALUATION.—

''(A) IN GENERAL.—The Secretary shall, directly or indirectly through a contract with another entity, conduct an evaluation of the collaborative efforts of the Secretaries to establish uniform health care quality measures and reporting requirements for federally supported health care delivery programs as required under this section.

''(B) REPORT.—Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress concerning the results of the evaluation under subparagraph (A).

''(2) REGULATIONS.—

''(A) PROPOSED.—Not later than 6 months after the date on which the report is submitted under paragraph (1)(B), the Secretary shall publish proposed regulations regarding the application of the uniform health care quality measures and reporting requirements described in this section to federally supported health delivery programs.

''(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the report is submitted under paragraph (1)(B), the Secretary shall publish final regulations regarding the uniform health care quality measures and reporting requirements described in this section.

''(h) DEFINITIONS.—In this section, the term 'federally supported health delivery program' means a program that is funded by the Federal Government under which health care items or services are delivered directly to patients.''.

## TITLE III—MAKING HEALTH CARE MORE AFFORDABLE FOR CHILDREN AND PREGNANT WOMEN

### Subtitle A—Covering all Children

**SEC. 300. FINDINGS.**

Congress makes the following findings:

(1) NEED FOR UNIVERSAL COVERAGE.—

(A) Currently, there are 9,000,000 children under the age of 19 that are uninsured. One out of every 8 children are uninsured while 1 in 5 Hispanic children and 1 in 7 African American children are uninsured. Three-quarters, approximately 6,800,000, of these children are eligible but not enrolled in the medicaid program or the State children's health insurance program (SCHIP). Long-range studies found that 1 in 3 children went without health insurance for all or part of 2002 and 2003.

(B) Low-income children are 3 times as likely as children in higher income families to be uninsured. It is estimated that 65 percent of uninsured children have at least 1 parent working full time over the course of the year.

(C) It is estimated that 50 percent of all legal immigrant children in families with income that is less than 200 percent of the Federal poverty line are uninsured. In States without programs to cover immigrant children, 57 percent of non-citizen children are uninsured.

(D) Children in the Southern and Western parts of the United States were nearly 1.7 times more likely to be uninsured than children in the Northeast. In the Northeast, 9.4 percent of children are uninsured while in the Midwest, 8.3 percent are uninsured. The South's rate of uninsured children is 14.3 percent while the West has an uninsured rate of 13 percent.

(E) Children's health care needs are neglected in the United States. One-quarter of young children in the United States are not fully up to date on their basic immunizations. One-third of children with chronic asthma do not get a prescription for the necessary medications to manage the disease.

(F) According to the Centers for Disease Control and Prevention, nearly ½ of all uninsured children have not had a well-child visit in the past year. One out of every 5 children has problems accessing needed care, and 1 out of every 4 children do not receive annual dental exams. One in 6 uninsured children had a delayed or unmet medical need in the past year. Minority children are less likely to receive proven treatments such as prescription medications to treat chronic disease.

(G) There are 7,600,000 young adults between the ages of 19 and 20. In the United States, approximately 28 percent, or 2,100,000 individuals, of this group are uninsured.

(H) Chronic illness and disability among children are on the rise. Children most at risk for chronic illness and disability are children who are most likely to be poor and uninsured.

(2) ROLE OF THE MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS.—

(A) The medicaid program and SCHIP serve as a crucial health safety net for 30,000,000 children. During the recent economic downturn and the highest number of uninsured individuals ever recorded in the United States, the medicaid program and SCHIP offset losses in employer-sponsored coverage. While the number of children living in low-income families increased by 2,000,000 between 2000 and 2003, the number of uninsured children fell due to the medicaid program and SCHIP.

(B) In 2003, 25,000,000 children were enrolled in the medicaid program, accounting for ½ of all enrollees and only 19 percent of total program costs.

(C) The medicaid program and SCHIP do more than just fill in the gaps. Gains in public coverage have reduced the percentage of low-income uninsured by a ⅓ from 1997 to 2003. In addition, a recent study found that publicly-insured children are more likely to obtain medical care, preventive care and dental care than similar low-income privately -insured children.

(D) Publicly funded programs such as the medicaid program and SCHIP actually improve children's health. Children who are currently insured by public programs are in better health than they were a year ago. Expansion of coverage for children and pregnant women under the medicaid program and SCHIP reduces rates of avoidable hospitalizations by 22 percent.

(E) Studies have found that children enrolled in public insurance programs experienced a 68 percent improvement in measures of school performance.

(F) Despite the success of expansions in general under the medicaid program and SCHIP, due to current budget constraints, many States have stopped doing aggressive outreach and have raised premiums and cost-sharing requirements on families under these programs. In addition, 8 States stopped enrollment in SCHIP for a period of time between April 2003 and July 2004. As a result, SCHIP enrollment fell by 200,000 children for the first time in the program's history.

(G) It is estimated that nearly 50 percent of children covered through SCHIP do not remain in the program due to reenrollment barriers. A recent study found that between 10 and 40 percent of these children are ''lost'' in the system. Difficult renewal policies and reenrollment barriers make seamless coverage in SCHIP unattainable. Studies indicate that as many as 67 percent of children who were eligible but not enrolled for SCHIP had applied for coverage but were denied due to procedural issues.

(H) While the medicaid program and SCHIP expansions to date have done much to offset what otherwise would have been a significant loss of coverage among children because of declining access to employer coverage, the shortcomings of previous expansions, such as the failure to enroll all eligible children and caps on enrollment in SCHIP because of under-funding, also are clear.

### CHAPTER 1—EXPANDED COVERAGE OF CHILDREN UNDER MEDICAID AND SCHIP

**SEC. 301. STATE OPTION TO RECEIVE 100 PERCENT FMAP FOR MEDICAL ASSISTANCE FOR CHILDREN IN POVERTY IN EXCHANGE FOR EXPANDED COVERAGE OF CHILDREN IN WORKING POOR FAMILIES UNDER TITLE XXI.**

(a) STATE OPTION.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by redesignating section 1936 as section 1937, and by inserting after section 1935 the following:

''STATE OPTION FOR INCREASED FMAP FOR MEDICAL ASSISTANCE FOR CHILDREN IN POVERTY IN EXCHANGE FOR EXPANDED COVERAGE OF CHILDREN IN WORKING POOR FAMILIES UNDER TITLE XXI

''SEC. 1936. (a) 100 PERCENT FMAP.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, in the case of a State that, through an amendment to each of its State plans under this title and title XXI (or to a waiver of either such plan), agrees to satisfy the conditions described in subsections (b), (c), and (d) the Federal medical assistance percentage shall be 100 percent with respect to the total amount expended by the State for providing medical assistance under this title for each fiscal year quarter beginning on or after the date described in subsection (e) for children whose family income does not exceed 100 percent of the poverty line.

''(2) LIMITATION ON SCOPE OF APPLICATION OF INCREASE.—The increase in the Federal medical assistance percentage for a State under this section shall apply only with respect to the total amount expended for providing medical assistance under this title for a fiscal year quarter for children described in paragraph (1) and shall not apply with respect to—

''(A) any other payments made under this title, including disproportionate share hospital payments described in section 1923;

''(B) payments under title IV or XXI; or

''(C) any payments made under this title or title XXI that are based on the enhanced FMAP described in section 2105(b).

''(b) ELIGIBILITY EXPANSIONS.—The condition described in this subsection is that the State agrees to do the following:

''(1) COVERAGE UNDER MEDICAID OR SCHIP FOR CHILDREN IN FAMILIES WHOSE INCOME DOES NOT EXCEED 300 PERCENT OF THE POVERTY LINE.—

''(A) IN GENERAL.—The State agrees to provide medical assistance under this title or

child health assistance under title XXI to children whose family income exceeds the medicaid applicable income level (as defined in section 2110(b)(4) but by substituting 'January 1, 2005' for 'March 31, 1997'), but does not exceed 300 percent of the poverty line.

''(B) STATE OPTION TO EXPAND COVERAGE THROUGH SUBSIDIZED PURCHASE OF FAMILY COVERAGE.—A State may elect to carry out subparagraph (A) through the provision of assistance for the purchase of dependent coverage under a group health plan or health insurance coverage if—

''(i) the dependent coverage is consistent with the benefit standards under this title or title XXI, as approved by the Secretary; and

''(ii) the State provides 'wrap-around' coverage under this title or title XXI.

''(C) DEEMED SATISFACTION FOR CERTAIN STATES.—A State that, as of January 1, 2005, provides medical assistance under this title or child health assistance under title XXI to children whose family income is 300 percent of the poverty line shall be deemed to satisfy this paragraph.

''(2) COVERAGE FOR CHILDREN UNDER AGE 21.—The State agrees to define a child for purposes of this title and title XXI as an individual who has not attained 21 years of age.

''(3) OPPORTUNITY FOR HIGHER INCOME CHILDREN TO PURCHASE SCHIP COVERAGE.—The State agrees to permit any child whose family income exceeds 300 percent of the poverty line to purchase full or 'wrap-around' coverage under title XXI at the full cost of providing such coverage, as determined by the State.

''(4) COVERAGE FOR LEGAL IMMIGRANT CHILDREN.—The State agrees to—

''(A) provide medical assistance under this title and child health assistance under title XXI for alien children who are lawfully residing in the United States (including battered aliens described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and who are otherwise eligible for such assistance in accordance with section 1903(v)(4) and 2107(e)(1)(E); and

''(B) not establish or enforce barriers that deter applications by such aliens, including through the application of the removal of the barriers described in subsection (c).

''(c) REMOVAL OF ENROLLMENT AND ACCESS BARRIERS.—The condition described in this subsection is that the State agrees to do the following:

''(1) PRESUMPTIVE ELIGIBILITY FOR CHILDREN.—The State agrees to—

''(A) provide presumptive eligibility for children under this title and title XXI in accordance with section 1920A;

''(B) treat any items or services that are provided to an uncovered child (as defined in section 2110(c)(8)) who is determined ineligible for medical assistance under this title as child health assistance for purposes of paying a provider of such items or services, so long as such items or services would be considered child health assistance for a targeted low-income child under title XXI.

''(2) ADOPTION OF 12-MONTH CONTINUOUS ENROLLMENT.—The State agrees to provide that eligibility for assistance under this title and title XXI shall not be regularly redetermined more often than once every year for children.

''(3) ACCEPTANCE OF SELF-DECLARATION OF INCOME.—The State agrees to permit the family of a child applying for medical assistance under this title or child health assistance under title XXI to declare and certify by signature under penalty of perjury family income for purposes of collecting financial eligibility information.

''(4) ADOPTION OF ACCEPTANCE OF ELIGIBILITY DETERMINATIONS FOR OTHER ASSISTANCE PROGRAMS.—The State agrees to accept determinations (made within a reasonable period, as found by the State, before its use for this purpose) of an individual's family or household income made by a Federal or State agency (or a public or private entity making such determination on behalf of such agency), including the agencies administering the Food Stamp Act of 1977, the Richard B. Russell National School Lunch Act, and the Child Nutrition Act of 1966, notwithstanding any differences in budget unit, disregard, deeming, or other methodology, but only if—

''(A) such agency has fiscal liabilities or responsibilities affected or potentially affected by such determinations; and

''(B) any information furnished by such agency pursuant to this subparagraph is used solely for purposes of determining eligibility for medical assistance under this title or for child health assistance under title XXI.

''(5) NO ASSETS TEST.—The State agrees to not (or demonstrates that it does not) apply any assets or resources test for eligibility under this title or title XXI with respect to children.

''(6) ELIGIBILITY DETERMINATIONS AND REDETERMINATIONS.—

''(A) IN GENERAL.—The State agrees for purposes of initial eligibility determinations and redeterminations of children under this title and title XXI not to require a face-to-face interview and to permit applications and renewals by mail, telephone, and the Internet.

''(B) NONDUPLICATION OF INFORMATION.—

''(i) IN GENERAL.—For purposes of redeterminations of eligibility for currently or previously enrolled children under this title and title XXI, the State agrees to use all information in its possession (including information available to the State under other Federal or State programs) to determine eligibility or redetermine continued eligibility before seeking similar information from parents.

''(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed as limiting any obligation of a State to provide notice and a fair hearing before denying, terminating, or reducing a child's coverage based on such information in the possession of the State.

''(7) NO WAITING LIST FOR CHILDREN UNDER SCHIP.—The State agrees to not impose any numerical limitation, waiting list, waiting period, or similar limitation on the eligibility of children for child health assistance under title XXI or to establish or enforce other barriers to the enrollment of eligible children based on the date of their application for coverage.

''(8) ADEQUATE PROVIDER PAYMENT RATES.—The State agrees to—

''(A) establish payment rates for children's health care providers under this title that are no less than the average of payment rates for similar services for such providers provided under the benchmark benefit packages described in section 2103(b);

''(B) establish such rates in amounts that are sufficient to ensure that children enrolled under this title or title XXI have adequate access to comprehensive care, in accordance with the requirements of section 1902(a)(30)(A); and

''(C) include provisions in its contracts with providers under this title guaranteeing compliance with these requirements.

''(d) MAINTENANCE OF MEDICAID ELIGIBILITY LEVELS FOR CHILDREN.—

''(1) IN GENERAL.—The condition described in this subsection is that the State agrees to maintain eligibility income, resources, and methodologies applied under this title (including under a waiver of such title or under section 1115) with respect to children that are no more restrictive than the eligibility income, resources, and methodologies applied with respect to children under this title (including under such a waiver) as of January 1, 2005.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as implying that a State does not have to comply with the minimum income levels required for children under section 1902(l)(2).

''(e) DATE DESCRIBED.—The date described in this subsection is the date on which, with respect to a State, a plan amendment that satisfies the requirements of subsections (b), (c), and (d) is approved by the Secretary.

''(f) DEFINITION OF POVERTY LINE.—In this section, the term 'poverty line' has the meaning given that term in section 2110(c)(5).''.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by inserting before the period the following: '', and with respect to amounts expended for medical assistance for children on or after the date described in subsection (d) of section 1936, in the case of a State that has, in accordance with such section, an approved plan amendment under this title and title XXI''.

(2) Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)) is amended—

(A) in subparagraph (C), by adding ''or'' after ''section 1611(b)(1),''; and

(B) by inserting after subparagraph (C), the following:

''(D) who would not receive such medical assistance but for State electing the option under section 1936 and satisfying the conditions described in subsections (b), (c), and (d) of such section,''.

**SEC. 302. ELIMINATION OF CAP ON SCHIP FUNDING FOR STATES THAT EXPAND ELIGIBILITY FOR CHILDREN.**

(a) IN GENERAL.—Section 2105 of the Social Security Act (42 U.S.C. 1397dd) is amended by adding at the end the following:

''(h) GUARANTEED FUNDING FOR CHILD HEALTH ASSISTANCE FOR COVERAGE EXPANSION STATES.—

''(1) IN GENERAL.—Only in the case of a State that has, in accordance with section 1936, an approved plan amendment under this title and title XIX, any payment cap that would otherwise apply to the State under this title as a result of having expended all allotments available for expenditure by the State with respect to a fiscal year shall not apply with respect to amounts expended by the State on or after the date described in section 1936(d).

''(2) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose of paying a State described in paragraph (1) for each quarter beginning on or after the date described in section 1936(d), an amount equal to the enhanced FMAP of expenditures described in paragraph (1) and incurred during such quarter.''.

(b) CONFORMING AMENDMENTS.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(1) in subsection (a), by inserting ''subject to section 2105(h),'' after ''under this section,'';

(2) in subsection (b)(1), by inserting ''and section 2105(h)'' after ''Subject to paragraph (4)''; and

(3) in subsection (c)(1), by inserting ''subject to section 2105(h),'' after ''for a fiscal year,''.

## CHAPTER 2—STATE OPTIONS FOR INCREMENTAL CHILD COVERAGE EXPANSIONS

**SEC. 311. STATE OPTION TO ENROLL LOW-INCOME CHILDREN OF STATE EMPLOYEES IN SCHIP.**

Section 2110(b)(2) of the Social Security Act (42 U.S.C. 1397jj(b)(2)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively and realigning the left margins of such clauses appropriately;

(2) by striking ''Such term'' and inserting the following:

''(A) IN GENERAL.—Such term''; and

(3) by adding at the end the following:

''(B) STATE OPTION TO ENROLL LOW-INCOME CHILDREN OF STATE EMPLOYEES.—At the option of a State, subparagraph (A)(ii) shall not apply to any low-income child who would otherwise be eligible for child health assistance under this title but for such subparagraph.''.

**SEC. 312. STATE OPTION FOR PASSIVE RENEWAL OF ELIGIBILITY FOR CHILDREN UNDER MEDICAID AND SCHIP.**

(a) IN GENERAL.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended by adding at the end the following:

''(5) Notwithstanding any other provision of this title, a State may provide that an individual who has not attained 21 years of age who has been determined eligible for medical assistance under this title shall remain eligible for medical assistance until such time as the State has information demonstrating that the individual is no longer so eligible.''.

(b) APPLICATION UNDER TITLE XXI.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)) is amended—

(1) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and

(2) by inserting after subparagraph (A), the following:

''(B) Section 1902(l)(5) (relating to passive renewal of eligibility for children).''.

## CHAPTER 3—TAX INCENTIVES FOR HEALTH INSURANCE COVERAGE OF CHILDREN

**SEC. 321. REFUNDABLE CREDIT FOR HEALTH INSURANCE COVERAGE OF CHILDREN.**

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

**''SEC. 36. HEALTH INSURANCE COVERAGE OF CHILDREN.**

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to so much of the amount paid during the taxable year, not compensated for by insurance or otherwise, for qualified health insurance for each dependent child of the taxpayer, as exceeds 5 percent of the adjusted gross income of such taxpayer for such taxable year.

''(b) DEPENDENT CHILD.—For purposes of this section, the term 'dependent child' means any child (as defined in section 152(f)(1)) who has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins and with respect to whom a deduction under section 151 is allowable to the taxpayer.

''(c) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified health insurance' means insurance, either employer-provided or made available under title XIX or XXI of the Social Security Act, which constitutes medical care as defined in section 213(d) without regard to—

''(A) paragraph (1)(C) thereof, and

''(B) so much of paragraph (1)(D) thereof as relates to qualified long-term care insurance contracts.

''(2) EXCLUSION OF CERTAIN OTHER CONTRACTS.—Such term shall not include insurance if a substantial portion of its benefits are excepted benefits (as defined in section 9832(c)).

''(d) MEDICAL SAVINGS ACCOUNT AND HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—

''(1) IN GENERAL.—If a deduction would (but for paragraph (2)) be allowed under section 220 or 223 to the taxpayer for a payment for the taxable year to the medical savings account or health savings account of an individual, subsection (a) shall be applied by treating such payment as a payment for qualified health insurance for such individual.

''(2) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under section 220 or 223 for that portion of the payments otherwise allowable as a deduction under section 220 or 223 for the taxable year which is equal to the amount of credit allowed for such taxable year by reason of this subsection.

''(e) SPECIAL RULES.—

''(1) DETERMINATION OF INSURANCE COSTS.—The Secretary shall provide rules for the allocation of the cost of any qualified health insurance for family coverage to the coverage of any dependent child under such insurance.

''(2) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—In the case of a taxpayer who is eligible to deduct any amount under section 162(l) for the taxable year, this section shall apply only if the taxpayer elects not to claim any amount as a deduction under such section for such year.

''(3) COORDINATION WITH MEDICAL EXPENSE AND HIGH DEDUCTIBLE HEALTH PLAN DEDUCTIONS.—The amount which would (but for this paragraph) be taken into account by the taxpayer under section 213 or 224 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

''(4) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

''(5) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under subsection (a) if the credit under section 35 is allowed and no credit shall be allowed under 35 if a credit is allowed under this section.

''(6) ELECTION NOT TO CLAIM CREDIT.—This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.''.

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning transactions with other persons) is amended by inserting after section 6050T the following new section:

**''SEC. 6050U. RETURNS RELATING TO PAYMENTS FOR QUALIFIED HEALTH INSURANCE.**

''(a) IN GENERAL.—Any governmental unit or any person who, in connection with a trade or business conducted by such person, receives payments during any calendar year from any individual for coverage of a dependent child (as defined in section 36(b)) of such individual under creditable health insurance, shall make the return described in subsection (b) (at such time as the Secretary may by regulations prescribe) with respect to each individual from whom such payments were received.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of the individual from whom payments described in subsection (a) were received,

''(B) the name, address, and TIN of each dependent child (as so defined) who was provided by such person with coverage under creditable health insurance by reason of such payments and the period of such coverage, and

''(C) such other information as the Secretary may reasonably prescribe.

''(c) CREDITABLE HEALTH INSURANCE.—For purposes of this section, the term 'creditable health insurance' means qualified health insurance (as defined in section 36(c)).

''(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required under subsection (b)(2)(A) to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person,

''(2) the aggregate amount of payments described in subsection (a) received by the person required to make such return from the individual to whom the statement is required to be furnished, and

''(3) the information required under subsection (b)(2)(B) with respect to such payments.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(e) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xiii) through (xviii) as clauses (xiv) through (xix), respectively, and by inserting after clause (xii) the following new clause:

''(xiii) section 6050U (relating to returns relating to payments for qualified health insurance),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ''or'' at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting '', or'', and by adding at the end the following new subparagraph:

''(CC) section 6050U(d) (relating to returns relating to payments for qualified health insurance).''.

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050T the following new item:

''Sec. 6050U. Returns relating to payments for qualified health insurance.''.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36 of such Code''.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following new items:

''Sec. 36. Health insurance coverage of children.

''Sec. 37. Overpayments of tax.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

**SEC. 322. FORFEITURE OF PERSONAL EXEMPTION FOR ANY CHILD NOT COVERED BY HEALTH INSURANCE.**

(a) IN GENERAL.—Section 151(d) of the Internal Revenue Code of 1986 (relating to exemption amount) is amended by adding at the end the following new paragraph:

''(5) REDUCTION OF EXEMPTION AMOUNT FOR ANY CHILD NOT COVERED BY HEALTH INSURANCE.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the exemption amount otherwise determined under this subsection for any dependent child (as defined in section 36(b)) for any taxable year shall be reduced by the same percentage as the percentage of such taxable year during which such dependent child was not covered by qualified health insurance (as defined in section 36(c)).

''(B) FULL REDUCTION IF NO PROOF OF COVERAGE IS PROVIDED.—For purposes of subparagraph (A), in the case of any taxpayer who fails to attach to the return of tax for any taxable year a copy of the statement furnished to such taxpayer under section 6050U, the percentage reduction under such subparagraph shall be deemed to be 100 percent.

''(C) NONAPPLICATION OF PARAGRAPH TO TAXPAYERS IN LOWEST TAX BRACKET.—This paragraph shall not apply to any taxpayer whose taxable income for the taxable year does not exceed the initial bracket amount determined under section 1(i)(1)(B).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

## CHAPTER 4—MISCELLANEOUS

**SEC. 331. REQUIREMENT FOR GROUP MARKET HEALTH INSURERS TO OFFER DEPENDENT COVERAGE OPTION FOR WORKERS WITH CHILDREN.**

(a) ERISA.—

(1) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:

**''SEC. 714. REQUIREMENT TO OFFER OPTION TO PURCHASE DEPENDENT COVERAGE FOR CHILDREN.**

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall offer an individual who is enrolled in such coverage the option to purchase dependent coverage for a child of the individual.

''(b) NO EMPLOYER CONTRIBUTION REQUIRED.—An employer shall not be required to contribute to the cost of purchasing dependent coverage for a child by an individual who is an employee of such employer.

''(c) DEFINITION OF CHILD.—In this section, the term 'child' means an individual who has not attained 21 years of age.''.

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001) is amended by inserting after the item relating to section 713 the following:

''Sec. 714. Requirement to offer option to purchase dependent coverage for children.''.

(b) PUBLIC HEALTH SERVICE ACT.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:

**''SEC. 2707. REQUIREMENT TO OFFER OPTION TO PURCHASE DEPENDENT COVERAGE FOR CHILDREN.**

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall offer an individual who is enrolled in such coverage the option to purchase dependent coverage for a child of the individual.

''(b) NO EMPLOYER CONTRIBUTION REQUIRED.—An employer shall not be required to contribute to the cost of purchasing dependent coverage for a child by an individual who is an employee of such employer.

''(c) DEFINITION OF CHILD.—In this section, the term 'child' means an individual who has not attained 21 years of age.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2006.

**SEC. 332. EFFECTIVE DATE.**

Unless otherwise provided, the amendments made by this subtitle shall take effect on October 1, 2005, and shall apply to child health assistance and medical assistance provided on or after that date without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

## Subtitle B—Covering Pregnant Women

**SEC. 351. STATE OPTION TO EXPAND OR ADD COVERAGE OF PREGNANT WOMEN UNDER THE MEDICAID PROGRAM AND STATE CHILDREN'S HEALTH INSURANCE PROGRAM.**

(a) MEDICAID.—

(1) AUTHORITY TO EXPAND COVERAGE.—Section 1902(l)(2)(A)(i) of the Social Security Act (42 U.S.C. 1396a(l)(2)(A)(i)) is amended by inserting ''(or such higher percentage as the State may elect for purposes of expenditures for medical assistance for pregnant women described in section 1905(u)(4)(A))'' after ''185 percent''.

(2) ENHANCED MATCHING FUNDS AVAILABLE IF CERTAIN CONDITIONS MET.—Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by section 311(b)(2), is amended—

(A) in the fourth sentence of subsection (b), by striking ''or (u)(4)'' and inserting '', (u)(4), or (u)(5)''; and

(B) in subsection (u)—

(i) by redesignating paragraph (5) as paragraph (6); and

(ii) by inserting after paragraph (4) the following new paragraph:

''(5) For purposes of the fourth sentence of subsection (b) and section 2105(a), the expenditures described in this paragraph are the following:

''(A) CERTAIN PREGNANT WOMEN.—If the conditions described in subparagraph (B) are met, expenditures for medical assistance for pregnant women described in subsection (n) or under section 1902(l)(1)(A) in a family the income of which exceeds 185 percent of the poverty line, but does not exceed the income eligibility level established under title XXI for a targeted low-income child.

''(B) CONDITIONS.—The conditions described in this subparagraph are the following:

''(i) The State plans under this title and title XXI do not provide coverage for pregnant women described in subparagraph (A) with higher family income without covering such pregnant women with a lower family income.

''(ii) The State does not apply an effective income level for pregnant women that is lower than the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) that has been specified under the State plan under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902, as of January 1, 2005, to be eligible for medical assistance as a pregnant woman.

''(C) DEFINITION OF POVERTY LINE.—In this subsection, the term 'poverty line' has the meaning given such term in section 2110(c)(5).''.

(3) PAYMENT FROM TITLE XXI ALLOTMENT FOR MEDICAID EXPANSION COSTS; ELIMINATION OF COUNTING MEDICAID CHILD PRESUMPTIVE ELIGIBILITY COSTS AGAINST TITLE XXI ALLOTMENT.—Section 2105(a)(1) of the Social Security Act (42 U.S.C. 1397ee(a)(1)) is amended—

(A) in the matter preceding subparagraph (A), by striking ''(or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)))''; and

(B) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) for the provision of medical assistance that is attributable to expenditures described in section 1905(u)(5)(A);''.

(b) SCHIP.—

(1) COVERAGE.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following new section:

**''SEC. 2111. OPTIONAL COVERAGE OF TARGETED LOW-INCOME PREGNANT WOMEN.**

''(a) OPTIONAL COVERAGE.—Notwithstanding any other provision of this title, a State may provide for coverage, through an amendment to its State child health plan under section 2102, of pregnancy-related assistance for targeted low-income pregnant women in accordance with this section, but only if—

''(1) the State has established an income eligibility level for pregnant women under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902 that is at least 185 percent of the income official poverty line; and

''(2) the State meets the conditions described in section 1905(u)(5)(B).

''(b) DEFINITIONS.—For purposes of this title:

''(1) PREGNANCY-RELATED ASSISTANCE.—The term 'pregnancy-related assistance' has the meaning given the term child health assistance in section 2110(a) as if any reference to targeted low-income children were a reference to targeted low-income pregnant women, except that the assistance shall be limited to services related to pregnancy (which include prenatal, delivery, and postpartum services and services described in section 1905(a)(4)(C)) and to other conditions that may complicate pregnancy.

''(2) TARGETED LOW-INCOME PREGNANT WOMAN.—The term 'targeted low-income pregnant woman' means a woman—

''(A) during pregnancy and through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends;

''(B) whose family income exceeds the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) that has been specified under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902, as of January 1, 2005, to be eligible for medical assistance as a pregnant woman under title XIX but does not exceed the income eligibility level established under the State child health plan under this title for a targeted low-income child; and

''(C) who satisfies the requirements of paragraphs (1)(A), (1)(C), (2), and (3) of section 2110(b).

''(c) REFERENCES TO TERMS AND SPECIAL RULES.—In the case of, and with respect to, a State providing for coverage of pregnancy-related assistance to targeted low-income pregnant women under subsection (a), the following special rules apply:

''(1) Any reference in this title (other than in subsection (b)) to a targeted low-income

child is deemed to include a reference to a targeted low-income pregnant woman.

''(2) Any such reference to child health assistance with respect to such women is deemed a reference to pregnancy-related assistance.

''(3) Any such reference to a child is deemed a reference to a woman during pregnancy and the period described in subsection (b)(2)(A).

''(4) In applying section 2102(b)(3)(B), any reference to children found through screening to be eligible for medical assistance under the State medicaid plan under title XIX is deemed a reference to pregnant women.

''(5) There shall be no exclusion of benefits for services described in subsection (b)(1) based on any preexisting condition and no waiting period (including any waiting period imposed to carry out section 2102(b)(3)(C)) shall apply.

''(6) Subsection (a) of section 2103 (relating to required scope of health insurance coverage) shall not apply insofar as a State limits its coverage to services described in subsection (b)(1) and the reference to such section in section 2105(a)(1)(C) is deemed not to require, in such case, compliance with the requirements of section 2103(a).

''(7) In applying section 2103(e)(3)(B) in the case of a pregnant woman provided coverage under this section, the limitation on total annual aggregate cost-sharing shall be applied to such pregnant woman.

''(8) The reference in section 2107(e)(1)(D) to section 1920A (relating to presumptive eligibility for children) is deemed a reference to section 1920 (relating to presumptive eligibility for pregnant women).

''(d) AUTOMATIC ENROLLMENT FOR CHILDREN BORN TO WOMEN RECEIVING PREGNANCY-RELATED ASSISTANCE.—If a child is born to a targeted low-income pregnant woman who was receiving pregnancy-related assistance under this section on the date of the child's birth, the child shall be deemed to have applied for child health assistance under the State child health plan and to have been found eligible for such assistance under such plan or to have applied for medical assistance under title XIX and to have been found eligible for such assistance under such title, as appropriate, on the date of such birth and to remain eligible for such assistance until the child attains 1 year of age. During the period in which a child is deemed under the preceding sentence to be eligible for child health or medical assistance, the child health or medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).''.

(2) ADDITIONAL ALLOTMENTS FOR PROVIDING COVERAGE OF PREGNANT WOMEN.—

(A) IN GENERAL.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by inserting after subsection (c) the following new subsection:

''(d) ADDITIONAL ALLOTMENTS FOR PROVIDING COVERAGE OF PREGNANT WOMEN.—

''(1) APPROPRIATION; TOTAL ALLOTMENT.—For the purpose of providing additional allotments to States under this title, there is appropriated, out of any money in the Treasury not otherwise appropriated, for each of fiscal years 2006 through 2009, $200,000,000.

''(2) STATE AND TERRITORIAL ALLOTMENTS.—In addition to the allotments provided under subsections (b) and (c), subject to paragraphs (3) and (4), of the amount available for the additional allotments under paragraph (1) for a fiscal year, the Secretary shall allot to each State with a State child health plan approved under this title—

''(A) in the case of such a State other than a commonwealth or territory described in subparagraph (B), the same proportion as the proportion of the State's allotment under subsection (b) (determined without regard to subsection (f)) to the total amount of the allotments under subsection (b) for such States eligible for an allotment under this paragraph for such fiscal year; and

''(B) in the case of a commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth's or territory's allotment under subsection (c) (determined without regard to subsection (f)) to the total amount of the allotments under subsection (c) for commonwealths and territories eligible for an allotment under this paragraph for such fiscal year.

''(3) USE OF ADDITIONAL ALLOTMENT.—Additional allotments provided under this subsection are not available for amounts expended before October 1, 2005. Such amounts are available for amounts expended on or after such date for child health assistance for targeted low-income children, as well as for pregnancy-related assistance for targeted low-income pregnant women.

''(4) NO PAYMENTS UNLESS ELECTION TO EXPAND COVERAGE OF PREGNANT WOMEN.—No payments may be made to a State under this title from an allotment provided under this subsection unless the State provides pregnancy-related assistance for targeted low-income pregnant women under this title, or provides medical assistance for pregnant women under title XIX, whose family income exceeds the effective income level applicable under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902 to a family of the size involved as of January 1, 2005.''.

(B) CONFORMING AMENDMENTS.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd), as amended by section 302(b), is amended—

(i) in subsection (a), in the matter preceding paragraph (1), by inserting ''subsection (d) and'' before ''section 2105(h)'';

(ii) in subsection (b)(1), by inserting '', subsection (d),'' after ''Subject to paragraph (4)''; and

(iii) in subsection (c)(1), by inserting ''subsection (d) and'' after ''section 2105(h)''.

(3) ADDITIONAL CONFORMING AMENDMENTS.—

(A) NO COST-SHARING FOR PREGNANCY-RELATED BENEFITS.—Section 2103(e)(2) of the Social Security Act (42 U.S.C. 1397cc(e)(2)) is amended—

(i) in the heading, by inserting ''OR PREGNANCY-RELATED SERVICES'' after ''PREVENTIVE SERVICES''; and

(ii) by inserting before the period at the end the following: ''or for pregnancy-related services''.

(B) NO WAITING PERIOD.—Section 2102(b)(1)(B) (42 U.S.C. 1397bb(b)(1)(B)) is amended—

(i) in clause (i), by striking '', and'' at the end and inserting a semicolon;

(ii) in clause (ii), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following new clause:

''(iii) may not apply a waiting period (including a waiting period to carry out paragraph (3)(C)) in the case of a targeted low-income pregnant woman.''.

(c) AUTHORITY FOR STATES THAT PROVIDE MEDICAID OR SCHIP COVERAGE FOR PREGNANT WOMEN WITH INCOME ABOVE 185 PERCENT OF THE POVERTY LINE TO USE PORTION OF SCHIP FUNDS FOR MEDICAID EXPENDITURES.—Section 2105(g) of the Social Security Act (42 U.S.C. 1397ee(g)) is amended—

(1) in the subsection heading, by inserting ''AND CERTAIN PREGNANCY COVERAGE EXPANSION STATES'' after ''QUALIFYING STATES'';

(2) by adding at the end the following:

''(4) SPECIAL AUTHORITY FOR CERTAIN PREGNANCY COVERAGE EXPANSION STATES.—

''(A) IN GENERAL.—In the case of a State that, as of the date of enactment of the Affordable Health Care Act of 2005, has an income eligibility standard under title XIX or this title (under section 1902(a)(10)(A) or under a statewide waiver in effect under section 1115 with respect to title XIX or this title) that is at least 185 percent of the poverty line with respect to pregnant women, the State may elect to use not more than 20 percent of any allotment under section 2104 for any fiscal year (insofar as it is available under subsections (e) and (g) of such section) for payments under title XIX in accordance with subparagraph (B), instead of for expenditures under this title.

''(B) PAYMENTS TO STATES.—

''(i) IN GENERAL.—In the case of a State described in subparagraph (A) that has elected the option described in that subparagraph, subject to the availability of funds under such subparagraph and, if applicable, paragraph (1)(A), with respect to the State, the Secretary shall pay the State an amount each quarter equal to the additional amount that would have been paid to the State under title XIX with respect to expenditures described in clause (ii) if the enhanced FMAP (as determined under subsection (b)) had been substituted for the Federal medical assistance percentage (as defined in section 1905(b)).

''(ii) EXPENDITURES DESCRIBED.—For purposes of this subparagraph, the expenditures described in this clause are expenditures, made after the date of the enactment of this paragraph and during the period in which funds are available to the State for use under subparagraph (A), for medical assistance under title XIX for pregnant women whose family income is at least 185 percent of the poverty line.

''(iii) NO IMPACT ON DETERMINATION OF BUDGET NEUTRALITY FOR WAIVERS.—In the case of a State described in subparagraph (A) that uses amounts paid under this paragraph for expenditures described in clause (ii) that are incurred under a waiver approved for the State, any budget neutrality determinations with respect to such waiver shall be determined without regard to such amounts paid.''; and

(3) in paragraph (3), by striking ''and (2)'' and inserting ''(2), and (4)''.

(d) OTHER AMENDMENTS TO MEDICAID.—

(1) ELIGIBILITY OF A NEWBORN.—Section 1902(e)(4) of the Social Security Act (42 U.S.C. 1396a(e)(4)) is amended in the first sentence by striking ''so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance''.

(2) APPLICATION OF QUALIFIED ENTITIES TO PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN UNDER MEDICAID.—Section 1920(b) of the Social Security Act (42 U.S.C. 1396r–1(b)) is amended by adding after paragraph (2) the following flush sentence:

''The term 'qualified provider' includes a qualified entity as defined in section 1920A(b)(3).''.

(e) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after October 1, 2005, without regard to whether regulations implementing such amendments have been promulgated.

**SEC. 352. OPTIONAL COVERAGE OF LEGAL IMMIGRANTS UNDER THE MEDICAID PROGRAM AND SCHIP.**

(a) MEDICAID PROGRAM.—Section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v)) is amended—

(1) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (4)''; and

(2) by adding at the end the following new paragraph:

''(4)(A) A State may elect (in a plan amendment under this title) to provide medical assistance under this title for aliens who are lawfully residing in the United States (including battered aliens described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and who are otherwise eligible for such assistance, within any of the following eligibility categories:

''(i) PREGNANT WOMEN.—Women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).

''(ii) CHILDREN.—Children (as defined under such plan), including optional targeted low-income children described in section 1905(u)(2)(B).

''(B)(i) In the case of a State that has elected to provide medical assistance to a category of aliens under subparagraph (A), no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost.

''(ii) The provisions of sections 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not apply to a State that makes an election under subparagraph (A).''.

(b) TITLE XXI.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended by adding at the end the following new subparagraph:

''(E) Section 1903(v)(4) (relating to optional coverage of permanent resident alien pregnant women and children), but only with respect to an eligibility category under this title, if the same eligibility category has been elected under such section for purposes of title XIX.''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2005, and apply to medical assistance and child health assistance furnished on or after such date.

**SEC. 353. PROMOTING CESSATION OF TOBACCO USE UNDER THE MEDICAID PROGRAM.**

(a) DROPPING EXCEPTION FROM MEDICAID PRESCRIPTION DRUG COVERAGE FOR TOBACCO CESSATION MEDICATIONS.—Section 1927(d)(2) of the Social Security Act (42 U.S.C. 1396r–8(d)(2)) is amended—

(1) by striking subparagraph (E);

(2) by redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I), respectively; and

(3) in subparagraph (F) (as redesignated by paragraph (2)), by inserting before the period at the end the following: '', except agents approved by the Food and Drug Administration for purposes of promoting, and when used to promote, tobacco cessation''.

(b) REQUIRING COVERAGE OF TOBACCO CESSATION COUNSELING SERVICES FOR PREGNANT WOMEN.—Section 1905 of the Social Security Act (42 U.S.C. 1396d(a)(4)) is amended—

(1) in subsection (a)(4)—

(A) by striking ''and'' before ''(C)''; and

(B) by inserting before the semicolon at the end the following new subparagraph: ''; and (D) counseling for cessation of tobacco use (as defined in subsection (x)) for pregnant women''; and

(2) by adding at the end the following:

''(y)(1) For purposes of this title, the term 'counseling for cessation of tobacco use' means therapy and counseling for cessation of tobacco use for pregnant women who use tobacco products or who are being treated for tobacco use that is furnished—

''(A) by or under the supervision of a physician; or

''(B) by any other health care professional who—

''(i) is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished; and

''(ii) is authorized to receive payment for other services under this title or is designated by the Secretary for this purpose.

''(2) Subject to paragraph (3), such term is limited to—

''(A) therapy and counseling services recommended in 'Treating Tobacco Use and Dependence: A Clinical Practice Guideline', published by the Public Health Service in June 2000, or any subsequent modification of such Guideline; and

''(B) such other therapy and counseling services that the Secretary recognizes to be effective.

''(3) Such term shall not include coverage for drugs or biologicals that are not otherwise covered under this title.''.

(c) REMOVAL OF COST-SHARING FOR TOBACCO CESSATION COUNSELING SERVICES FOR PREGNANT WOMEN.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended in each of subsections (a)(2)(B) and (b)(2)(B) by inserting '', and counseling for cessation of tobacco use (as defined in section 1905(x))'' after ''complicate the pregnancy''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date that is 1 year after the date of enactment of this Act.

**SEC. 354. PROMOTING CESSATION OF TOBACCO USE UNDER THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM.**

(a) QUALITY MATERNAL AND CHILD HEALTH SERVICES INCLUDES TOBACCO CESSATION COUNSELING AND MEDICATIONS.—

(1) IN GENERAL.—Section 501 of the Social Security Act (42 U.S.C. 701) is amended by adding at the end the following new subsection:

''(c) For purposes of this title, counseling for cessation of tobacco use (as defined in section 1905(y)), drugs and biologicals used to promote smoking cessation, and the inclusion of antitobacco messages in health promotion counseling shall be considered to be part of quality maternal and child health services.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date that is 1 year after the date of enactment of this Act.

(b) EVALUATION OF NATIONAL CORE PERFORMANCE MEASURES.—

(1) IN GENERAL.—The Administrator of the Health Resources and Services Administration shall assess the current national core performance measures and national core outcome measures utilized under the Maternal and Child Health Block Grant under title V of the Social Security Act (42 U.S.C. 701 et seq.) for purposes of expanding such measures to include some of the known causes of low birthweight and prematurity, including the percentage of infants born to pregnant women who smoked during pregnancy.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Health Resources and Services Administration shall submit to the appropriate committees of Congress a report concerning the results of the evaluation conducted under paragraph (1).

**SEC. 355. STATE OPTION TO PROVIDE FAMILY PLANNING SERVICES AND SUPPLIES TO INDIVIDUALS WITH INCOMES THAT DO NOT EXCEED A STATE'S INCOME ELIGIBILITY LEVEL FOR MEDICAL ASSISTANCE.**

(a) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), as amended by section 301(a), is amended—

(1) by redesignating section 1937 as section 1938; and

(2) by inserting after section 1936 the following new section:

''STATE OPTION TO PROVIDE FAMILY PLANNING SERVICES AND SUPPLIES

''SEC. 1937. (a) IN GENERAL.—Subject to subsections (b) and (c), a State may elect (through a State plan amendment) to make medical assistance described in section 1905(a)(4)(C) available to any individual whose family income does not exceed the greater of—

''(1) 185 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved; or

''(2) the eligibility income level (expressed as a percentage of such poverty line) that has been specified under a waiver authorized by the Secretary or under section 1902(r)(2)), as of January 1, 2005, for an individual to be eligible for medical assistance under the State plan.

''(b) COMPARABILITY.—Medical assistance described in section 1905(a)(4)(C) that is made available under a State plan amendment under subsection (a) shall—

''(1) not be less in amount, duration, or scope than the medical assistance described in that section that is made available to any other individual under the State plan; and

''(2) be provided in accordance with the restrictions on deductions, cost sharing, or similar charges imposed under section 1916(a)(2)(D).

''(c) OPTION TO EXTEND COVERAGE DURING A POST-ELIGIBILITY PERIOD.—

''(1) INITIAL PERIOD.—A State plan amendment made under subsection (a) may provide that any individual who was receiving medical assistance described in section 1905(a)(4)(C) as a result of such amendment, and who becomes ineligible for such assistance because of hours of, or income from, employment, may remain eligible for such medical assistance through the end of the 6-month period that begins on the first day the individual becomes so ineligible.

''(2) ADDITIONAL EXTENSION.—A State plan amendment made under subsection (a) may provide that any individual who has received medical assistance described in section 1905(a)(4)(C) during the entire 6-month period described in paragraph (1) may be extended coverage for such assistance for a succeeding 6-month period.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to medical assistance provided on and after October 1, 2005.

**SEC. 356. STATE OPTION TO EXTEND THE POSTPARTUM PERIOD FOR PROVISION OF FAMILY PLANNING SERVICES AND SUPPLIES.**

(a) IN GENERAL.—Section 1902(e)(5) of the Social Security Act (42 U.S.C. 1396a(e)(5)) is amended—

(1) by striking ''eligible under the plan, as though'' and inserting ''eligible under the plan—

''(A) as though'';

(2) by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(B) for medical assistance described in section 1905(a)(4)(C) for so long as the family income of such woman does not exceed the maximum income level established by the State for the woman to be eligible for medical assistance under the State plan (as a result of pregnancy or otherwise).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to medical assistance provided on and after October 1, 2005.

**SEC. 357. STATE OPTION TO PROVIDE WRAP-AROUND SCHIP COVERAGE TO CHILDREN WHO HAVE OTHER HEALTH COVERAGE.**

(a) IN GENERAL.—

(1) SCHIP.—

(A) STATE OPTION TO PROVIDE WRAP-AROUND COVERAGE.—Section 2110(b) of the Social Security Act (42 U.S.C. 1397jj(b)) is amended—

(i) in paragraph (1)(C), by inserting '', subject to paragraph (5),'' after ''under title XIX or''; and

(ii) by adding at the end the following:

''(5) STATE OPTION TO PROVIDE WRAP-AROUND COVERAGE.—A State may waive the requirement of paragraph (1)(C) that a targeted low-income child may not be covered under a group health plan or under health insurance coverage, if the State satisfies the conditions described in subsection (c)(8). The State may waive such requirement in order to provide—

''(A) services for a child with special health care needs; or

''(B) all services.

In waiving such requirement, a State may limit the application of the waiver to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the maximum income level otherwise established for other children under the State child health plan.''.

(B) CONDITIONS DESCRIBED.—Section 2105(c) of the Social Security Act (42 U.S.C. 1397ee(c)) is amended by adding at the end the following:

''(8) CONDITIONS FOR PROVISION OF WRAP-AROUND COVERAGE.—For purposes of section 2110(b)(5), the conditions described in this paragraph are the following:

''(A) INCOME ELIGIBILITY.—The State child health plan (whether implemented under title XIX or this XXI)—

''(i) has the highest income eligibility standard permitted under this title as of January 1, 2005;

''(ii) subject to subparagraph (B), does not limit the acceptance of applications for children; and

''(iii) provides benefits to all children in the State who apply for and meet eligibility standards.

''(B) NO WAITING LIST IMPOSED.—With respect to children whose family income is at or below 200 percent of the poverty line, the State does not impose any numerical limitation, waiting list, or similar limitation on the eligibility of such children for child health assistance under such State plan.

''(C) NO MORE FAVORABLE TREATMENT.—The State child health plan may not provide more favorable coverage of dental services to the children covered under section 2110(b)(5) than to children otherwise covered under this title.''.

(C) STATE OPTION TO WAIVE WAITING PERIOD.—Section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)), as amended by section 2(b)(3)(B), is amended—

(i) in clause (ii), by striking '', and'' at the end and inserting a semicolon;

(ii) in clause (iii), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following new clause:

''(iv) at State option, may not apply a waiting period in the case of a child described in section 2110(b)(5), if the State satisfies the requirements of section 2105(c)(8).''.

(2) APPLICATION OF ENHANCED MATCH UNDER MEDICAID.—Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by section 2(a)(2), is amended—

(A) in subsection (b), in the fourth sentence, by striking ''or (u)(4)'' and inserting ''(u)(4), or (u)(5)''; and

(B) in subsection (u)—

(i) by redesignating paragraph (5) as paragraph (6); and

(ii) by inserting after paragraph (4) the following:

''(5) For purposes of subsection (b), the expenditures described in this paragraph are expenditures for items and services for children described in section 2110(b)(5), but only in the case of a State that satisfies the requirements of section 2105(c)(8).''.

(3) APPLICATION OF SECONDARY PAYOR PROVISIONS.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)), as amended by section 3(b), is amended by adding at the end the following:

''(F) Section 1902(a)(25) (relating to coordination of benefits and secondary payor provisions) with respect to children covered under a waiver described in section 2110(b)(5).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2005, and shall apply to child health assistance and medical assistance provided on or after that date.

**SEC. 358. INNOVATIVE OUTREACH PROGRAMS.**

Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), as amended by section 351(b), is amended by adding at the end the following:

**''SEC. 2112. EXPANDED OUTREACH ACTIVITIES.**

''(a) IN GENERAL.—Funds made available under subsection (f) for expenditure under this section for a fiscal year shall be used by the Secretary to award grants to eligible entities to conduct innovative outreach and enrollment efforts that are designed to increase the enrollment and participation of eligible children under this title and title XIX.

''(b) PRIORITY FOR GRANTS IN CERTAIN AREAS.—In making grants under subsection (a), the Secretary shall give priority to eligible entities that propose to target geographic areas with high rates of—

''(1) eligible but unenrolled children, including such children who reside in rural areas;

''(2) families for whom English is not their primary language; or

''(3) racial and ethnic minorities and health disparity populations

''(c) APPLICATION.—An eligible entity that desires to receive a grant under this section shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may decide. Such application shall include—

''(1) quality and outcomes performance measures to evaluate the effectiveness of activities funded by a grant under this paragraph to ensure that the activities are meeting their goals; and

''(2) an assurance that the entity will—

''(A) collect and report enrollment data; and

''(B) disseminate findings from evaluations of the activities funded under the grant.

''(d) REPORT.—The Secretary shall report to Congress on an annual basis the results of the outreach efforts under grants awarded under this section.

''(e) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means any of the following:

''(1) A State.

''(2) A national, local, or community-based public or nonprofit private organization.

''(f) APPROPRIATION.—For the purpose of awarding grants to eligible entities under this section, there is appropriated, out of any money in the Treasury not otherwise appropriated, $50,000,000 for each of fiscal years 2006 and 2007.''.

## Subtitle C—Affirming the Importance of Medicaid

**SEC. 361. SENSE OF THE SENATE.**

(a) FINDINGS.—The Senate makes the following findings:

(1) The Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) provides essential health care and long-term care coverage to more than 50,000,000 low-income children, pregnant women and families, individuals with disabilities, and senior citizens. It is a Federal guarantee that even the most vulnerable will have access to needed medical services.

(2) Medicaid provides health insurance for more than ¼ of America's children and is the largest purchaser of maternity care, paying for more than ⅓ of all the births in the United States each year.

(3) Medicaid provides critical help for the elderly and individuals living with disabilities. Medicaid is America's single largest purchaser of nursing home services and other long-term care, covering the majority of nursing home residents.

(4) Medicaid pays for personal care and other supportive services, which are typically not provided by private health insurance, even if individuals could obtain it. These services are necessary to enable individuals with spinal cord injuries, developmental disabilities, neurological degenerative diseases, serious and persistent mental illnesses, HIV/AIDS, and other chronic conditions to remain in the community, to work, and to maintain independence.

(5) Medicaid is an essential supplement to the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for more than 6,000,000 Medicare beneficiaries who are low-income elderly or disabled, assisting them with their Medicare premiums and co-insurance, wrap-around benefits, and, in most States, the costs of nursing home care that Medicare does not cover.

(6) About 42 percent of all Medicaid spending is for those who are elderly or are living with disabilities and are dually eligible for Medicare and Medicaid.

(7) Medicaid faces an ever growing burden as a result of Medicare's gaps. The Medicaid program spent nearly $40,000,000,000 on uncovered Medicare services in 2002. Medicaid payments for low-income Medicare beneficiary cost-sharing are the largest and fastest growing share of Medicaid spending.

(8) The Medicare drug benefit imposes additional costs on States, which will add to the already significant long-term care cost burden. Medicaid spending on Medicare beneficiaries' long-term care costs is expected to double from $25,000,000,000 in 2002 to $51,000,000,000 in 2012.

(9) Medicaid helps ensure access to care for all Americans. Medicaid is the single largest source of revenue for the Nation's safety net hospitals and health centers and is critical to the ability of those providers to serve Medicaid enrollees and uninsured Americans.

(10) Medicaid serves a major role in ensuring that the number of Americans without health insurance, approximately 45,000,000 in 2003, is not substantially higher. Medicaid helps buffer the drop in private coverage during recessions. More than 4,800,000 Americans lost employer sponsored coverage between 2000 and 2003. Medicaid covered an additional 5,800,000 Americans during this period, preventing even greater numbers of uninsured.

(11) Medicaid matters to women in America. More than 16,000,000 women depend on Medicaid for their health care. Women comprise the majority of seniors (71 percent) on Medicaid. Half of nonelderly women with permanent mental or physical disabilities have health coverage through Medicaid. Medicaid provides treatment for low-income women diagnosed with breast or cervical cancer in every State.

(12) Medicaid is critical for children with disabilities. Medicaid covers 78 percent of poor children with disabilities who are under

5 years of age and 70 percent of poor children with disabilities who are between the ages of 5 and 17. Similarly, Medicaid covers a substantial portion of children with disabilities who are near poor, covering 40 percent of children with disabilities who are under 5 years of age and 25 percent of children with disabilities who are between the ages of 5 and 17.

(13) Medicaid is the Nation's largest source of payment for mental health services, HIV/AIDS care, and care for children with special needs. Much of this care is either not covered by private insurance or limited in scope or duration. Medicaid is also a critical source of funding for health care for children in foster care and for health services in schools.

(14) The need for Medicaid is greater than ever today, because the number of Americans living in poverty has increased by 8,000,000 over the last 4 years and the number of the uninsured has increased by 5,000,000.

(15) The system of Federal matching for State Medicaid expenditures ensures that Federal funds will grow as State spending increases in response to unmet needs.

(16) Despite the varied population served by the Medicaid program, including those with significant health care needs, Medicaid per capita growth has been consistently about half the rate of growth in private insurance premiums and Medicaid has far lower administrative costs. Medicaid costs less per person than private coverage for people who have similar health status.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is a critical component of the health care system of the United States;

(2) Federal support for the Medicaid program must be adequate to support State spending meeting the essential health needs of the low-income elderly, low-income individuals with disabilities, and low-income children and families, and should not be cut or capped; and

(3) any retreat from the Federal commitment to Medicaid would threaten not only the health care safety net of the United States but the entire health care system

## TITLE IV—REDUCING HEALTH CARE COSTS FOR SMALL EMPLOYERS

### Subtitle A—Tax Relief

**SEC. 401. REFUNDABLE CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH INSURANCE EXPENSES.**

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and inserting after section 35 the following new section:

**"SEC. 36. SMALL BUSINESS EMPLOYEE HEALTH INSURANCE EXPENSES.**

''(a) DETERMINATION OF AMOUNT.—In the case of a qualified small employer, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the expense amount described in subsection (b) paid by the taxpayer during the taxable year.

''(b) EXPENSE AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The expense amount described in this subsection is the applicable percentage of the amount of qualified employee health insurance expenses of each qualified employee.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is equal to—

''(A) for any qualified small employer described in subparagraph (A) of paragraph (4), 50 percent,

''(B) for any qualified small employer described in subparagraph (B) of paragraph (4), 35 percent, and

''(C) for any qualified small employer described in subparagraph (C) of paragraph (4), 25 percent.

''(3) PER EMPLOYEE DOLLAR LIMITATION.—The amount of qualified employee health insurance expenses taken into account under paragraph (1) with respect to any qualified employee for any taxable year shall not exceed—

''(A) $1,500 in the case of self-only coverage; and

''(B) $3,500 in the case of family coverage.

''(4) QUALIFIED SMALL EMPLOYERS DESCRIBED.—A qualified small employer is described in—

''(A) this subparagraph if such employer employed an average of 9 or fewer employees (as determined under subsection (c)(1)(A)(ii)),

''(B) this subparagraph if such employer employed an average of more than 9 but less than 25 employees (as so determined), and

''(C) this subparagraph if such employer employed an average of more than 24 but not more than 50 employees (as so determined).

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SMALL EMPLOYER.—

''(A) IN GENERAL.—The term 'qualified small employer' means, with respect to any calendar year, any employer if—

''(i) such employer pays or incurs at least 75 percent of the qualified employee health insurance expenses of each qualified employee (determined without regard to subsection (b)(3)), and

''(ii) such employer employed an average of 50 or fewer employees on business days during either of the 2 preceding calendar years.

For purposes of clause (ii), a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

''(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A)(ii) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

''(A) IN GENERAL.—The term 'qualified employee health insurance expenses' means any amount paid by an employer for health insurance coverage (as defined in section 9832(b)(1)) to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

''(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance coverage pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

''(3) QUALIFIED EMPLOYEE.—

''(A) IN GENERAL.—The term 'qualified employee' means, with respect to any period, an employee of an employer if—

''(i) the annual amount of hours in the employ of such employer by such employee is at least 400 hours,

''(ii) the total amount of wages paid or incurred by such employer to such employee at an annual rate during the taxable year is at least $5,000, and

''(iii) such employee is not eligible for—

''(I) any benefits under title XVIII, XIX, or XXI of the Social Security Act, or

''(II) any other publicly-sponsored health insurance program.

''(B) TREATMENT OF CERTAIN EMPLOYEES.—For purposes of subparagraph (A), the term 'employee'—

''(i) shall not include an employee within the meaning of section 401(c)(1), and

''(ii) shall include a leased employee within the meaning of section 414(n).

''(C) WAGES.—The term 'wages' has the meaning given such term by section 3121(a) (determined without regard to any dollar limitation contained in such section).

''(d) CERTAIN RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 52 shall apply.

''(e) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—In the case of a taxpayer who is eligible to deduct any amount under section 162(l) for the taxable year, this section shall apply only if the taxpayer elects not to claim any amount as a deduction under such section for such year.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36 of such Code''.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following new items:

''Sec. 36. Small business employee health insurance expenses.

''Sec. 37. Overpayments of tax.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2005.

### Subtitle B—Three-Share Program

**SEC. 421. THREE-SHARE PROGRAMS.**

The Social Security Act (42 U.S.C. 301 et seq.) is amended by adding at the end the following:

**"TITLE XXII—PROVIDING FOR THE UNINSURED**

**"SEC. 2201. THREE-SHARE PROGRAMS.**

''(a) PILOT PROGRAMS.—The Secretary, acting through the Administrator, shall award grants under this section for the startup and operation of 25 eligible three-share pilot programs for a 5-year period.

''(b) GRANTS FOR THREE-SHARE PROGRAMS.—

''(1) ESTABLISHMENT.—The Administrator may award grants to eligible entities—

''(A) to establish three-share programs;

''(B) to provide for contributions to the premiums assessed for coverage under a three-share program as provided for in subsection (c)(2)(B)(iii); and

''(C) to establish risk pools.

''(2) THREE-SHARE PROGRAM PLAN.—Each entity desiring a grant under this subsection shall develop a plan for the establishment and operation of a three-share program that meets the requirements of paragraphs (2) and (3) of subsection (c).

''(3) APPLICATION.—Each entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner and containing such information as the Administrator may require, including—

''(A) the three-share program plan described in paragraph (2); and

''(B) an assurance that the eligible entity will—

''(i) determine a benefit package;

''(ii) recruit businesses and employees for the three-share program;

''(iii) build and manage a network of health providers or contract with an existing network or licensed insurance provider;

''(iv) manage all administrative needs; and

''(v) establish relationships among community, business, and provider interests.

''(4) PRIORITY.—In awarding grants under this section the Secretary shall give priority to an applicant—

''(A) that is an existing three-share program;

''(B) that is an eligible three-share program that has demonstrated community support; or

''(C) that is located in a State with insurance laws and regulations that permit three-share program expansion.

''(c) GRANT ELIGIBILITY.—

''(1) IN GENERAL.—The Secretary, acting through the Administrator, shall promulgate regulations providing for the eligibility of three-share programs for participation in the pilot program under this section.

''(2) THREE-SHARE PROGRAM REQUIREMENTS.—

''(A) IN GENERAL.—To be determined to be an eligible three-share program for purposes of participation in the pilot program under this section a three-share program shall—

''(i) be either a non-profit or local governmental entity;

''(ii) define the region in which such program will provide services;

''(iii) have the capacity to carry out administrative functions of managing health plans, including monthly billings, verification/enrollment of eligible employers and employees, maintenance of membership rosters, development of member materials (such as handbooks and identification cards), customer service, and claims processing; and

''(iv) have demonstrated community involvement.

''(B) PAYMENT.—To be eligible under paragraph (1), a three-share program shall pay the costs of services provided under subparagraph (A)(ii) by charging a monthly premium for each covered individual to be divided as follows:

''(i) Not more than 30 percent of such premium shall be paid by a qualified employee desiring coverage under the three-share program.

''(ii) Not more than 30 percent of such premium shall be paid by the qualified employer of such a qualified employee.

''(iii) At least 40 percent of such premium shall be paid from amounts provided under a grant under this section.

''(iv) Any remaining amount shall be paid by the three-share program from other public, private, or charitable sources.

''(C) PROGRAM FLEXIBILITY.—A three-share program may set an income eligibility guideline for enrollment purposes.

''(3) COVERAGE.—

''(A) IN GENERAL.—To be an eligible three-share program under this section, the three-share program shall provide at least the following benefits:

''(i) Physicians services.

''(ii) In-patient hospital services.

''(iii) Out-patient services.

''(iv) Emergency room visits.

''(v) Emergency ambulance services.

''(vi) Diagnostic lab fees and x-rays.

''(vii) Prescription drug benefits.

''(B) LIMITATION.—Nothing in subparagraph (A) shall be construed to require that a three-share program provide coverage for services performed outside the region described in paragraph (2)(A)(i).

''(C) PREEXISTING CONDITIONS.—A program described in subparagraph (A) shall not be an eligible three-share program under paragraph (1) if any individual can be excluded from coverage under such program because of a preexisting health condition.

''(d) GRANTS FOR EXISTING THREE-SHARE PROGRAMS TO MEET CERTIFICATION REQUIREMENTS.—

''(1) IN GENERAL.—The Administrator may award grants to three-share programs that are operating on the date of enactment of this section.

''(2) APPLICATION.—Each eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

''(e) APPLICATION OF STATE LAWS.—Nothing in this section shall be construed to preempt State law.

''(f) DISTRESSED BUSINESS FORMULA.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Administrator of the Health Resources and Services Administration shall develop a formula to determine which businesses qualify as distressed businesses for purposes of this section.

''(2) EFFECT ON INSURANCE MARKET.—Granting eligibility to a distressed business using the formula under paragraph (1) shall not interfere with the insurance market. Any business found to have reduced benefits to qualify as a distressed business under the formula under paragraph (1) shall not be eligible to be a three-share program for purposes of this section.

''(g) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Health Resources and Services Administration.

''(2) COVERED INDIVIDUAL.—The term 'covered individual' means—

''(A) a qualified employee; or

''(B) a child under the age of 23 or a spouse of such qualified employee who—

''(i) lacks access to health care coverage through their employment or employer;

''(ii) lacks access to health coverage through a family member;

''(iii) is not eligible for coverage under the medicare program under title XVIII or the medicaid program under title XIX; and

''(iv) does not qualify for benefits under the State Children's Health Insurance Program under title XXI.

''(3) DISTRESSED BUSINESS.—The term 'distressed business' means a business that—

''(A) in light of economic hardship and rising health care premiums may be forced to discontinue or scale back its health care coverage; and

''(B) qualifies as a distressed business according to the formula under subsection (g).

''(4) ELIGIBLE ENTITY.—The term 'eligible entity' means an entity that meets the requirements of subsection (a)(2)(A).

''(5) QUALIFIED EMPLOYEE.—The term 'qualified employee' means any individual employed by a qualified employer who meets certain criteria including—

''(A) lacking access to health coverage through a family member or common law partner;

''(B) not being eligible for coverage under the medicare program under title XVIII or the medicaid program under title XIX; and

''(C) agreeing that the share of fees described in subsection (a)(2)(B)(i) shall be paid in the form of payroll deductions from the wages of such individual.

''(6) QUALIFIED EMPLOYER.—The term 'qualified employer' means an employer as defined in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)) who—

''(A) is a small business concern as defined in section 3(a) of the Small Business Act (15 U.S.C. 632);

''(B) is located in the region described in subsection (a)(2)(A)(i); and

''(C) has not contributed to the health care benefits of its employees for at least 12 months consecutively or currently provides insurance but is classified as a distressed business.

''(h) EVALUATION.—Not later than 90 days after the end of the 5-year period during which grants are available under this section, the Government Accountability Office shall submit to the Secretary and the appropriate committees of Congress a report concerning—

''(1) the effectiveness of the programs established under this section;

''(2) the number of individuals covered under such programs;

''(3) any resulting best practices; and

''(4) the level of community involvement.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2011.''.

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By Mr. DODD (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. ROCKEFELLER, and Mr. SCHUMER):

S. 17. A bill to amend the Help America Vote Act of 2002 to protect voting rights and to improve the administration of Federal elections, and for other purposes; to the Committee on Rules and Administration.

Mr. DODD. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 17

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Voting Opportunity and Technology Enhancement Rights Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. National Federal write-in absentee ballot.
Sec. 4. Voter verified ballots.
Sec. 5. Requirements for counting provisional ballots.
Sec. 6. Minimum required voting systems and poll workers in polling places.
Sec. 7. Election day registration.
Sec. 8. Integrity of voter registration list.
Sec. 9. Early voting.
Sec. 10. Acceleration of study on election day as a public holiday.
Sec. 11. Improvements to voting systems.
Sec. 12. Voter registration.
Sec. 13. Establishing voter identification.
Sec. 14. Impartial administration of elections.
Sec. 15. Strengthening the election assistance commission.
Sec. 16. Authorization of appropriations.
Sec. 17. Effective date.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress makes the following findings:

(1) The right of all eligible citizens to vote and have their vote counted is the cornerstone of a democratic form of government and the core precondition of government of the people, by the people, and for the people.

(2) The right of citizens of the United States to vote is a fundamental civil right guaranteed under the United States Constitution.

(3) Congress has an obligation to reaffirm the right of each American to have an equal

opportunity to vote and have that vote counted in Federal elections, regardless of color, ethnicity, disability, language, or the resources of the community in which they live.

(4) Congress has an obligation to ensure the uniform and nondiscriminatory exercise of that right by removing barriers in the form of election administration procedures and technology and insufficient and unequal resources of State and local governments.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To secure the opportunity to participate in democracy for all eligible American citizens by establishing a national Federal write-in absentee ballot for Federal elections.

(2) To expand and establish uniform and nondiscriminatory requirements and standards to remove administrative procedural barriers and technological obstacles to casting a vote and having that vote counted in Federal elections.

(3) To expand and establish uniform and nondiscriminatory requirements and standards to provide for the accessibility, accuracy, verifiability, privacy, and security of all voting systems and technology used in Federal elections.

(4) To provide a Federal funding mechanism for the States to implement the requirements and standards to preserve and protect voting rights and th integrity of Federal elections in the United States.

**SEC. 3. NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.**

(a) IN GENERAL.—

(1) IN GENERAL.—Title III of the Help America Vote Act of 2002 (42 U.S.C. 15481 et seq.) is amended by adding at the end the following new subtitle:

**"Subtitle C—Additional Requirements**

**"SEC. 321. USE OF NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.**

''(a) IN GENERAL.—Any person who is otherwise qualified to vote in a Federal election in a State shall be permitted to use the national Federal write-in absentee ballot prescribed by the Election Assistance Commission under section 298 to cast a vote in an election for Federal office.

''(b) SUBMISSION AND PROCESSING.—

''(1) IN GENERAL.—Except as otherwise provided in this section, a national Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved.

''(2) DEADLINE.—An otherwise eligible national Federal write-in absentee ballot shall be counted if postmarked or signed before the close of the polls on election day and received by the appropriate State election official on or before the date which is 10 days after the date of the election or the date provided for receipt of absentee ballots under State law, whichever is later.

''(c) SPECIAL RULES.—The following rules shall apply with respect to national Federal write-in absentee ballots:

''(1) In completing the ballot, the voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

''(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

''(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot.

''(d) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.''.

(2) CONFORMING AMENDMENT.—Section 401 of the Help America Vote Act of 2002 (42 U.S.C. 15511) is amended by striking ''and 303'' and inserting ''303, and subtitle C''.

(b) NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.—

(1) IN GENERAL.—Title II of the Help America Vote Act of 2002 (42 U.S.C. 15321 et seq.) is amended by adding at the end the following new subtitle:

**"Subtitle E—Guidance and Standards**

**"SEC. 297. NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.**

''(a) FORM OF BALLOT.—The Commission shall prescribe a national Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in elections for Federal office.

''(b) STANDARDS.—The Commission shall prescribe standards for—

''(1) distributing the national Federal write-in absentee ballot, including standards for distributing such ballot through the Internet; and

''(2) processing and submission of the national Federal write-in absentee ballot.''.

(2) CONFORMING AMENDMENT.—Section 202 of the Help America Vote Act of 2002 (42 U.S.C. 15322) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) carrying out the duties described in subtitle E.''.

(c) COORDINATION WITH UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.—

(1) IN GENERAL.—The Presidential designee under the Uniformed and Overseas Absentee Voting Act, in consultation with the Election Assistance Commission, shall facilitate the use and return of the national Federal write-in ballot for absent uniformed services voters and overseas voters.

(2) DEFINITIONS.—The terms ''absent uniformed service voter'' and ''overseas voter'' shall have the meanings given such terms by section 107 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973gg–6).

**SEC. 4. VOTER VERIFIED BALLOTS.**

(a) VERIFICATION.—

(1) IN GENERAL.—Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)) is amended by adding at the end the following new paragraph:

''(7) VOTER VERIFIED BALLOTS.—In order to meet the requirements of paragraph (1)(A)(i), on and after January 1, 2009:

''(A) The voting system shall provide an independent means of voter verification which meets the requirements of subparagraph (B) and which allows each voter to verify the ballot before it is cast and counted.

''(B) A means of voter verification meets the requirements of this subparagraph if the voting system allows the voter to choose from one of the following options to verify the voter's vote selection:

''(i) A paper record.

''(ii) An audio record.

''(iii) A pictorial record.

''(iv) An electronic record or other means that provides for voter verification that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides privacy and independence equal to that provided for other voters.

''(C) Any means of verification described in clause (ii), (iii), or (iv) of subparagraph (B) must provide verification which is equal or superior to verification through the use of a paper record.

''(D) The requirements of this paragraph shall not apply to any voting system purchased before January 1, 2009, in order to meet the requirements of paragraph (3)(B).''.

(2) CONFORMING AMENDMENT.—Clause (i) of section 301(a)(1)(A) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(1)(A)(i)) is amended by inserting ''and consistent with the requirements of paragraphs (2), (4), and (7)'' after ''independent manner''.

(b) GUIDANCE.—Subtitle E of Title II of the Help America Vote Act of 2002, as added by this Act, is amended by adding at the end the following new section:

**"SEC. 298. VOTER VERIFIED BALLOTS.**

''The Commission shall issue uniform and nondiscriminatory standards—

''(1) for voter verified ballots required under section 301(a)(7); and

''(2) for meeting the audit requirements of section 301(a)(2).''.

(c) REPORTS.—

(1) ELECTION ASSISTANCE COMMISSION.—Section 207 of the Help America Vote Act of 2002 (42 U.S.C. 15327) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) A description of the progress on implementing the voter verified ballot requirements of section 301(a)(7) and the impact of the use of such requirements on the accessibility, privacy, security, usability, and auditability of voting systems.''.

(2) STATE REPORTS.—Section 258 of the Help America Vote Act of 2002 (42 U.S.C. 15408) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; and'', and by adding at the end the following new paragraph:

''(4) an analysis and description in the form and manner prescribed by the Commission of the progress on implementing the voter verified ballot requirements of section 301(a)(7).''.

**SEC. 5. REQUIREMENTS FOR COUNTING PROVISIONAL BALLOTS.**

(a) IN GENERAL.—Section 302 of the Help America Vote Act of 2002 (42 U.S.C. 15482) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) STATEWIDE COUNTING OF PROVISIONAL BALLOTS.—For purposes of subsection (a)(4), notwithstanding at which polling place a provisional ballot is cast within the State, the State shall count such ballot if the individual who cast such ballot is otherwise eligible to vote.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subsection (e) of section 302 of the Help America Vote Act of 2002 (42 U.S.C. 15482(e)), as redesignated under subsection (a), is amended by adding at the end the following:

''(2) EFFECTIVE DATE FOR STATEWIDE COUNTING OF PROVISIONAL BALLOTS.—Each State shall be required to comply with the requirements of subsection (d) on and after January 1, 2007.''.

(2) CONFORMING AMENDMENT.—Subsection (e) of section 302 of the Help America Vote Act of 2002 (42 U.S.C. 15482(e)), as redesignated under subsection (a), is amended by striking ''Each'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), each''.

**SEC. 6. MINIMUM REQUIRED VOTING SYSTEMS AND POLL WORKERS IN POLLING PLACES.**

(a) IN GENERAL.—Subtitle C of title III of the Help America Vote Act of 2002, as added by this Act, is amended by adding at the end the following new section:

**"SEC. 322. MINIMUM REQUIRED VOTING SYSTEMS AND POLL WORKERS.**

''(a) IN GENERAL.—Each State shall provide for the minimum required number of voting

systems and poll workers for each polling place on the day of any Federal election and on any days during which such State allows early voting for a Federal election in accordance with the standards determined under section 299A

''(b) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.''.

(b) STANDARDS.—Subtitle E of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 299. STANDARDS FOR ESTABLISHING THE MINIMUM REQUIRED VOTING SYSTEMS AND POLL WORKERS.**

''(a) IN GENERAL.—The Commission shall issue standards regarding the minimum number of voting systems and poll workers required in each polling place on the day of any Federal election and on any days during which early voting is allowed for a Federal election.

''(b) DISTRIBUTION.—The standards described in subsection (a) shall provide for a uniform and nondiscriminatory geographic distribution of such systems and workers.

''(c) DEVIATION.—The standards described in subsection (a) shall permit States, upon providing adequate public notice, to deviate from any allocation requirements in the case of unforseen circumstances such as a natural disaster, terrorist attack, or a change in voter turnout.''.

**SEC. 7. ELECTION DAY REGISTRATION.**

(a) REQUIREMENT.—Subtitle C of title III of the Help America Vote Act of 2002 is, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 323. ELECTION DAY REGISTRATION.**

''(a) IN GENERAL.—

''(1) REGISTRATION.—Notwithstanding section 8(a)(1)(D) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–6), each State shall permit any individual on the day of a Federal election—

''(A) to register to vote in such election at the polling place using the form established by the Election Assistance Commission pursuant to section 297; and

''(B) to cast a vote in such election.

''(2) EXCEPTION.—The requirements under paragraph (1) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

''(b) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of subsection (a) on and after January 1, 2007.''.

(b) ELECTION DAY REGISTRATION FORM.—Subtitle E of Title II of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 299A. ELECTION DAY REGISTRATION FORM.**

''The Commission shall develop an election day registration form for elections for Federal office.''.

**SEC. 8. INTEGRITY OF VOTER REGISTRATION LIST.**

Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 324. REMOVAL FROM VOTER REGISTRATION LIST.**

''(a) PUBLIC NOTICE.—Not later than 45 days before any Federal election, each State shall provide public notice of all names which have been removed from the voter registration list of such State under section 303 since the later of the most recent election for Federal office or the day of the most recent previous public notice provided under this section.

''(b) NOTICE TO INDIVIDUAL VOTERS.—

''(1) IN GENERAL.—No individual shall be removed from the voter registration list under section 303 unless such individual is first provided with a notice which meets the requirements of paragraph (2).

''(2) REQUIREMENTS OF NOTICE.—The notice required under paragraph (1) shall be—

''(A) provided to each voter in a uniform and nondiscriminatory manner;

''(B) consistent with the requirements of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and

''(C) in the form and manner prescribed by the Election Assistance Commission.

''(c) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.''.

**SEC. 9. EARLY VOTING.**

(a) IN GENERAL.—Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 325. EARLY VOTING.**

''(a) IN GENERAL.—Each State shall allow individuals to vote in an election for Federal office not less than 15 days prior to the day scheduled for such election in the same manner as voting is allowed on such day.

''(b) MINIMUM EARLY VOTING REQUIREMENTS.—Each polling place which allows voting prior to the day of a Federal election pursuant to subsection (a) shall—

''(1) allow such voting for no less than 4 hours on each day (other than Sunday); and

''(2) have uniform hours each day for which such voting occurs.

''(c) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.''.

(b) STANDARDS FOR EARLY VOTING.—Subtitle E of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 299B. STANDARDS FOR EARLY VOTING.**

''(a) IN GENERAL.—The Commission shall issue standards for the administration of voting prior to the day scheduled for a Federal election. Such standards shall include the nondiscriminatory geographic placement of polling places at which such voting occurs.

''(b) DEVIATION.—The standards described in subsection (a) shall permit States, upon providing adequate public notice, to deviate from any requirement in the case of unforseen circumstances such as a natural disaster, terrorist attack, or a change in voter turnout.''.

**SEC. 10. ACCELERATION OF STUDY ON ELECTION DAY AS A PUBLIC HOLIDAY.**

(a) IN GENERAL.—Section 241 of the Help America Vote Act of 2002 (42 U.S.C. 15381) is amended by adding at the end the following new subsection:

''(d) REPORT ON ELECTION DAY.—

''(1) IN GENERAL.—The report required under subsection (a) with respect to election administration issues described in subsection (b)(10) shall be submitted not later than 6 months after the date of the enactment of the Voting Enhancement and Technology Accuracy Rights Act of 2005.

''(2) AUTHORIZATION OF APPROPRIATIONS.—Of the amount authorized to be appropriated under section 210 for fiscal year 2006, $100,000 shall be authorized solely to carry out the purposes of this subsection.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

**SEC. 11. IMPROVEMENTS TO VOTING SYSTEMS.**

(a) IN GENERAL.—Subparagraph (B) of section 301(a)(1) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(1)(B)) is amended by striking '', a punch card voting system, or a central count voting system''.

(b) CLARIFICATION OF REQUIREMENTS FOR PUNCH CARD SYSTEMS.—Subparagraph (A) of section 301(a)(1) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(1)(A)) is amended by inserting ''punch card voting system,'' after ''any''.

**SEC. 12. VOTER REGISTRATION.**

(a) IN GENERAL.—Paragraph (4) of section 303(b) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)(4)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION.—On and after January 1, 2007—

''(i) in lieu of the questions and statements required under subparagraph (A), such mail voter registration form shall include an affidavit to be signed by the registrant attesting both to citizenship and age; and

''(ii) subparagraph (B) shall not apply.''.

(b) INTERNET REGISTRATION.—Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 326. INTERNET REGISTRATION.**

''(a) INTERNET REGISTRATION.—Each State shall establish a program under which individuals may access and submit voter registration forms electronically through the Internet.

''(b) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2009.''.

(c) STANDARDS FOR INTERNET REGISTRATION.—Subtitle E of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 299C. STANDARDS FOR INTERNET REGISTRATION PROGRAMS.**

''The Commission shall establish standards regarding the design and operation of programs which allow electronic voter registration through the Internet.''.

**SEC. 13. ESTABLISHING VOTER IDENTIFICATION.**

(a) IN GENERAL.—

(1) IN PERSON VOTING.—Clause (i) of section 303(b)(2)(A) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)(2)(A)(i)) is amended by striking ''or'' at the end of subclause (I) and by adding at the end the following new subclause:

''(III) executes a written affidavit attesting to such individual's identity; or''.

(2) VOTING BY MAIL.—Clause (ii) of section 303(b)(2)(A) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)(2)(A)(ii)) is amended by striking ''or'' at the end of subclause (I), by striking the period at the end of subclause (II) and inserting ''; or'', and by adding at the end the following new subclause:

''(III) a written affidavit, executed by such individual, attesting to such individual's identity.''.

(b) STANDARDS FOR VERIFYING VOTER INFORMATION.—Subtitle E of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 299D. VOTER IDENTIFICATION.**

''The Commission shall develop standards for verifying the identification information required under section 303(a)(5) in connection with the registration of an individual to vote in a Federal election.''.

**SEC. 14. IMPARTIAL ADMINISTRATION OF ELECTIONS.**

Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 327. ELECTION ADMINISTRATION REQUIREMENTS.**

''(a) NOTICE OF CHANGES IN STATE ELECTION LAWS.—Not later than 15 days prior to any Federal election, each State shall issue a

public notice describing all changes in State law affecting the administration of Federal elections since the most recent prior election.

''(b) OBSERVERS.—

''(1) IN GENERAL.—Each State shall allow uniform and nondiscriminatory access to any polling place for purposes of observing a Federal election to—

''(A) party challengers;

''(B) voting rights and civil rights organizations; and

''(C) nonpartisan domestic observers and international observers.

''(2) NOTICE OF DENIAL OF OBSERVATION REQUEST.—Each State shall issue a public notice with respect to any denial of a request by any observer described in paragraph (1) for access to any polling place for purposes of observing a Federal election. Such notice shall be issued not later than 24 hours after such denial.

''(c) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.''.

**SEC. 15. STRENGTHENING THE ELECTION ASSISTANCE COMMISSION.**

(a) BUDGET REQUESTS.—Part 1 of subtitle A of title II of the Help America Vote Act of 2002 (42 U.S.C. 15321 et seq.) is amended by inserting after section 209 the following new section:

**''SEC. 209A. SUBMISSION OF BUDGET REQUESTS.**

''Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress and to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate.''.

(b) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Paragraph (1) of section 3502 of title 44, United States Code, is amended by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following new subparagraph:

''(B) the Election Assistance Commission;''.

(c) RULEMAKING.—Section 209 of the Help America Vote Act of 2002 (42 U.S.C. 15239) is amended—

(1) by striking ''The Commission'' and inserting the following:

''(a) IN GENERAL.—Except as provided in subsection (b), the Commission'', and

(2) by inserting at the end the following new subsection:

''(b) EXCEPTION.—On and after January 1, 2007, subsection (a) shall not apply to any authority granted under subtitle E of this title or subtitle C of title III.''.

(d) NIST AUTHORITY.—Subtitle E of title II of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

**''SEC. 299E. TECHNICAL SUPPORT.**

''At the request of the Commission, the Director of the National Institute of Standards and Technology shall provide the Commission with technical support necessary for the Commission to carry out its duties under this title.''.

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 210 of the Help America Vote Act of 2002 (42 U.S.C. 15330) is amended by striking ''for each of fiscal years 2003 through 2005 such sums as may be necessary (but not to exceed $10,000,000 for each such year)'' and inserting ''$23,000,000 for fiscal year 2006 (of which $3,000,000 are authorized solely to carry out the purposes of section 299E) and such sums as may be necessary for succeeding fiscal years''.

**SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

Subsection (a) of section 257 of the Help America Vote Act of 2002 (42 U.S.C. 15408(a)) is amended by adding at the end the following new paragraphs:

''(4) For fiscal year 2006, $2,000,000,000.

''(5) For each fiscal year after 2006, such sums as are necessary.''.

**SEC. 17. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided by section 10 and subsection (b), the amendments made by this Act shall take effect on January 1, 2007.

(b) EXCEPTIONS.—The amendments made by section 4, section 11, section 12(b), and subsections (a) and (b) of section 15 shall take effect on January 1, 2009.

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By Mr. DAYTON (for himself, Mr. REID, Ms. STABENOW, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. CORZINE, Mr. SCHUMER, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. AKAKA, Mr. INOUYE, Mrs. CLINTON, Mr. LEVIN, Mr. KERRY, Mr. LEAHY, Mr. ROCKEFELLER, Mr. DODD, Mr. SARBANES, and Mr. DURBIN):

S. 18. A bill to amend title XVIII of the Social Security Act to make improvements to the medicare program for beneficiaries; to the Committee on Finance.

Mr. DAYTON. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 18

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Meeting Our Responsibility to Medicare Beneficiaries Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ELIMINATING SPECIAL INTEREST PREFERENCES

Sec. 101. Negotiating fair prices for medicare prescription drugs.

Sec. 102. Elimination of MA Regional Plan Stabilization Fund (Slush Fund).

Sec. 103. Application of risk adjustment reflecting characteristics for the entire medicare population in payments to Medicare Advantage organizations.

TITLE II—IMPROVING THE MEDICARE PROGRAM FOR BENEFICIARIES

Sec. 201. Eliminating coverage gap.

Sec. 202. Requiring two prescription drug plans to avoid Federal fallback.

Sec. 203. Waiver of part D late enrollment penalty for transition period.

Sec. 204. Improving the transition of full-benefit dual eligible individuals to coverage under the medicare drug benefit.

Sec. 205. Part B premium reduction.

Sec. 206. Study and report on providing incentives to preserve retiree coverage.

Sec. 207. Promoting transparency in employer subsidy payments.

## TITLE I—ELIMINATING SPECIAL INTEREST PREFERENCES

**SEC. 101. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.**

(a) IN GENERAL.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–111) is amended by striking subsection (i) (relating to noninterference) and by inserting the following new subsection:

''(i) AUTHORITY TO NEGOTIATE PRICES WITH MANUFACTURERS.—

''(1) IN GENERAL.—The Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.

''(2) REQUIRED USE OF AUTHORITY.—

''(A) FALLBACK PLANS.—The Secretary shall exercise the authority described in paragraph (1) with respect to covered part D drugs offered under each fallback prescription drug plan under subsection (g).

''(B) PDPS AND MA–PD PLANS.—In order to ensure that beneficiaries enrolled under prescription drug plans and MA–PD plans and taxpayers are getting fair and affordable prices for covered part D drugs that reflect the bulk purchasing power of such enrollees, the Secretary shall exercise the authority described in paragraph (1) with respect to such drugs offered under all such plans if the Secretary determines that the negotiated prices available under such plans for such drugs are not fair and affordable prices compared to the prices obtained by other Federal government programs for such drugs.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

**SEC. 102. ELIMINATION OF MA REGIONAL PLAN STABILIZATION FUND (SLUSH FUND).**

(a) IN GENERAL.—Subsection (e) of section 1858 of the Social Security Act (42 U.S.C. 1395w–27a) is repealed.

(b) CONFORMING AMENDMENT.—Section 1858(f)(1) of the Social Security Act (42 U.S.C. 1395w–27a(f)(1)) is amended by striking ''subject to subsection (e),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 221(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2181).

**SEC. 103. APPLICATION OF RISK ADJUSTMENT REFLECTING CHARACTERISTICS FOR THE ENTIRE MEDICARE POPULATION IN PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS.**

Effective January 1, 2006, in applying risk adjustment factors to payments to organizations under section 1853 of the Social Security Act (42 U.S.C. 1395w–23), the Secretary of Health and Human Services shall ensure that payments to such organizations are adjusted based on such factors to ensure that the health status of the enrollee is reflected in such adjusted payments, including adjusting for the difference between the health status of the enrollee and individuals enrolled under the original medicare fee-for-service program under parts A and B of title XVIII of such Act. Payments to such organizations must, in aggregate, reflect such differences.

## TITLE II—IMPROVING THE MEDICARE PROGRAM FOR BENEFICIARIES

**SEC. 201. ELIMINATING COVERAGE GAP.**

(a) IN GENERAL.—Section 1860D–2(b)(4)(B) of the Social Security Act (42 U.S.C. 1395w–102(b)(4)(B)) is amended to read as follows:

''(B) ANNUAL OUT-OF-POCKET THRESHOLD.—For purposes of this part, the 'annual out-of-pocket threshold' specified in this subparagraph for a year is equal to the greater of—

''(i) $3,600; or

''(ii) the initial coverage limit for the year specified in paragraph (3).''.

(b) CONFORMING AMENDMENT.—Section 1860D–22(a)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395w–132(b)(4)(B)(ii)) is amended by striking ''and the annual out-of-pocket threshold, respectively, are annually adjusted under paragraphs (1) and (4)(B) of section 1860D–2(b)'' and inserting ''is annually adjusted under paragraph (1) of section 1860D–2(b) (using the percentage increase specified in paragraph (6) of such section)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

**SEC. 202. REQUIRING TWO PRESCRIPTION DRUG PLANS TO AVOID FEDERAL FALLBACK.**

(a) IN GENERAL.—Section 1860D–3(a) of the Social Security Act (42 U.S.C. 1395w–103(a)) is amended—

(1) in paragraph (1)—

(A) by striking ''qualifying plans (as defined in paragraph (3))'' and inserting ''prescription drug plans''; and

(B) by striking '', at least one of which is a prescription drug plan'';

(2) in paragraph (2), by striking ''qualifying plans'' and inserting ''prescription drug plans''; and

(3) by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

**SEC. 203. WAIVER OF PART D LATE ENROLLMENT PENALTY FOR TRANSITION PERIOD.**

(a) IN GENERAL.—Section 1860D–13(b) of the Social Security Act (42 U.S.C. 1895w–113(b)) is amended by adding at the end the following new paragraph:

''(8) WAIVER OF PENALTY FOR MONTHS PRIOR TO 2008.—A part D eligible individual who enrolls for the first time in a prescription drug plan or an MA–PD plan under this part prior to January 1, 2008, shall not be subject an increase in the monthly beneficiary premium established under subsection (a) with respect to months occurring prior to such date.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (117 Stat. 2071).

**SEC. 204. IMPROVING THE TRANSITION OF FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS TO COVERAGE UNDER THE MEDICARE DRUG BENEFIT.**

(a) IN GENERAL.—Notwithstanding subsection (d)(1) of section 1935 of the Social Security Act (42 U.S.C. 1396u–5), beginning on January 1, 2006, the Secretary of Health and Human Services shall administer a 12-month period during which full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act) shall gradually transition from receiving medical assistance for prescribed drugs under the medicaid program under title XIX of such Act to obtaining coverage of covered part D drugs (as defined in section 1860D–2(e) (42 U.S.C. 1395w–102(e)) under title XVIII of such Act in order to assure that such individuals continue to receive the outpatient prescription drugs they need.

(b) ADJUSTMENTS TO PHASED-DOWN STATE CONTRIBUTION.—The Secretary of Health and Human Services shall make appropriate adjustments to the amount of payments required to be made by a State or the District of Columbia under section 1935(c) of the Social Security Act (42 U.S.C. 1396u–5(c)) for months occurring during the period described in subsection (a) in order to account for increased costs for the provision of medical assistance incurred by the State or the District of Columbia by reason of the application of the transition period required under this section.

**SEC. 205. PART B PREMIUM REDUCTION.**

Section 1839(a) of the Social Security Act (42 U.S.C. 1395r(a)) is amended—

(1) in paragraph (3), in the first sentence, by striking ''The Secretary'' and inserting ''Subject to paragraph (5), the Secretary''; and

(2) by adding at the end the following new paragraph:

''(5) For each year (beginning with 2006), the Secretary shall reduce the monthly premium rate determined under paragraph (3) for each month in the year for each individual enrolled under this part (including such an individual subject to an increased premium under subsection (b) or (i)) so that the aggregate amount of such reductions in the year is equal to the aggregate amount of reduced expenditures from the Federal Supplementary Medicare Insurance Trust Fund in the year that the Secretary estimates will result from the provisions of section 103 of the Meeting Our Responsibility to Medicare Beneficiaries Act of 2005.''.

**SEC. 206. STUDY AND REPORT ON PROVIDING INCENTIVES TO PRESERVE RETIREE COVERAGE.**

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study to determine what additional incentives should be provided to employers in order for such employers to continue to provide retirees with prescription drug coverage. Such study shall include an assessment of permitting costs incurred by an employer for covered part D drugs on behalf of a retiree to be treated as incurred costs for purposes of reaching the annual out-of-pocket threshold under section 1860D–2(b)(4) of the Social Security Act (42 U.S.C. 1395w–102(b)(4)).

(b) REPORT.—Not later than January 1, 2006, the Secretary of Health and Human Services shall submit to Congress a report on the study under subsection (a) together with such recommendations for legislation as the Secretary deems appropriate.

**SEC. 207. PROMOTING TRANSPARENCY IN EMPLOYER SUBSIDY PAYMENTS.**

(a) IN GENERAL.—Section 1860D–22(a) of the Social Security Act (42 U.S.C. 1895w–132(a)) is amended by adding at the end the following new paragraph:

''(7) DISCLOSURE OF CERTAIN INFORMATION.—The Secretary shall make the following information regarding the sponsor of a qualified prescription drug plan receiving a subsidy under this section available to the public through the Internet website of the Centers for Medicare & Medicaid Services and other appropriate means:

''(A) The information used by the Secretary to ensure that the prescription drug coverage offered under the plan meets the requirements for subsidy payments under this section.

''(B) The total amount of the subsidy payments made to the sponsor under this section.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

Mr. KENNEDY. Mr. President, the Bush Administration and the Republican Congress are no friend of America's seniors. In 2003, they enacted legislation to dismantle Medicare, even though Medicare has helped a generation of seniors live their golden years with health and dignity.

Now their target is Social Security. They want to privatize this trusted program for the benefit of Wall Street bankers. They even want to cut benefits for women because—in the Republican view—they live too long. It's time to end these shameful attacks on our senior citizens, restore Medicare and protect Social Security.

I commend the leadership of my colleague from Minnesota, Senator DAYTON, and our Democratic Leader, Senator REID, in introducing this urgently needed legislation today to enable Medicare to keep its promise to the elderly.

Forty years ago, Congress enacted the landmark legislation that established Medicare. We would do well today to remember President Lyndon Johnson's words on signing that historic bill in 1965: ''No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings they have so carefully put away over a lifetime so that they might enjoy dignity in their later years.''

The ruinous Medicare legislation that the Republican Congress enacted in 2003 breaks that solemn promise.

Before Medicare was created, millions of seniors could obtain health care coverage only at the whim of the insurance industry. If they were too sick or too poor to be profitable to an insurance company, they would be denied health care coverage. Their savings—and their children's savings—were in jeopardy when illness struck. Before Medicare, senior citizens were among the poorest Americans, with almost three in ten living in poverty. Bankruptcies from overwhelming medical bills were common.

Medicare changed all that, and 40 years later, President Bush and the Republican Congress are wrong to try to turn back the clock.

Some of my colleagues attempt to portray Medicare as a failure. But the facts show that it is one of the most successful endeavors the Nation has ever undertaken. In 1963, before Medicare was enacted, almost half of America's seniors were uninsured. Today that number is one in a hundred.

Before Medicare was enacted, Americans turning 65 could expect to live another 14 years. Today, they can expect almost 18 more years.

Seniors understand that Medicare works. They don't want to return to the days when they had to gamble their health, their savings and their lives on risky private insurance.

The 2003 Republican bill was sold to the American people as a way to help seniors with the high cost of prescription drugs, so you might think it does something about the high cost of drugs. But it doesn't.

It not only fails to help Medicare lower the cost of drugs—it actually makes it illegal for Medicare to try. Republicans were so worried about protecting drug company profits that they made it illegal for Medicare to do what

the Veterans Administration does for veterans—negotiate discounts on drug prices. The Bush Administration and the GOP Congress wouldn't dare to prohibit the VA from doing that for the veterans, and they shouldn't do it for senior citizens either.

The discounts on drug prices for veterans are substantial. On average, the price paid by the VA is 45 percent of the retail price, but often, the savings are even more dramatic. The retail price for Mevacor is $4 a pill, but the VA pays only 23 cents. The undiscounted price of Zantac is $1.83, but the VA pays two cents.

Senator DAYTON's legislation abolishes the unconscionable provision that bars Medicare from negotiating discounts on drug prices for America's seniors. That's not price control—it's common sense.

Republicans also claim that their new drug benefit is ''voluntary.'' Not exactly. If seniors don't sign up the first year, they have to pay more and more to join in subsequent years. When they need the coverage, they may not be able to afford it.

Senator DAYTON's legislation reverses this flagrant system of fines and makes the Medicare drug program truly voluntary. When Congress enacts it, seniors will be able to sign up for the drug program without facing ruinous fines.

Good prescription drug coverage for senior citizens is a priority for Democrats. For the Administration and the Republicans in Congress, however, tax cuts for billionaires are more important than health care for senior citizens.

In addition, the 2003 Medicare law leaves too many elderly citizens with unaffordable costs. Seniors with moderate incomes and high drug expenses still face high drug costs. The benefits under the GOP law—with its $250 deductible, 25 percent cost-sharing, an out-of-pocket limit of $3,600 on costs, but continued co-payment obligations even after the limit is reached—are far less generous than those enjoyed by most younger Americans, even though the elderly's need for prescription drugs is much greater.

Senior citizens with an income of $15,000 and drug expenses of $4,000 would have to pay more than $2,900, including premiums, out of their own pocket. That's too heavy a burden.

If they fall into the so-called doughnut hole, their situation is much worse. Under the 2003 law, the government makes no contribution to any drug costs between $2,250 in expenditures and $5,100 in expenditures. Patients who need $5,200 worth of prescriptions could be forced to pay $2,850 in drug expenses without any help at all from Medicare. That's too much for an elderly person to pay and still meet other essential medical needs, pay the rent or mortgage, and buy food and other necessities of life.

Senator DAYTON's proposal begins to fill in that doughnut hole by not allowing the cap on total out of pocket expenditures to rise year after year, as it does under the GOP act. Under Senator DAYTON's proposal, seniors will have the certainty of knowing where that limit is from one year to the next. As drug expenses rise, more seniors will gain the benefit of the assistance from Medicare at these high spending levels, and ultimately, the doughnut hole will close.

The Republican Medicare law is a raw deal for seniors, but it's a bonanza for the drug industry and the insurance industry.

It gives massive subsidies to HMOs. Most Americans probably think it's the job of insurance companies to guarantee the health of their beneficiaries, but according to the Republican view that's wrong. They make America's seniors guarantee the health and wealth of HMOs.

The government already pays private insurance plans 104 percent of what it costs Medicare to provide seniors with the same health care. Republicans claim to be in favor of competition, but the playing field is tilted toward HMOs, and their 2003 Act tilted it further. You might think HMOs need that overpayment because they serve sicker or needier beneficiaries. Not true. Enrollees in private plans are actually healthier than those in Medicare, resulting in a further bonus of 8.7 percent to the private plans.

Senator DAYTON's legislation requires realistic risk adjustment for private plans that provide services to seniors under Medicare. It removes the artificial calculations that inflate payments to HMOs and other private insurance carriers.

Another problem with the 2003 Act is that if the subsidies don't provide enough profits, the Republican bill provides cash handouts for the insurance industry. If an HMO doesn't think it can make enough money in some area of the country, the Bush Administration can simply ladle out the cash—up to $12 billion a year—until the bribe is high enough to get the company to participate.

Senator DAYTON's legislation reverses this outrageous giveaway and ensures that the dollars devoted to this slush fund are used instead to provide better health care for seniors.

The Republican law stacks the deck against seniors in other ways. It allows a region to be served by only one prescription drug plan, along with a PPO. That gives the drug plan a monopoly in that region for seniors who want to remain in Medicare. If the only available drug plan is tailored to the healthiest and youngest seniors, it might be acceptable for a senior whose prescription needs are limited. But it gives no help to seniors who take medications for multiple chronic conditions every day. Seniors have no real recourse if they can't afford the monopoly drug plan. The only way they can get prescription drug coverage is to enroll in the PPO.

Senator DAYTON's legislation provides an effective guarantee that seniors who wish to remain in traditional Medicare will have a genuine choice of prescription-only plans. If a choice between at least two private drug-only plans is not available in any region, the Federal Government will provide a plan. This proposal ensures that any senior who wishes to remain in Medicare will have access to high-quality affordable prescription drug coverage.

The Republican Medicare law also dealt a harsh blow to the employer plans that millions of retirees depend on. The Congressional Budget Office estimates that almost three million retirees will lose their current drug coverage, because employers will drop the coverage when retirees become eligible for the new federal benefit, which is not as comprehensive.

Democrats fought to include provisions in that flawed legislation to help employers maintain the good coverage that so many Americans depend on to meet their needs in retirement. Sadly, some employers could abuse these subsidies by failing to use them to assist their employees—and the Bush Administration is letting them get away with it. Toothless enforcement and weak regulation allow some unscrupulous employers to pocket the subsidy and weaken the coverage.

Senator DAYTON's legislation will put an end to this scandalous practice by requiring employers to account for the funds they receive in subsidies. No longer will employers be able to hide that they are accepting subsidies to maintain retiree health coverage and still cut back the coverage. The Dayton bill also requires new research on ways to help employers maintain retiree coverage.

One of the most troubling aspects of the 2003 Act is that it victimizes six million senior citizens and disabled people on Medicaid—the poorest of the poor. Their out-of-pocket payments for drugs will be raised, even though they do not even have coverage for the drugs they need the most.

Today, under Federal law, people with drug coverage under Medicaid may be charged only nominal amounts for the drugs they need. The vast majority of states charge nothing.

For every other Medicare benefit, Medicaid wraps around Medicare coverage and picks up the out-of-pocket costs that Medicare does not pay. Not under this legislation. States are prohibited from wrapping around the Medicare benefits with their Medicaid program. Instead, a uniform Federal co-payment is imposed. It is indexed, so that it increases every year. If low income seniors need a drug that is not in the insurance company formulary, they have to go through a burdensome appeals process. Most will simply go without the drug they need.

The people we are talking about are truly the poorest of the poor. In most cases, their incomes are well below poverty. And the impact of even small

co-payments is devastating. Study after study finds that when the poor have to pay more for drugs, they end up hospitalized, in nursing homes, or dead.

Senator DAYTON's legislation reverses this cruel provision and allows States to delay implementing the requirement that the new Medicare provisions must immediately supplant State Medicaid programs for the poorest of the poor.

Congress should be helping seniors with the burden of high drug costs, not allowing a right wing agenda to destroy the guarantee of affordable health care that America's seniors deserve and expect.

That's why Senator DAYTON and Senator REID have introduced this needed legislation, and I urge my colleagues to support it.

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By Mr. CONRAD (for himself, Mr. REID, Mr. FEINGOLD, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. DAYTON, Mr. DODD, and Mrs. CLINTON):

S. 19. A bill to reduce budget deficits by restoring budget enforcement and strengthening fiscal responsibility; to the Committee on the Budget.

Mr. CONRAD. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 19

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Fiscal Responsibility for a Sound Future Act''.

**SEC. 2. EXTENSION OF THE DISCRETIONARY SPENDING CAPS.**

(a) IN GENERAL.—Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)) is amended to read as follows:

''(c) DISCRETIONARY SPENDING LIMIT.—As used in this part, the term 'discretionary spending limit' means, with respect to fiscal year 2005—

''(1) for the discretionary category: $836,268,000,000 in new budget authority and $895,966,000,000 in outlays;

''(2) for the highway category: $31,761,000,000 in outlays; and

''(3) for the mass transit category: $956,000,000 in new budget authority and $6,748,000,000 in outlays;

as adjusted in strict conformance with subsection (b).''.

(b) COMMITMENT OF THE SENATE.—Congress should enact a limit on total discretionary spending for fiscal year 2006.

**SEC. 3. EXTENSION OF PAY-AS-YOU-GO REQUIREMENT.**

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subsection (a), by striking ''enacted before October 1, 2002''; and

(2) in subsection (b), by striking ''enacted before October 1, 2002,''.

**SEC. 4. EXTENSION OF BUDGET ENFORCEMENT THROUGH 2015.**

Section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 note) is amended by adding at the end the following:

''(d) REENACTMENT.—Part C of this title is reenacted into law effective for fiscal year 2005. Part C shall expire at the end of fiscal year 2015.''.

**SEC. 5. RECONCILIATION FOR DEFICIT REDUCTION IN THE SENATE.**

(a) IN GENERAL.—It shall not be in order in the Senate to consider under the expedited procedures applicable to reconciliation in sections 305 and 310 of the Congressional Budget Act of 1974 any bill, resolution, amendment, amendment between Houses, motion, or conference report that increases the deficit in the first fiscal year covered by the most recently adopted concurrent resolution on the budget, the period of the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget, or the period of the 5 fiscal years following the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget.

(b) BUDGET RESOLUTION.—It shall not be in order in the Senate to consider pursuant to sections 301, 305, or 310 of the Congressional Budget Act of 1974 pertaining to concurrent resolutions on the budget any resolution, concurrent resolution, amendment, amendment between the Houses, motion, or conference report that contains any reconciliation directive that would increase the deficit in the first fiscal year covered by the most recently adopted concurrent resolution on the budget, the period of the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget, or the period of the 5 fiscal years following the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget.

(c) SUPERMAJORITY WAIVER AND APPEAL.—This section may be waived or suspended in the Senate only by an affirmative vote of ⅗ of the Members, duly chosen and sworn. An affirmative vote of ⅗ of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

**SEC. 6. SENATE PAYGO RULE.**

(a) IN GENERAL.—Section 505(a)(5)(A) of H. Con. Res. 95 (108th Congress) is amended by striking ''as adjusted for any changes in revenues or direct spending assumed by such resolution''.

(b) EXPIRATION DATE.—Section 505(e) of H. Con. Res. 95 (108th Congress) is amended by striking ''2008'' and inserting ''2015''.

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By Mr. REID (for himself, Mrs. MURRAY, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mrs. CLINTON, Mr. KERRY, Mrs. FEINSTEIN, Ms. CANTWELL, Mr. HARKIN, Ms. MIKULSKI, Mr. INOUYE, Mr. AKAKA, Mr. LEVIN, Mr. KENNEDY, Mr. LEAHY, Mr. WYDEN, and Ms. STABENOW):

S. 20. A bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women's health care; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 20

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Prevention First Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—TITLE X OF PUBLIC HEALTH SERVICE ACT

Sec. 101. Short title.
Sec. 102. Authorization of appropriations.

TITLE II—FAMILY PLANNING STATE EMPOWERMENT

Sec. 201. Short title.
Sec. 202. State option to provide family planning services and supplies to additional low-income individuals.
Sec. 203. State option to extend the period of eligibility for provision of family planning services and supplies.

TITLE III—EQUITY IN PRESCRIPTION INSURANCE AND CONTRACEPTIVE COVERAGE

Sec. 301. Short title.
Sec. 302. Amendments to Employee Retirement Income Security Act of 1974.
Sec. 303. Amendments to Public Health Service Act relating to the group market.
Sec. 304. Amendment to Public Health Service Act relating to the individual market.

TITLE IV—EMERGENCY CONTRACEPTION EDUCATION AND INFORMATION

Sec. 401. Short title.
Sec. 402. Emergency contraception education and information programs.

TITLE V—COMPASSIONATE ASSISTANCE FOR RAPE EMERGENCIES

Sec. 501. Short title.
Sec. 502. Survivors of sexual assault; provision by hospitals of emergency contraceptives without charge.

TITLE VI—TEENAGE PREGNANCY PREVENTION

Sec. 601. Short title.
Sec. 602. Teenage pregnancy prevention.

TITLE VII—ACCURACY OF CONTRACEPTIVE INFORMATION

Sec. 701. Short title.
Sec. 702. Accuracy of contraceptive information.

**SEC. 2. FINDINGS.**

The Congress finds as follows:

(1) Although the Centers for Disease Control and Prevention (referred to in this section as the ''CDC'') included family planning in its published list of the Ten Great Public Health Achievements in the 20th Century, the United States still has one of the highest rates of unintended pregnancies among industrialized nations.

(2) Each year, 3,000,000 pregnancies, nearly half of all pregnancies, in the United States are unintended, and nearly half of unintended pregnancies end in abortion.

(3) In 2002, 34,000,000 women-half of all women of reproductive age (ages 15-44)-were in need of contraceptive services and supplies to help prevent unintended pregnancy, and half of those were in need of public support for such care.

(4) The United States also has the highest rate of infection with sexually transmitted diseases of any industrialized country. In 2003 there were approximately 19,000,000 new cases of sexually transmitted diseases. According to the CDC (November 2004), these sexually transmitted diseases impose a tremendous economic burden with direct medical costs as high as $15,500,000,000 per year.

(5) Increasing access to family planning services will improve women's health and reduce the rates of unintended pregnancy, abortion, and infection with sexually transmitted diseases. Contraceptive use saves public health dollars. Every dollar spent on providing family planning services saves an estimated $3 in expenditures for pregnancy-related and newborn care for Medicaid alone.

(6) Contraception is basic health care that improves the health of women and children by enabling women to plan and space births.

(7) Women experiencing unintended pregnancy are at greater risk for physical abuse and women having closely spaced births are at greater risk of maternal death.

(8) The child born from an unintended pregnancy is at greater risk of low birth weight, dying in the first year of life, being abused, and not receiving sufficient resources for healthy development.

(9) The ability to control fertility also allows couples to achieve economic stability by facilitating greater educational achievement and participation in the workforce.

(10) The average American woman desires two children and spends five years of her life pregnant or trying to get pregnant and roughly 30 years trying to prevent pregnancy. Without contraception, a sexually active woman has an 85 percent chance of becoming pregnant within a year.

(11) The percentage of sexually active women ages 15 through 44 who were not using contraception increased from 5.4 percent to 7.4 percent in 2002, an increase of 37 percent, according to the CDC. This represents an apparent increase of 1,430,000 women and could raise the rate of unintended pregnancy.

(12) Many poor and low-income women cannot afford to purchase contraceptive services and supplies on their own. 12,100,000 or 20 percent of all women ages 15 through 24 were uninsured in 2002, and that proportion has increased by 10 percent since 1999.

(13) Public health programs like Medicaid and title X (of the Public Health Service Act), the national family planning program, provide high-quality family planning services and other preventive health care to underinsured or uninsured individuals who may otherwise lack access to health care.

(14) Medicaid is the single largest source of public funding for family planning services and HIV/AIDS care in the United States. Half of all public dollars spent on contraceptive services and supplies in the United States are provided through Medicaid and approximately 5,500,000 women of reproductive age-nearly one in 10 women between the ages of 15 and 44-rely on Medicaid for their basic health care needs.

(15) Each year, title X services enable Americans to prevent approximately 1,000,000 unintended pregnancies, and one in three women of reproductive age who obtains testing or treatment for sexually transmitted diseases does so at a title X-funded clinic. In 2003, title X-funded clinics provided 2,800,000 Pap tests, 5,100,000 sexually transmitted disease tests, and 526,000 HIV tests.

(16) The increasing number of uninsured, stagnant funding, health care inflation, new and expensive contraceptive technologies, and improved but expensive screening and treatment for cervical cancer and sexually transmitted diseases, have diminished the ability of title X funded clinics to adequately serve all those in need. Taking inflation into account, funding for the title X program declined by 58 percent between 1980 and 2003.

(17) While Medicaid remains the largest source of subsidized family planning services, States are facing significant budgetary pressures to cut their Medicaid programs, putting many women at risk of losing coverage for family planning services.

(18) In addition, eligibility for Medicaid in many States is severely restricted leaving family planning services financially out of reach for many poor women. Many States have demonstrated tremendous success with Medicaid family planning waivers that allow them to expand access to Medicaid family planning services. However, the administrative burden of applying for a waiver poses a significant barrier to States that would like to expand their coverage of family planning programs through Medicaid.

(19) As of January of 2005, 21 States offered expanded family planning benefits as a result of Medicaid family planning waivers. The cost-effectiveness of these waivers was affirmed by a recent evaluation funded by the Centers for Medicare & Medicaid. This evaluation of six waivers found that all such programs resulted in significant savings to both the Federal and State governments. Moreover, the researchers found measurable reductions in unintended pregnancy.

(20) Although employer-sponsored health plans have improved coverage of contraceptive services and supplies, largely in response to State contraceptive coverage laws, there is still significant room for improvement. The ongoing lack of coverage in health insurance plans, particularly in self-insured and individual plans, continues to place effective forms of contraception beyond the financial reach of many women.

(21) Including contraceptive coverage in private health care plans saves employers money. Not covering contraceptives in employee health plans costs employers 15 to 17 percent more than providing such coverage.

(22) Approved for use by the Food and Drug Administration, emergency contraception is a safe and effective way to prevent unintended pregnancy after unprotected sex. It is estimated that the use of emergency contraception could cut the number of unintended pregnancies in half, thereby reducing the need for abortion. New research confirms that easier access to emergency contraceptives does not increase sexual risk-taking or sexually transmitted diseases.

(23) In 2000, 51,000 abortions were prevented by the use of emergency contraception. Increased use of emergency contraception accounted for up to 43 percent of the total decline in abortions between 1994 and 2000.

(24) A February 2004 CDC study of declining birth and pregnancy rates among teens concluded that the reduction in teen pregnancy between 1991 and 2001 suggests that increased abstinence and increased use of contraceptives were equally responsible for the decline. As such, it is critically important that teens receive accurate, unbiased information about contraception.

(25) Thirteen percent of all teens give birth before age 20. 88 percent of births to teens age 17 or younger were unintended. 24 percent of Hispanic females gave birth before the age of 20. (CDC, December 2004).

(26) The American Medical Association, the American Nurses Association, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American Public Health Association, and the Society for Adolescent Medicine, support responsible sexuality education that includes information about both abstinence and contraception.

(27) Teens who receive sex education that includes discussion of contraception are more likely than those who receive abstinence-only messages to delay sex and to have fewer partners and use contraceptives when they do become sexually active.

(28) Government-funded abstinence only programs are precluded from discussing contraception except to talk about failure rates. A December 2004 review of federally-funded abstinence-only programs by the United States House of Representatives Committee on Government Reform (Minority Staff) found that many federally funded abstinence-only program curricula distort public health data and misrepresent the effectiveness of contraception. Information on the effectiveness of condoms, in preventing pregnancy and sexually transmitted diseases, including HIV, was often highly inaccurate.

## TITLE I—TITLE X OF PUBLIC HEALTH SERVICE ACT

**SEC. 101. SHORT TITLE.**

This Act may be cited as the ''Title X Family Planning Services Act of 2005''.

**SEC. 102. AUTHORIZATION OF APPROPRIATIONS.**

For the purpose of making grants and contracts under section 1001 of the Public Health Service Act, there are authorized to be appropriated $643,000,000 for fiscal year 2006, and such sums as may be necessary for each subsequent fiscal year.

## TITLE II—FAMILY PLANNING STATE EMPOWERMENT

**SEC. 201. SHORT TITLE.**

This Act may be cited as the ''Family Planning State Empowerment Act''.

**SEC. 202. STATE OPTION TO PROVIDE FAMILY PLANNING SERVICES AND SUPPLIES TO ADDITIONAL LOW-INCOME INDIVIDUALS.**

(a) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(1) by redesignating section 1936 as section 1937; and

(2) by inserting after section 1935 the following:

''STATE OPTION TO PROVIDE FAMILY PLANNING SERVICES AND SUPPLIES TO ADDITIONAL LOW-INCOME INDIVIDUALS

''SEC. 1936.

''(a) IN GENERAL.—A State may elect (through a State plan amendment) to make medical assistance described in section 1905(a)(4)(C) available to any individual not otherwise eligible for such assistance—

''(1) whose family income does not exceed an income level (specified by the State) that does not exceed the greatest of—

''(A) 200 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of the size involved;

''(B) in the case of a State that has in effect (as of the date of the enactment of this section) a waiver under section 1115 to provide such medical assistance to individuals based on their income level (expressed as a percent of the poverty line), the eligibility income level as provided under such waiver; or

''(C) the eligibility income level (expressed as a percent of such poverty line) that has been specified under the plan (including under section 1902(r)(2)), for eligibility of pregnant women for medical assistance; and

''(2) at the option of the State, whose resources do not exceed a resource level specified by the State, which level is not more restrictive than the resource level applicable under the waiver described in paragraph (1)(B) or to pregnant women under paragraph (1)(C).

''(b) FLEXIBILITY.—A State may exercise the authority under subsection (a) with respect to one or more classes of individuals described in such subsection.''.

(b) CONFORMING AMENDMENT.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before paragraph (1)—

(1) by striking ''and'' at the end of clause (xii);

(2) by adding ''and'' at the end of clause (xiii); and

(3) by inserting after clause (xiii) the following new clause:

''(xiv) individuals described in section 1935, but only with respect to items and services described in paragraph (4)(C),''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to medical assistance provided on and after October 1, 2005.

**SEC. 203. STATE OPTION TO EXTEND THE PERIOD OF ELIGIBILITY FOR PROVISION OF FAMILY PLANNING SERVICES AND SUPPLIES.**

(a) IN GENERAL.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraph:

''(13) At the option of a State, the State plan may provide that, in the case of an individual who was eligible for medical assistance described in section 1905(a)(4)(C), but who no longer qualifies for such assistance because of an increase in income or resources or because of the expiration of a post-partum period, the individual may remain eligible for such assistance for such period as the State may specify, but the period of extended eligibility under this paragraph shall not exceed a continuous period of 24 months for any individual. The State may apply the previous sentence to one or more classes of individuals and may vary the period of extended eligibility with respect to different classes of individuals.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to medical assistance provided on and after October 1, 2005.

## TITLE III—EQUITY IN PRESCRIPTION INSURANCE AND CONTRACEPTIVE COVERAGE

**SEC. 301. SHORT TITLE.**

This Act may be cited as the ''Equity in Prescription Insurance and Contraceptive Coverage Act''.

**SEC. 302. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.**

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:

**''SEC. 714. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.**

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) exclude or restrict benefits for prescription contraceptive drugs or devices approved by the Food and Drug Administration, or generic equivalents approved as substitutable by the Food and Drug Administration, if such plan or coverage provides benefits for other outpatient prescription drugs or devices; or

''(2) exclude or restrict benefits for outpatient contraceptive services if such plan or coverage provides benefits for other outpatient services provided by a health care professional (referred to in this section as 'outpatient health care services').

''(b) PROHIBITIONS.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan because of the individual's or enrollee's use or potential use of items or services that are covered in accordance with the requirements of this section;

''(2) provide monetary payments or rebates to a covered individual to encourage such individual to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services, described in subsection (a), in accordance with this section; or

''(4) provide incentives (monetary or otherwise) to a health care professional to induce such professional to withhold from a covered individual contraceptive drugs or devices, or contraceptive services, described in subsection (a).

''(c) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed—

''(A) as preventing a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan from imposing deductibles, coinsurance, or other cost-sharing or limitations in relation to—

''(i) benefits for contraceptive drugs under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such drug shall be consistent with those imposed for other outpatient prescription drugs otherwise covered under the plan or coverage;

''(ii) benefits for contraceptive devices under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such device shall be consistent with those imposed for other outpatient prescription devices otherwise covered under the plan or coverage; and

''(iii) benefits for outpatient contraceptive services under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such service shall be consistent with those imposed for other outpatient health care services otherwise covered under the plan or coverage;

''(B) as requiring a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan to cover experimental or investigational contraceptive drugs or devices, or experimental or investigational contraceptive services, described in subsection (a), except to the extent that the plan or issuer provides coverage for other experimental or investigational outpatient prescription drugs or devices, or experimental or investigational outpatient health care services; or

''(C) as modifying, diminishing, or limiting the rights or protections of an individual under any other Federal law.

''(2) LIMITATIONS.—As used in paragraph (1), the term 'limitation' includes—

''(A) in the case of a contraceptive drug or device, restricting the type of health care professionals that may prescribe such drugs or devices, utilization review provisions, and limits on the volume of prescription drugs or devices that may be obtained on the basis of a single consultation with a professional; or

''(B) in the case of an outpatient contraceptive service, restricting the type of health care professionals that may provide such services, utilization review provisions, requirements relating to second opinions prior to the coverage of such services, and requirements relating to preauthorizations prior to the coverage of such services.

''(d) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1), for purposes of assuring notice of such requirements under the plan, except that the summary description required to be provided under the last sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.

''(e) PREEMPTION.—Nothing in this section shall be construed to preempt any provision of State law to the extent that such State law establishes, implements, or continues in effect any standard or requirement that provides coverage or protections for participants or beneficiaries that are greater than the coverage or protections provided under this section.

''(f) DEFINITION.—In this section, the term 'outpatient contraceptive services' means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods (including natural family planning) to prevent an unintended pregnancy.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001) is amended by inserting after the item relating to section 713 the following:

''Sec. 714. Standards relating to benefits for contraceptives.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2006.

**SEC. 303. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT RELATING TO THE GROUP MARKET.**

(a) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:

**''SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.**

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) exclude or restrict benefits for prescription contraceptive drugs or devices approved by the Food and Drug Administration, or generic equivalents approved as substitutable by the Food and Drug Administration, if such plan or coverage provides benefits for other outpatient prescription drugs or devices; or

''(2) exclude or restrict benefits for outpatient contraceptive services if such plan or coverage provides benefits for other outpatient services provided by a health care professional (referred to in this section as 'outpatient health care services').

''(b) PROHIBITIONS.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan because of the individual's or enrollee's use or potential use of items or services that are covered in accordance with the requirements of this section;

''(2) provide monetary payments or rebates to a covered individual to encourage such individual to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services, described in subsection (a), in accordance with this section; or

''(4) provide incentives (monetary or otherwise) to a health care professional to induce such professional to withhold from covered individual contraceptive drugs or devices, or contraceptive services, described in subsection (a).

''(c) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed—

''(A) as preventing a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan from imposing deductibles, coinsurance, or other cost-sharing or limitations in relation to—

''(i) benefits for contraceptive drugs under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such drug shall be consistent with those imposed for other outpatient prescription drugs otherwise covered under the plan or coverage;

''(ii) benefits for contraceptive devices under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such device shall be consistent with those imposed for other outpatient prescription devices otherwise covered under the plan or coverage; and

''(iii) benefits for outpatient contraceptive services under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such service shall be consistent with those imposed for other outpatient health care services otherwise covered under the plan or coverage;

''(B) as requiring a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan to cover experimental or investigational contraceptive drugs or devices, or experimental or investigational contraceptive services, described in subsection (a), except to the extent that the plan or issuer provides coverage for other experimental or investigational outpatient prescription drugs or devices, or experimental or investigational outpatient health care services; or

''(C) as modifying, diminishing, or limiting the rights or protections of an individual under any other Federal law.

''(2) LIMITATIONS.—As used in paragraph (1), the term 'limitation' includes—

''(A) in the case of a contraceptive drug or device, restricting the type of health care professionals that may prescribe such drugs or devices, utilization review provisions, and limits on the volume of prescription drugs or devices that may be obtained on the basis of a single consultation with a professional; or

''(B) in the case of an outpatient contraceptive service, restricting the type of health care professionals that may provide such services, utilization review provisions, requirements relating to second opinions prior to the coverage of such services, and requirements relating to preauthorizations prior to the coverage of such services.

''(d) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 714(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.

''(e) PREEMPTION.—Nothing in this section shall be construed to preempt any provision of State law to the extent that such State law establishes, implements, or continues in effect any standard or requirement that provides coverage or protections for enrollees that are greater than the coverage or protections provided under this section.

''(f) DEFINITION.—In this section, the term 'outpatient contraceptive services' means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods (including natural family planning) to prevent an unintended pregnancy.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning on or after January 1, 2006.

**SEC. 304. AMENDMENT TO PUBLIC HEALTH SERVICE ACT RELATING TO THE INDIVIDUAL MARKET.**

(a) IN GENERAL.—Part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–41 et seq.) is amended—

(1) by redesignating the first subpart 3 (relating to other requirements) as subpart 2; and

(2) by adding at the end of subpart 2 the following:

**''SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.**

''The provisions of section 2707 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 2006.

## TITLE IV—EMERGENCY CONTRACEPTION EDUCATION AND INFORMATION

**SEC. 401. SHORT TITLE.**

This Act may be cited as the ''Emergency Contraception Education Act''.

**SEC. 402. EMERGENCY CONTRACEPTION EDUCATION AND INFORMATION PROGRAMS.**

(a) DEFINITIONS.—For purposes of this section:

(1) EMERGENCY CONTRACEPTION.—The term ''emergency contraception'' means a drug or device (as the terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)) or a drug regimen that is—

(A) used after sexual relations;

(B) prevents pregnancy, by preventing ovulation, fertilization of an egg, or implantation of an egg in a uterus; and

(C) approved by the Food and Drug Administration.

(2) HEALTH CARE PROVIDER.—The term ''health care provider'' means an individual who is licensed or certified under State law to provide health care services and who is operating within the scope of such license.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) EMERGENCY CONTRACEPTION PUBLIC EDUCATION PROGRAM.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop and disseminate to the public information on emergency contraception.

(2) DISSEMINATION.—The Secretary may disseminate information under paragraph (1) directly or through arrangements with nonprofit organizations, consumer groups, institutions of higher education, Federal, State, or local agencies, clinics and the media.

(3) INFORMATION.—The information disseminated under paragraph (1) shall include, at a minimum, a description of emergency contraception, and an explanation of the use, safety, efficacy, and availability of such contraception.

(c) EMERGENCY CONTRACEPTION INFORMATION PROGRAM FOR HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration and in consultation with major medical and public health organizations, shall develop and disseminate to health care providers information on emergency contraception.

(2) INFORMATION.—The information disseminated under paragraph (1) shall include, at a minimum—

(A) information describing the use, safety, efficacy and availability of emergency contraception;

(B) a recommendation regarding the use of such contraception in appropriate cases; and

(C) information explaining how to obtain copies of the information developed under subsection (b), for distribution to the patients of the providers.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 for each of the fiscal years 2006 through 2010.

## TITLE V—COMPASSIONATE ASSISTANCE FOR RAPE EMERGENCIES

**SEC. 501. SHORT TITLE.**

This Act may be cited as the ''Compassionate Assistance for Rape Emergencies Act''.

**SEC. 502. SURVIVORS OF SEXUAL ASSAULT; PROVISION BY HOSPITALS OF EMERGENCY CONTRACEPTIVES WITHOUT CHARGE.**

(a) IN GENERAL.—Federal funds may not be provided to a hospital under any health-related program, unless the hospital meets the conditions specified in subsection (b) in the case of—

(1) any woman who presents at the hospital and states that she is a victim of sexual assault, or is accompanied by someone who states she is a victim of sexual assault; and

(2) any woman who presents at the hospital whom hospital personnel have reason to believe is a victim of sexual assault.

(b) ASSISTANCE FOR VICTIMS.—The conditions specified in this subsection regarding a hospital and a woman described in subsection (a) are as follows:

(1) The hospital promptly provides the woman with medically and factually accurate and unbiased written and oral information about emergency contraception, including information explaining that—

(A) emergency contraception does not cause an abortion; and

(B) emergency contraception is effective in most cases in preventing pregnancy after unprotected sex.

(2) The hospital promptly offers emergency contraception to the woman, and promptly provides such contraception to her on her request.

(3) The information provided pursuant to paragraph (1) is in clear and concise language, is readily comprehensible, and meets such conditions regarding the provision of the information in languages other than English as the Secretary may establish.

(4) The services described in paragraphs (1) through (3) are not denied because of the inability of the woman or her family to pay for the services.

(c) DEFINITIONS.—For purposes of this section:

(1) The term ''emergency contraception'' means a drug, drug regimen, or device that is—

(A) used postcoitally;

(B) prevents pregnancy by delaying ovulation, preventing fertilization of an egg, or preventing implantation of an egg in a uterus; and

(C) is approved by the Food and Drug Administration.

(2) The term ''hospital'' has the meanings given such term in title XVIII of the Social Security Act, including the meaning applicable in such title for purposes of making payments for emergency services to hospitals

that do not have agreements in effect under such title.

(3) The term ''Secretary'' means the Secretary of Health and Human Services.

(4) The term ''sexual assault'' means coitus in which the woman involved does not consent or lacks the legal capacity to consent.

(d) EFFECTIVE DATE; AGENCY CRITERIA.—This section takes effect upon the expiration of the 180-day period beginning on the date of enactment of this Act. Not later than 30 days prior to the expiration of such period, the Secretary shall publish in the Federal Register criteria for carrying out this section.

**TITLE VI—TEENAGE PREGNANCY PREVENTION**

**SEC. 601. SHORT TITLE.**

This title may be cited as the ''Preventing Teen Pregnancy Act''.

**SEC. 602. TEENAGE PREGNANCY PREVENTION.**

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by inserting after section 399N the following section:

**''SEC. 399N-1. TEENAGE PREGNANCY PREVENTION GRANTS.**

''(a) AUTHORITY.—The Secretary may award on a competitive basis grants to public and private entities to establish or expand teenage pregnancy prevention programs.

''(b) GRANT RECIPIENTS.—Grant recipients under this section may include State and local not-for-profit coalitions working to prevent teenage pregnancy, State, local, and tribal agencies, schools, entities that provide afterschool programs, and community and faith-based groups.

''(c) PRIORITY.—In selecting grant recipients under this section, the Secretary shall give—

''(1) highest priority to applicants seeking assistance for programs targeting communities or populations in which—

''(A) teenage pregnancy or birth rates are higher than the corresponding State average; or

''(B) teenage pregnancy or birth rates are increasing; and

''(2) priority to applicants seeking assistance for programs that—

''(A) will benefit underserved or at-risk populations such as young males or immigrant youths; or

''(B) will take advantage of other available resources and be coordinated with other programs that serve youth, such as workforce development and after school programs.

''(d) USE OF FUNDS.—Funds received by an entity as a grant under this section shall be used for programs that—

''(1) replicate or substantially incorporate the elements of one or more teenage pregnancy prevention programs that have been proven (on the basis of rigorous scientific research) to delay sexual intercourse or sexual activity, increase condom or contraceptive use (without increasing sexual activity), or reduce teenage pregnancy; and

''(2) incorporate one or more of the following strategies for preventing teenage pregnancy: encouraging teenagers to delay sexual activity; sex and HIV education; interventions for sexually active teenagers; preventive health services; youth development programs; service learning programs; and outreach or media programs.

''(e) COMPLETE INFORMATION.—Programs receiving funds under this section that choose to provide information on HIV/AIDS or contraception or both must provide information that is complete and medically accurate.

''(f) RELATION TO ABSTINENCE-ONLY PROGRAMS.—Funds under this section are not intended for use by abstinence-only education programs. Abstinence-only education programs that receive Federal funds through the Maternal and Child Health Block Grant, the Administration for Children and Families, the Adolescent Family Life Program, and any other program that uses the definition of 'abstinence education' found in section 510(b) of the Social Security Act are ineligible for funding.

''(g) APPLICATIONS.—Each entity seeking a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

''(h) MATCHING FUNDS.—

''(1) IN GENERAL.—The Secretary may not award a grant to an applicant for a program under this section unless the applicant demonstrates that it will pay, from funds derived from non-Federal sources, at least 25 percent of the cost of the program.

''(2) APPLICANT'S SHARE.—The applicant's share of the cost of a program shall be provided in cash or in kind.

''(i) SUPPLEMENTATION OF FUNDS.—An entity that receives funds as a grant under this section shall use the funds to supplement and not supplant funds that would otherwise be available to the entity for teenage pregnancy prevention.

''(j) EVALUATIONS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) conduct or provide for a rigorous evaluation of 10 percent of programs for which a grant is awarded under this section;

''(B) collect basic data on each program for which a grant is awarded under this section; and

''(C) upon completion of the evaluations referred to in subparagraph (A), submit to the Congress a report that includes a detailed statement on the effectiveness of grants under this section.

''(2) COOPERATION BY GRANTEES.—Each grant recipient under this section shall provide such information and cooperation as may be required for an evaluation under paragraph (1).

''(k) DEFINITION.—For purposes of this section, the term 'rigorous scientific research' means based on a program evaluation that:

''(1) Measured impact on sexual or contraceptive behavior, pregnancy or childbearing.

''(2) Employed an experimental or quasi-experimental design with well-constructed and appropriate comparison groups.

''(3) Had a sample size large enough (at least 100 in the combined treatment and control group) and a follow-up interval long enough (at least six months) to draw valid conclusions about impact.

''(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2006, and such sums as may be necessary for each subsequent fiscal year. In addition, there are authorized to be appropriated for evaluations under subsection (j) such sums as may be necessary for fiscal year 2006 and each subsequent fiscal year.''.

**TITLE VII—ACCURACY OF CONTRACEPTIVE INFORMATION**

**SEC. 701. SHORT TITLE.**

This title may be cited as the ''Truth in Contraception Act''.

**SEC. 702. ACCURACY OF CONTRACEPTIVE INFORMATION.**

Notwithstanding any other provision of law, any information concerning the use of a contraceptive provided through any federally funded sex education, family life education, abstinence education, comprehensive health education, or character education program shall be medically accurate and shall include health benefits and failure rates relating to the use of such contraceptive.

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By Mrs. HUTCHISON:

S. 24. A bill to establish an emergency reserve fund to provide timely financial assistance in response to domestic disasters and emergencies; to the Committee on the Budget.

Mrs. HUTCHISON. Mr. President, over the past decade, Congress has approved over $46 billion in disaster relief and emergency spending. This is an average of $4.6 billion a year. The majority of this funding—$34 billion—has been provided through supplemental bills, not subject to the normal appropriations process.

Supporters of supplemental spending suggest it provides Congress flexibility to respond to emergencies and to priorities that did not receive the proper consideration during the budget cycle. While supplemental bills do offer flexibility, they are not always helpful for fiscal responsibility. Millions of dollars are put in emergency spending bills that should go through the regular budget process, adding more and more to the bottom line.

America is at a critical time—we must be prepared to address domestic emergencies without increasing the deficit or being forced to fund non-emergency projects in order to release necessary funds. Supplemental spending circumvents budgetary enforcement mechanisms and can lead lawmakers to under-fund programs in the regular appropriations process, because they know they ultimately can get what is needed through a supplemental.

Supplemental bills allocate funding for emergencies, and we have all witnessed, firsthand, how a natural disaster can impact a country severely. Merely because something is unforeseen does not mean we should not prepare. Congress needs to plan in a manner that is fiscally responsible and procedurally transparent.

Today, I offer a bill to create an emergency fund under the office of the Secretary of the Treasury, in an interest bearing account, containing 1.2 percent of the annual non-defense domestic spending, or roughly $4.6 billion. This will be America's rainy day fund—a savings account ready for almost any potential unforeseen domestic emergencies.

This account is not designed to eliminate the need for supplemental bills but rather lessen the need for them.

Last year, in supplemental spending alone, Congress spent $2.5 billion on disaster relief in America. Domestic discretionary supplemental bills enacted in response to natural disasters, such as hurricanes and earthquakes, rose steadily through the 1990s. Federal Emergency Management Agency, FEMA, was the second-largest recipient of supplemental spending during the 1990s. Supplemental appropriations for ''non-natural'' disasters such as the Los Angeles riots in 1992 and the Oklahoma City bombing in 1995 as well as the September 11 terrorist attack have also demanded quick and efficient funding. History is teaching us a lesson; while we do not know what the

emergencies will be, we can feel certain there will be something to which we will need to respond.

Beyond the clear fiscal conservatism we need, I believe this rainy day fund would reduce the time it takes to respond to emergencies by giving Congress a more efficient, less political process. My bill would require the contingency fund to be expended before supplemental spending for domestic disasters can be pursued, with the exclusion of defense spending.

As we seek to be more fiscally responsible, our next step forward should be this account, from which the funds we draw upon are planned for and set aside through the normal appropriations process. Our current system regularly underfunds FEMA and other agencies for emergencies, and this should end.

As we prepare for the future, it is my goal that we save and prepare for the vital needs of our people should there be a domestic emergency. Recent events worldwide demand we be fiscally responsible and procedurally capable of this, our most important duty, the protection and safe-keeping of the American people.

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By Mr. CHAMBLISS:

S. 25. A bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States; to the Committee on Finance.

Mr. CHAMBLISS. Mr. President, I rise today to introduce the Fair Tax Act of 2005. This bill will promote freedom, fairness, and economic opportunity by repealing the Federal income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax.

The Fair Tax, which offers a national sales tax as the primary source of Federal revenue, is a necessary piece of tax reform that, should it pass, upon its inception would eliminate our current archaic and inefficient Tax Code and replace it with a simpler, fairer means of collecting revenue.

Our antiquated Tax Code was implemented in 1913 and has since been modified numerous times. The Federal Tax Code in its present form is overly complicated and desperately in need of an overhaul. We are well beyond rectifying the unfairness in our current system by tinkering around the edges. All Americans are in dire need of unbiased, sweeping tax reform—and the Fair Tax provides just that.

The Fair Tax Act of 2005 would repeal the individual income tax, the corporate income tax, capital gains taxes, all payroll taxes, the self-employment tax and the estate and gift taxes in lieu of a 23 percent tax on the final sale of all goods and services. Elimination of these inefficient taxing mechanisms will not only bring about equality within in our tax system, it will also bring about simplicity.

This bill will also provide for tax relief for business-to-business transactions. These transactions, including used-product transactions which have already been taxed, are not subject to the sales tax, thereby abrogating any double taxation.

Social Security and Medicare benefits would remain untouched under the Fair Tax bill. There would be no financial reductions to either one of these vital programs. Instead, the source of the trust-fund revenue for these two programs would be replaced simply by sales-tax revenue instead of payroll-tax revenue.

Lastly, under the Fair Tax Act, every American would receive a monthly rebate check equal to spending up to the Federal poverty level according to the Department of Health and Human Services guidelines. This rebate would ensure that no American pays taxes on the purchase of necessities.

The Fair Tax creates a fairer, simpler code that allows every American the freedom to determine his or her own priorities and opportunities. Ronald Reagan once said, ''I believe we really can, however, say that God did give mankind virtually unlimited gifts to invent, produce and create. And for that reason alone, it would be wrong for governments to devise a tax structure or economic system that suppresses and denies those gifts.'' I couldn't agree more.

And as long as we continue to operate under our current skewed Tax Code, we will continue to suppress and deny these unlimited gifts to the American people, who would otherwise thrive boundlessly under the Fair Tax.

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By Mrs. HUTCHISON (for herself, Mr. FRIST, Ms. CANTWELL, Mr. ENSIGN, Mr. ALEXANDER, and Mr. CORNYN):

S. 27. A bill to amend the Internal Revenue Code of 1986 to make permanent the deduction of State and local general sales taxes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to permanently correct an injustice in the tax code that has harmed citizens in many States of this great Nation.

State and local governments have various alternatives for raising revenue. Some levy income taxes, some use sales taxes, and others use a combination of the two. The citizens who pay State and local income taxes have been able to offset some of what they pay by receiving a deduction on their federal taxes. Before 1986, taxpayers also had the ability to deduct their sales taxes.

The philosophy behind these deductions is simple: people should not have to pay taxes on their taxes. The money that people must give to one level of government should not also be taxed by another level of government.

Unfortunately, citizens of some States were treated differently after 1986 when the deduction for State and local sales taxes was eliminated. This discriminated against those living in States, such as my home State of Texas, with no income taxes. It is important to remember the lack of an income tax does not mean citizens in these States do not pay State taxes; revenues are simply collected differently.

It is unfair to give citizens from some States a deduction for the revenue they provide their State and local governments, while not doing the same for citizens from other States. Federal tax law should not treat people differently on the basis of State residence and differing tax collection methods, and it should not provide an incentive for States to establish income taxes over sales taxes.

This discrepancy had a significant impact on Texas. According to the Texas Comptroller, the ability of taxpayers to deduct their sales taxes will lead to an additional $740 million staying in the hands of Texans each year, the creation of more than 16,500 new jobs, and the addition of $920 million in State economic activity.

Last year, we took an important step by reinstating a sales tax deduction. As a result, everyone now has the opportunity to deduct either their State and local income taxes or sales taxes. For the 55 million of us in the 7 States with a sales tax but no income tax, this means the tax code no longer discriminates against us. Unfortunately, the new deduction is only in effect for 2004 and 2005. We must act to prevent the inequity from returning.

The legislation I am offering today will fix this problem for good by making the State and local sales tax deduction permanent. This will permanently end the discrimination suffered by my fellow Texans and citizens of other States who do not have the option of an income tax deduction.

This legislation is about reestablishing equity to the tax code and defending the important principle of eliminating taxes on taxes. I hope my fellow Senators will support this effort.

I ask unanimous consent that the test of the bill be printed in the RECORD.

Ms. CANTWELL. Mr. President, today I am joining my good friend the Senator from Texas, (Mrs. HUTCHISON), and the Senator from Tennessee, the Majority Leader, Mr. FRIST, in legislation to permanently extend the State sales tax deduction. This bill aims to make permanent legislation that the Congress passed and the President signed into law last year on October 22, 2004 as a provision of the JOBS Act. It is a change to the tax code that I have worked to see enacted since coming to the U.S. Senate, and one I want to maintain.

The JOBS Act reinstituted, for a period of 2 years, the ability of taxpayers to deduct State and local sales taxes just as they would State and local income taxes. Residents of States such as Washington that do not have income

taxes, but have State sales taxes, had not been able to do this since the 1986.

Make no mistake about it: permanently extending the sales tax deduction is a tax cut for Washington State taxpayers. Such a cut will strengthen our economy and fundamentally restore basic tax fairness.

When the Federal income tax was first imposed in 1913, Congress allowed taxpayers to deduct State and local sales so they would not be taxed on once at the State level and then, again, at the Federal level in the same calendar year.

In 1986, after 74 years of precedent, this tax equity abruptly ended. Taxpayers from States without income taxes were given a raw deal when Congress made a budgetary squeeze play and ended the tax deduction for State sales taxes.

For States like Washington, where sales tax revenues are nearly 60 percent of the State budget, the impact is immense. The loss to Washington State taxpayers in 2004 alone, is estimated to be $500 million.

Washington taxpayers waited 18 years to for the Federal government to correct the unique burden on them that amounts to requiring them to pay taxes twice on the same money. Now that the burden has been lifted for 2 years, with thanks to this body and the President, Washington taxpayers are now looking for—and must have—permanence in the tax code with regard to their ability to deduct State and local sales taxes from their Federal income tax.

As I mentioned, this issue has been a primary one for me on behalf of the people I serve. In fact, when I became a member of this body in the 107th Congress, one of my first legislative acts was to cosponsor sales tax deduction legislation that at the time was introduced by the former Senator from Tennessee, Mr. Thompson. In the 108th Congress, Senator HUTCHISON and I carried the banner as the lead sponsors of similar legislation, the core of which we saw enacted into law for a 2-year period.

I am here once again in the 109th Congress with the Senator from Texas, Mrs. HUTCHISON, on the heels of a victory for a two-year reprieve for our constituents, looking, now, for permanent equity in the tax code. I look forward to continuing to work with Senator HUTCHISON, as well as Senator FRIST and others, in moving this sales tax deduction legislation forward in the coming months.

Only by making the two-year law permanent will we be able to see to it that taxpayers from Washington State, or any other State, are not unfairly singled out to pay higher taxes.

I urge prompt action on this measure.

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By Mrs. FEINSTEIN (for herself and Mr. LEAHY):

S. 29. A bill to amend title 18, United States Code, to limit the misuse of social security numbers, to establish criminal penalties for such misuse, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEN. Mr. President, I rise on behalf of myself and Senator LEAHY to again introduce legislation to protect one of Americans' most valuable but vulnerable assets: Social Security numbers. This is the second Congress in a row that I have introduced this legislation, to restrict the sale and display of Social Security numbers.

We have just begun the New Year, and unfortunately we can say with certainty that it will be another year in which millions of Americans will be victimized by identity theft, a crime so often linked to unprotected Social Security numbers. It is my hope that Congress will finally approve this legislation this year. For the benefit of all Californians and of all Americans, the Senate needs to take this step, to stop those who would do us harm by taking our very identities.

The goal of this bill is straightforward—to get Social Security numbers out of the public domain, so that identity thieves can't get them. Toward this goal, this bill will do the following:

The heart of this bill prohibits anyone from selling or displaying an individual's Social Security number to the general public without the individual's express consent.

But in recognition that sometimes there are legitimate needs for Social Security numbers, the bill also makes exceptions. Perhaps the most important exception allows the sale of Social Security numbers between businesses, or between the government and businesses. The bill also makes exceptions for law enforcement, national security, compliance with other laws, and a few other areas.

Additionally, this bill prohibits government entities from displaying Social Security numbers on public records that are posted on the Internet or in other electronic media after the legislation's effective date. It also prohibits governments from printing Social Security numbers on government checks.

This bill also punishes people who fraudulently use Social Security numbers to obtain benefits that they do not deserve.

Finally, this law has teeth to enforce its provisions. It gives the Attorney General the authority to issue civil penalties of up to $5,000 for people who misuse Social Security numbers. It also creates a criminal penalty, of up to five years in prison, for anyone who obtains another person's Social Security number for the purpose of locating or identifying that individual with the intent to physically harm that person. And it lets the victims of identity theft sue in court to recover their loss from the person who causes it.

Mr. President, the need for this bill should be clear. Theft of a Social Security number can be especially devastating, because that piece of information has become a de facto universal identifier in American society.

Despite the widespread use of Social Security numbers, the General Accounting Office reported recently that "No single federal law regulates the overall use or restricts the disclosure of SSNs by governments." (Source: Social Security numbers: SSNs are Widely Used by Government and Could be Better Protected, 2002 (Report Number GAO–02–691T) at page 5). As a result, the use of Social Security numbers is regulated by an inconsistent and insufficient patchwork of state and federal laws, that often leaves the numbers in plain view of the whole world.

One recent book on privacy in the United States documents how far the use of Social Security numbers has spread beyond its original purpose, when they were created in 1936, of tracking American workers' earnings and benefits. According to the book: "The SSN began to be used for military personnel, legally admitted aliens, anyone receiving or applying for federal benefits, food stamps, school lunch program eligibility, draft registration, and federal loans. State and local governments, as well as private sector entities such as schools and banks, began to use SSNs as well—for drivers' licenses, birth certificates, blood donation, jury selection, worker's compensation, occupational licenses, and marriage licenses." (Source: Daniel Solove and Marc Rotenberg, Information Privacy Law, Aspen Publishers, 2003, at page 447–48.)

It isn't surprising, then, that the sale of Social Security numbers is proceeding at a furious pace. According to the GAO in a report that it released earlier this year, "Internet-based information resellers whose Web sites we accessed also obtain SSNs from their customers and scour public records and other publicly available information to provide the information to persons willing to pay a fee." (Source: Social Security numbers: Private Sector Entities Routinely Obtain and Use SSNs, and Laws Limit the Disclosure of this Information (2004, Report Number GAO–04–11, on Highlights Page).

Governments also play a role in the widespread availability of Social Security numbers to the general public. According to another GAO report, issued just the other month in November 2004, "State agencies in 41 States and the District of Columbia reported visible SSNs in at least one type of record." (Source: Government Could Do More to Reduce Display in Public Records and on Identity Cards, (November 2004, Report Number GAO–05–59, on Highlights Page). This affects about 94 percent of the country's population. The report continues that "15 to 28 percent of the nation's 3,141 counties do place [Social Security numbers] on the Internet and this could affect millions of people."

If anyone who has doubts about the important role that this legislation will in protecting the identity of Americans, let me offer a few facts.

For the past four years, the Federal Trade Commission has ranked identity theft as its top consumer complaint. When the new numbers for 2004 come out in early February, I will not be surprised if identity theft again ranks as the most common complaint.

The most comprehensive survey of identity-theft victimization, a Federal Trade Commission report released in 2003, found that nearly 10 million Americans had been victimized by identity theft in the previous year. The California Office of Privacy Protection estimates that 1.1 million of those victims were Californians.

A separate FTC report found California to have the third-highest rate of identity theft per capita in 2003, with the number of victims increasing by more than 28 percent from 2002.

For anyone still unconvinced about the need for this law, let me offer a few specific examples of identity theft.

In November, 2004, in my home state of California, a married couple—Antonio and Rose Espino—pled guilty after stealing the identities of over 1,000 victims, and also stealing more than $8.8 million in fraudulent unemployment insurance. They obtained employer payroll lists that included names and Social Security numbers. (Source: ''San Joaquin couple plead guilty in identity-theft case,'' Fresno Bee, November 23, 2004).

In another case, Christopher Jones, a twenty-five-year-old employee at the University of North Carolina-Pembroke, stole approximately 3,000 Social Security numbers through his job, handing out towels and other equipment at the university gym, and then tried to sell them in blocks of 1,000 on eBay. He stated in his advertisement: ''100 (one hundred Social Security # Numbers Obtain False Credit Cards Idenity Theft I Don't Care Bid Starts at a Dollar a Piece USPS Money Orders only all Different.''

Similar behavior—using the Web to gather Social Secuirty numbers—still continues. As The Washington Post reported last February, by using the common search engine Google on the Web, ''Search strings . . . often bring up spread sheets, credit card numbers, and Social Security numbers linked to a customer list.'' (Source: ''Online Search Engines Help Lift Cover of Privacy,'' The Washington Post, February 9, 2004, at A1).

I personally first became aware of the need for a law to restrict the sale and display of Social Security numbers about eight years ago, when one of my staff members sat me down and downloaded my own Social Security Number from the Internet in a matter of minutes.

Unfortunately, Congress has done little to protect Social Security numbers since then. We still badly need a uniform law. Year after year, I have advocated and proposed such legislation that would restrict the public display and use of Social Security numbers:

In the 106th Congress, I introduced S. 2966.

In the 107th Congress, I introduced, S. 848 and S. 3100.

In the 108th Congress, I introduced S. 228, S. 745, and S. 2801.

None of these bills moved. Today, I stand before you yet again, to introduce for a seventh time a bill to take steps that will make it more difficult for thieves to steal this precious resource. This issue does not concern Republican government or Democratic government; this is an issue of good government.

Last year, the President signed into law a bill that I helped to author, to increase penalties for those who steal the identities of others. But punishment is not enough. We need to stop identity theft from occurring in the first place. This information should have been under lock and key long ago. It is time for us to act. Thank you Mr. President.

I ask for unanimous consent that the text of the legislation directly follow this statement in the RECORD.

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

S. 29

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Social Security Number Misuse Prevention Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents
Sec. 2. Findings
Sec. 3. Prohibition of the display, sale, or purchase of social security numbers
Sec. 4. Application of prohibition of the display, sale, or purchase of social security numbers to public records
Sec. 5. Rulemaking authority of the Attorney General
Sec. 6. Treatment of social security numbers on government documents
Sec. 7. Limits on personal disclosure of a social security number for consumer transactions
Sec. 8. Extension of civil monetary penalties for misuse of a social security number
Sec. 9. Criminal penalties for the misuse of a social security number
Sec. 10. Civil actions and civil penalties
Sec. 11. Federal injunctive authority

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The inappropriate display, sale, or purchase of social security numbers has contributed to a growing range of illegal activities, including fraud, identity theft, and, in some cases, stalking and other violent crimes.

(2) While financial institutions, health care providers, and other entities have often used social security numbers to confirm the identity of an individual, the general display to the public, sale, or purchase of these numbers has been used to commit crimes, and also can result in serious invasions of individual privacy.

(3) The Federal Government requires virtually every individual in the United States to obtain and maintain a social security number in order to pay taxes, to qualify for social security benefits, or to seek employment. An unintended consequence of these requirements is that social security numbers have become one of the tools that can be used to facilitate crime, fraud, and invasions of the privacy of the individuals to whom the numbers are assigned. Because the Federal Government created and maintains this system, and because the Federal Government does not permit individuals to exempt themselves from those requirements, it is appropriate for the Federal Government to take steps to stem the abuse of social security numbers.

(4) The display, sale, or purchase of social security numbers in no way facilitates uninhibited, robust, and wide-open public debate, and restrictions on such display, sale, or purchase would not affect public debate.

(5) No one should seek to profit from the display, sale, or purchase of social security numbers in circumstances that create a substantial risk of physical, emotional, or financial harm to the individuals to whom those numbers are assigned.

(6) Consequently, this Act provides each individual that has been assigned a social security number some degree of protection from the display, sale, and purchase of that number in any circumstance that might facilitate unlawful conduct.

**SEC. 3. PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS.**

(a) PROHIBITION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1028 the following:

**''§ 1028A. Prohibition of the display, sale, or purchase of social security numbers**

''(a) DEFINITIONS.—In this section:

''(1) DISPLAY.—The term 'display' means to intentionally communicate or otherwise make available (on the Internet or in any other manner) to the general public an individual's social security number.

''(2) PERSON.—The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, or any other entity.

''(3) PURCHASE.—The term 'purchase' means providing directly or indirectly, anything of value in exchange for a social security number.

''(4) SALE.—The term 'sale' means obtaining, directly or indirectly, anything of value in exchange for a social security number.

''(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

''(b) LIMITATION ON DISPLAY.—Except as provided in section 1028B, no person may display any individual's social security number to the general public without the affirmatively expressed consent of the individual.

''(c) LIMITATION ON SALE OR PURCHASE.—Except as otherwise provided in this section, no person may sell or purchase any individual's social security number without the affirmatively expressed consent of the individual.

''(d) PREREQUISITES FOR CONSENT.—In order for consent to exist under subsection (b) or (c), the person displaying or seeking to display, selling or attempting to sell, or purchasing or attempting to purchase, an individual's social security number shall—

''(1) inform the individual of the general purpose for which the number will be used, the types of persons to whom the number may be available, and the scope of transactions permitted by the consent; and

''(2) obtain the affirmatively expressed consent (electronically or in writing) of the individual.

''(e) EXCEPTIONS.—Nothing in this section shall be construed to prohibit or limit the

display, sale, or purchase of a social security number—

''(1) required, authorized, or excepted under any Federal law;

''(2) for a public health purpose, including the protection of the health or safety of an individual in an emergency situation;

''(3) for a national security purpose;

''(4) for a law enforcement purpose, including the investigation of fraud and the enforcement of a child support obligation;

''(5) if the display, sale, or purchase of the number is for a use occurring as a result of an interaction between businesses, governments, or business and government (regardless of which entity initiates the interaction), including, but not limited to—

''(A) the prevention of fraud (including fraud in protecting an employee's right to employment benefits);

''(B) the facilitation of credit checks or the facilitation of background checks of employees, prospective employees, or volunteers;

''(C) the retrieval of other information from other businesses, commercial enterprises, government entities, or private nonprofit organizations; or

''(D) when the transmission of the number is incidental to, and in the course of, the sale, lease, franchising, or merger of all, or a portion of, a business;

''(6) if the transfer of such a number is part of a data matching program involving a Federal, State, or local agency; or

''(7) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program;

except that, nothing in this subsection shall be construed as permitting a professional or commercial user to display or sell a social security number to the general public.

''(f) LIMITATION.—Nothing in this section shall prohibit or limit the display, sale, or purchase of social security numbers as permitted under title V of the Gramm-Leach-Bliley Act, or for the purpose of affiliate sharing as permitted under the Fair Credit Reporting Act, except that no entity regulated under such Acts may make social security numbers available to the general public, as may be determined by the appropriate regulators under such Acts. For purposes of this subsection, the general public shall not include affiliates or unaffiliated third-party business entities as may be defined by the appropriate regulators.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following:

''1028A. Prohibition of the display, sale, or purchase of social security numbers''.

(b) STUDY; REPORT.—

(1) IN GENERAL.—The Attorney General shall conduct a study and prepare a report on all of the uses of social security numbers permitted, required, authorized, or excepted under any Federal law. The report shall include a detailed description of the uses allowed as of the date of enactment of this Act, the impact of such uses on privacy and data security, and shall evaluate whether such uses should be continued or discontinued by appropriate legislative action.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall report to Congress findings under this subsection. The report shall include such recommendations for legislation based on criteria the Attorney General determines to be appropriate.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 30 days after the date on which the final regulations promulgated under section 5 are published in the Federal Register.

**SEC. 4. APPLICATION OF PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS TO PUBLIC RECORDS.**

(a) PUBLIC RECORDS EXCEPTION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code (as amended by section 3(a)(1)), is amended by inserting after section 1028A the following:

**''§ 1028B. Display, sale, or purchase of public records containing social security numbers**

''(a) DEFINITION.—In this section, the term 'public record' means any governmental record that is made available to the general public.

''(b) IN GENERAL.—Except as provided in subsections (c), (d), and (e), section 1028A shall not apply to a public record.

''(c) PUBLIC RECORDS ON THE INTERNET OR IN AN ELECTRONIC MEDIUM.—

''(1) IN GENERAL.—Section 1028A shall apply to any public record first posted onto the Internet or provided in an electronic medium by, or on behalf of a government entity after the date of enactment of this section, except as limited by the Attorney General in accordance with paragraph (2).

''(2) EXCEPTION FOR GOVERNMENT ENTITIES ALREADY PLACING PUBLIC RECORDS ON THE INTERNET OR IN ELECTRONIC FORM.—Not later than 60 days after the date of enactment of this section, the Attorney General shall issue regulations regarding the applicability of section 1028A to any record of a category of public records first posted onto the Internet or provided in an electronic medium by, or on behalf of a government entity prior to the date of enactment of this section. The regulations will determine which individual records within categories of records of these government entities, if any, may continue to be posted on the Internet or in electronic form after the effective date of this section. In promulgating these regulations, the Attorney General may include in the regulations a set of procedures for implementing the regulations and shall consider the following:

''(A) The cost and availability of technology available to a governmental entity to redact social security numbers from public records first provided in electronic form after the effective date of this section.

''(B) The cost or burden to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments of complying with section 1028A with respect to such records.

''(C) The benefit to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments if the Attorney General were to determine that section 1028A should apply to such records.

Nothing in the regulation shall permit a public entity to post a category of public records on the Internet or in electronic form after the effective date of this section if such category had not been placed on the Internet or in electronic form prior to such effective date.

''(d) HARVESTED SOCIAL SECURITY NUMBERS.—Section 1028A shall apply to any public record of a government entity which contains social security numbers extracted from other public records for the purpose of displaying or selling such numbers to the general public.

''(e) ATTORNEY GENERAL RULEMAKING ON PAPER RECORDS.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Attorney General shall determine the feasibility and advisability of applying section 1028A to the records listed in paragraph (2) when they appear on paper or on another nonelectronic medium. If the Attorney General deems it appropriate, the Attorney General may issue regulations applying section 1028A to such records.

''(2) LIST OF PAPER AND OTHER NONELECTRONIC RECORDS.—The records listed in this paragraph are as follows:

''(A) Professional or occupational licenses.

''(B) Marriage licenses.

''(C) Birth certificates.

''(D) Death certificates.

''(E) Other short public documents that display a social security number in a routine and consistent manner on the face of the document.

''(3) CRITERIA FOR ATTORNEY GENERAL REVIEW.—In determining whether section 1028A should apply to the records listed in paragraph (2), the Attorney General shall consider the following:

''(A) The cost or burden to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments of complying with section 1028A.

''(B) The benefit to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments if the Attorney General were to determine that section 1028A should apply to such records.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code (as amended by section 3(a)(2)), is amended by inserting after the item relating to section 1028A the following:

''1028B. Display, sale, or purchase of public records containing social security numbers''.

(b) STUDY AND REPORT ON SOCIAL SECURITY NUMBERS IN PUBLIC RECORDS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study and prepare a report on social security numbers in public records. In developing the report, the Comptroller General shall consult with the Administrative Office of the United States Courts, State and local governments that store, maintain, or disseminate public records, and other stakeholders, including members of the private sector who routinely use public records that contain social security numbers.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1). The report shall include a detailed description of the activities and results of the study and recommendations for such legislative action as the Comptroller General considers appropriate. The report, at a minimum, shall include—

(A) a review of the uses of social security numbers in non-federal public records;

(B) a review of the manner in which public records are stored (with separate reviews for both paper records and electronic records);

(C) a review of the advantages or utility of public records that contain social security numbers, including the utility for law enforcement, and for the promotion of homeland security;

(D) a review of the disadvantages or drawbacks of public records that contain social security numbers, including criminal activity, compromised personal privacy, or threats to homeland security;

(E) the costs and benefits for State and local governments of removing social security numbers from public records, including a review of current technologies and procedures for removing social security numbers from public records; and

(F) an assessment of the benefits and costs to businesses, their customers, and the general public of prohibiting the display of social security numbers on public records (with separate assessments for both paper records and electronic records).

(c) EFFECTIVE DATE.—The prohibition with respect to electronic versions of new classes of public records under section 1028B(b) of title 18, United States Code (as added by subsection (a)(1)) shall not take effect until the date that is 60 days after the date of enactment of this Act.

**SEC. 5. RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL.**

(a) IN GENERAL.—Except as provided in subsection (b), the Attorney General may prescribe such rules and regulations as the Attorney General deems necessary to carry out the provisions of section 1028A(e)(5) of title 18, United States Code (as added by section 3(a)(1)).

(b) DISPLAY, SALE, OR PURCHASE RULEMAKING WITH RESPECT TO INTERACTIONS BETWEEN BUSINESSES, GOVERNMENTS, OR BUSINESS AND GOVERNMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the Commissioner of Social Security, the Chairman of the Federal Trade Commission, and such other heads of Federal agencies as the Attorney General determines appropriate, shall conduct such rulemaking procedures in accordance with subchapter II of chapter 5 of title 5, United States Code, as are necessary to promulgate regulations to implement and clarify the uses occurring as a result of an interaction between businesses, governments, or business and government (regardless of which entity initiates the interaction) permitted under section 1028A(e)(5) of title 18, United States Code (as added by section 3(a)(1)).

(2) FACTORS TO BE CONSIDERED.—In promulgating the regulations required under paragraph (1), the Attorney General shall, at a minimum, consider the following:

(A) The benefit to a particular business, to customers of the business, and to the general public of the display, sale, or purchase of an individual's social security number.

(B) The costs that businesses, customers of businesses, and the general public may incur as a result of prohibitions on the display, sale, or purchase of social security numbers.

(C) The risk that a particular business practice will promote the use of a social security number to commit fraud, deception, or crime.

(D) The presence of adequate safeguards, procedures, and technologies to prevent—

(i) misuse of social security numbers by employees within a business; and

(ii) misappropriation of social security numbers by the general public, while permitting internal business uses of such numbers.

(E) The presence of procedures to prevent identity thieves, stalkers, and other individuals with ill intent from posing as legitimate businesses to obtain social security numbers.

(F) The impact of such uses on privacy.

**SEC. 6. TREATMENT OF SOCIAL SECURITY NUMBERS ON GOVERNMENT DOCUMENTS.**

(a) PROHIBITION OF USE OF SOCIAL SECURITY ACCOUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY GOVERNMENTAL AGENCIES.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following:

''(x) No Federal, State, or local agency may display the social security account number of any individual, or any derivative of such number, on any check issued for any payment by the Federal, State, or local agency.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to violations of section 205(c)(2)(C)(x) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(x)), as added by paragraph (1), occurring after the date that is 3 years after the date of enactment of this Act.

(b) PROHIBITION OF INMATE ACCESS TO SOCIAL SECURITY ACCOUNT NUMBERS.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) (as amended by subsection (b)) is amended by adding at the end the following:

''(xi) No Federal, State, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the social security account numbers of other individuals. For purposes of this clause, the term 'prisoner' means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of a criminal offense.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to employment of prisoners, or entry into contract with prisoners, after the date that is 1 year after the date of enactment of this Act.

**SEC. 7. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.**

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following:

**''SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.**

''(a) IN GENERAL.—A commercial entity may not require an individual to provide the individual's social security number when purchasing a commercial good or service or deny an individual the good or service for refusing to provide that number except—

''(1) for any purpose relating to—

''(A) obtaining a consumer report for any purpose permitted under the Fair Credit Reporting Act;

''(B) a background check of the individual conducted by a landlord, lessor, employer, voluntary service agency, or other entity as determined by the Attorney General;

''(C) law enforcement; or

''(D) a Federal, State, or local law requirement; or

''(2) if the social security number is necessary to verify the identity of the consumer to effect, administer, or enforce the specific transaction requested or authorized by the consumer, or to prevent fraud.

''(b) APPLICATION OF CIVIL MONEY PENALTIES.—A violation of this section shall be deemed to be a violation of section 1129(a)(3)(F).

''(c) APPLICATION OF CRIMINAL PENALTIES.—A violation of this section shall be deemed to be a violation of section 208(a)(8).

''(d) LIMITATION ON CLASS ACTIONS.—No class action alleging a violation of this section shall be maintained under this section by an individual or any private party in Federal or State court.

''(e) STATE ATTORNEY GENERAL ENFORCEMENT.—

''(1) IN GENERAL.—

''(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under this section, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

''(i) enjoin that practice;

''(ii) enforce compliance with such section;

''(iii) obtain damages, restitution, or other compensation on behalf of residents of the State; or

''(iv) obtain such other relief as the court may consider appropriate.

''(B) NOTICE.—

''(i) IN GENERAL.—Before filing an action under subparagraph (A), the attorney general of the State involved shall provide to the Attorney General—

''(I) written notice of the action; and

''(II) a copy of the complaint for the action.

''(ii) EXEMPTION.—

''(I) IN GENERAL.—Clause (i) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

''(II) NOTIFICATION.—With respect to an action described in subclause (I), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the same time as the State attorney general files the action.

''(2) INTERVENTION.—

''(A) IN GENERAL.—On receiving notice under paragraph (1)(B), the Attorney General shall have the right to intervene in the action that is the subject of the notice.

''(B) EFFECT OF INTERVENTION.—If the Attorney General intervenes in the action under paragraph (1), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

''(A) conduct investigations;

''(B) administer oaths or affirmations; or

''(C) compel the attendance of witnesses or the production of documentary and other evidence.

''(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General for violation of a practice that is prohibited under this section, no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint in that action for violation of that practice.

''(5) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(f) SUNSET.—This section shall not apply on or after the date that is 6 years after the effective date of this section.''.

(b) EVALUATION AND REPORT.—Not later than the date that is 6 years and 6 months after the date of enactment of this Act, the Attorney General, in consultation with the chairman of the Federal Trade Commission, shall issue a report evaluating the effectiveness and efficiency of section 1150A of the Social Security Act (as added by subsection (a)) and shall make recommendations to Congress as to any legislative action determined to be necessary or advisable with respect to such section, including a recommendation regarding whether to reauthorize such section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests to provide a social security number occurring after the date that is 1 year after the date of enactment of this Act.

**SEC. 8. EXTENSION OF CIVIL MONETARY PENALTIES FOR MISUSE OF A SOCIAL SECURITY NUMBER.**

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking ''who'' and inserting ''who—'';

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following:

''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(B) makes such a statement or representation for such use with knowing disregard for the truth; or

''(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to'';

(C) by inserting ''or each receipt of such benefits while withholding disclosure of such fact'' after ''each such statement or representation'';

(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation''; and

(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation''.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—The first sentence of section 1129A(a) of the Social Security Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking ''who'' and inserting ''who—''; and

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following:

''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(2) makes such a statement or representation for such use with knowing disregard for the truth; or

''(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to''.

(b) APPLICATION OF CIVIL MONEY PENALTIES TO ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8(a)), as amended by subsection (a)(1), is amended—

(1) by redesignating paragraph (2) as paragraph (4);

(2) by redesignating the last sentence of paragraph (1) as paragraph (2) and inserting such paragraph after paragraph (1); and

(3) by inserting after paragraph (2) (as so redesignated) the following:

''(3) Any person (including an organization, agency, or other entity) who—

''(A) uses a social security account number that such person knows or should know has been assigned by the Commissioner of Social Security (in an exercise of authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Commissioner by any person;

''(B) falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to any individual, when such person knows or should know that such number is not the social security account number assigned by the Commissioner to such individual;

''(C) knowingly alters a social security card issued by the Commissioner of Social Security, or possesses such a card with intent to alter it;

''(D) knowingly displays, sells, or purchases a card that is, or purports to be, a card issued by the Commissioner of Social Security, or possesses such a card with intent to display, purchase, or sell it;

''(E) counterfeits a social security card, or possesses a counterfeit social security card with intent to display, sell, or purchase it;

''(F) discloses, uses, compels the disclosure of, or knowingly displays, sells, or purchases the social security account number of any person in violation of the laws of the United States;

''(G) with intent to deceive the Commissioner of Social Security as to such person's true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner with respect to any information required by the Commissioner in connection with the establishment and maintenance of the records provided for in section 205(c)(2);

''(H) offers, for a fee, to acquire for any individual, or to assist in acquiring for any individual, an additional social security account number or a number which purports to be a social security account number; or

''(I) being an officer or employee of a Federal, State, or local agency in possession of any individual's social security account number, willfully acts or fails to act so as to cause a violation by such agency of clause (vi)(II) or (x) of section 205(c)(2)(C), shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each violation. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from such violation, of not more than twice the amount of any benefits or payments paid as a result of such violation.''.

(c) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of the Social Security Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking ''In the case of amounts recovered arising out of a determination relating to title VIII or XVI,'' and inserting ''In the case of any other amounts recovered under this section,''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of the Social Security Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

(2) Section 1129(c)(1) of the Social Security Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

(3) Section 1129(e)(1)(A) of the Social Security Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to violations of sections 1129 and 1129A of the Social Security Act (42 U.S.C. 1320–8 and 1320a–8a), as amended by this section, committed after the date of enactment of this Act.

(2) VIOLATIONS BY GOVERNMENT AGENTS IN POSSESSION OF SOCIAL SECURITY NUMBERS.—Section 1129(a)(3)(I) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)(I)), as added by subsection (b), shall apply with respect to violations of that section occurring on or after the effective date described in section 3(c).

**SEC. 9. CRIMINAL PENALTIES FOR THE MISUSE OF A SOCIAL SECURITY NUMBER.**

(a) PROHIBITION OF WRONGFUL USE AS PERSONAL IDENTIFICATION NUMBER.—No person may obtain any individual's social security number for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for any illegal purpose.

(b) CRIMINAL SANCTIONS.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) in paragraph (8), by inserting ''or'' after the semicolon; and

(2) by inserting after paragraph (8) the following:

''(9) except as provided in subsections (e) and (f) of section 1028A of title 18, United States Code, knowingly and willfully displays, sells, or purchases (as those terms are defined in section 1028A(a) of title 18, United States Code) any individual's social security account number without having met the prerequisites for consent under section 1028A(d) of title 18, United States Code; or

''(10) obtains any individual's social security number for the purpose of locating or identifying the individual with the intent to injure or to harm that individual, or to use the identity of that individual for an illegal purpose;''.

**SEC. 10. CIVIL ACTIONS AND CIVIL PENALTIES.**

(a) CIVIL ACTION IN STATE COURTS.—

(1) IN GENERAL.—Any individual aggrieved by an act of any person in violation of this Act or any amendments made by this Act may, if otherwise permitted by the laws or rules of the court of a State, bring in an appropriate court of that State—

(A) an action to enjoin such violation;

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater; or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of the regulations prescribed under this Act. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B).

(2) STATUTE OF LIMITATIONS.—An action may be commenced under this subsection not later than the earlier of—

(A) 5 years after the date on which the alleged violation occurred; or

(B) 3 years after the date on which the alleged violation was or should have been reasonably discovered by the aggrieved individual.

(3) NONEXCLUSIVE REMEDY.—The remedy provided under this subsection shall be in addition to any other remedies available to the individual.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—Any person who the Attorney General determines has violated any section of this Act or of any amendments made by this Act shall be subject, in addition to any other penalties that may be prescribed by law—

(A) to a civil penalty of not more than $5,000 for each such violation; and

(B) to a civil penalty of not more than $50,000, if the violations have occurred with such frequency as to constitute a general business practice.

(2) DETERMINATION OF VIOLATIONS.—Any willful violation committed contemporaneously with respect to the social security numbers of 2 or more individuals by means of mail, telecommunication, or otherwise, shall be treated as a separate violation with respect to each such individual.

(3) ENFORCEMENT PROCEDURES.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a), other than subsections (a), (b), (f), (h), (i), (j), (m), and (n) and the first sentence of subsection (c) of such section, and the provisions of subsections (d) and (e) of section 205 of such Act (42 U.S.C. 405) shall apply to a civil penalty action under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act (42 U.S.C. 1320a–7a(a)), except that, for purposes of this paragraph, any reference in section 1128A of such Act (42 U.S.C. 1320a–7a) to the Secretary shall be deemed to be a reference to the Attorney General.

**SEC. 11. FEDERAL INJUNCTIVE AUTHORITY.**

In addition to any other enforcement authority conferred under this Act or the amendments made by this Act, the Federal Government shall have injunctive authority with respect to any violation by a public entity of any provision of this Act or of any amendments made by this Act.

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By Mr. SARBANES (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. AKAKA, Mr. BINGAMAN, Mr. SCHUMER, Mr. DODD, Mrs. BOXER, Ms. MIKULSKI, and Mr. REID):

S. 31. A bill to amend the Electronic Fund Transfer Act to extend certain consumer protections to international remittance transfers of funds originating in the United States, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. SARBANES. Mr. President, today I am introducing the International Remittance Consumer Protection Act of 2005. This legislation extends basic consumer protection rights to those who send remittances, and it creates new avenues and incentives for federally insured financial institutions to provide remittance and basic banking services to those who currently do not use such institutions to send remittances.

The practice of sending remittances is not new. Immigrants to the United States traditionally have used remittances to provide financial assistance to family members who remained in their country of origin, but the practice has been largely overlooked; it has not been systematically studied and its implications have not been fully understood. The 2000 census shows that 30 million people in this country are foreign-born—the largest number in our Nation's history—and the vast majority of them—22 million are citizens or legal residents. More than 40 percent of our Nation's foreign-born population immigrated to the United States in the 1990s, and some 15.4 million, or more than half the immigrant community, have come from Latin American countries. Immigrants make a vital contribution to the economic and social life of our Nation.

In a recent study, Sending Money Home: Remittances to Latin America from the U.S., 2004, the Inter-American Development Bank, IADB, found that nationwide over 60 percent of Latin American immigrants send remittances. On average, each immigrant sends $240 at a time, 12 times per year. Although these individual transactions are not large, they have constituted an aggregate amount of over $30 billion from America to our Latin American neighbors in this year alone.

In my State of Maryland, we have 175,000 immigrants from Latin America and the vast majority send remittances back home. According to the IADB's study 80 percent of Maryland's immigrants from Latin America send remittances. The typical sender remits an average of $245, 14 times per year—in other words, remittances are a monthly matter, with special gifts for Christmas and Mother's Day.

The subject of remittances has been a major interest of mine for some time. As chairman of the Banking Committee, in February, 2002, during the 107th Congress, I chaired what I understand was the first Congressional hearing devoted exclusively to the subject. Dr. Manuel Orozco, a leading researcher on remittances at the Inter-American Dialogue, told the Committee that remittances from the U.S. to Latin America had grown substantially—at that point to an estimated $20 billion in 2001—and that between 15 to 20 percent—$3–$4 billion—was being lost in fees and other transaction costs. Since Dr. Orozco testified, remittances to Latin America have grown by $10 billion, or 50 percent, in just three years, and continued growth is expected.

That an estimated 15 percent to 20 percent of the money sent in remittances is diverted to fees and other transaction costs, often hidden from the remittance sender, is evidence of the abusive practices that exist in the remittance market. There are two primary factors that account for this abuse. First, studies have shown that people who send remittances tend to be relatively low-wage earners, with modest formal education and relatively little experience in dealing with this country's complex system of financial institutions. As a result they are susceptible to unscrupulous actors who can take advantage of them by charging all sorts of exorbitant fees, which are often hidden or misrepresented. The exchange rate conversion is often the mechanism for this abusive practice.

Second, remittances are currently not subject to the requirements set by Federal consumer protection law, including the disclosure of fees. There is no requirement that a remittance transfer provider disclose to the consumer the exchange rate fee that will be applied in the transaction. Without knowing the exchange rate fee that the company is charging, a consumer has little ability to gauge accurately the full cost of sending a remittance. As Sergio Bendixen, a leading researcher of public opinion and behavior, with a specialty among Hispanic consumers, testified before the Banking Committee: ''an overwhelming majority of Hispanic immigrants are unaware that their families in Latin America receive less money than what they send from the United States.'' Further, a remittance sender cannot effectively shop between remittance transfer providers. The lack of basic information limits the amount of competition in this market.

The legislation I am introducing today extends basic consumer rights to those who send remittances. Further, by requiring clear and understandable disclosures to the remittance sender of the cost of the remittance, thus presenting to the consumer the full cost of sending money, the legislation will enhance competition, which in turn should lead to an overall decrease in the cost of sending remittances. As Sergio Bendixen testified to the Banking Committee, ''Full disclosure should unleash market forces that, hopefully, will result in a significant reduction in the cost of sending cash remittances.''

This legislation amends the Electronic Fund Transfer Act, EFTA, which is the primary vehicle for providing basic protections to most persons who engage in electronic transactions, to cover remittances, and to provide the basic rights associated with EFTA to remittance transactions. The two most important components of EFTA are the requirement of full disclosure of fees and the establishment of a process for the resolution of transactional errors. These rights have been an integral part of the regulations that govern our banking infrastructure since EFTA's enactment in 1978. The new legislation will build upon the success of EFTA by extending these basic rights to remittance senders.

The cornerstone of this legislation is the requirement that remittance transfer providers make three key disclosures to their consumers: One, the total cost of the remittance, represented in a single dollar amount; two, the total amount of currency that will be sent to the designated recipient; and three, the promised date of delivery for the remittance. These disclosures follow the core recommendations of the Inter-American Development Bank, which in its publication, Remittances to Latin America and the Caribbean: Goals and Recommendations,

states: ''Remittance institutions should disclose in a fully transparent manner, complete information on total costs and transfer conditions, including all commissions and fees, foreign exchange rates applied and execution time.''

The total cost disclosure will include the cost of the exchange rate conversion as well as all up-front fees. This single item will both give consumers a more accurate representation of the cost of the remittance transaction and allow consumers to more effectively compare costs between remittance transfer providers.

In order to calculate the cost of the exchange rate conversion, which is part of the total cost, the legislation requires that the Treasury Department post on its website, on a daily basis, the exchange rate for all currencies. At present the Treasury receives this information on a daily basis, but posts it only on a quarterly basis on the Treasury website. By posting the information daily, the Treasury could create a uniform and credible source for exchange rate information.

To calculate the cost to the consumer of the exchange rate differential, remittance transfer providers will use the difference between the previous business day's exchange rate, as posted on the Treasury website, and the exchange rate that the remittance transfer provider offers. Using the exchange rate posted by the Treasury will ensure that the exchange rate cost is calculated on a uniform base. When the exchange rate cost is disclosed to the consumer as part of the total cost of the remittance transfer, the consumer will be better able to understand the full cost of the transaction and to shop between different remittance transfer providers.

In addition to fee disclosure requirements, this legislation establishes an error resolution mechanism so that consumers whose remittance transactions experience an error have a fair, open, and expedient process through which they may resolve those errors with the institution that conducted the flawed transaction. This basic right is already afforded to consumers who are protected by EFTA, and now this right will be extended to cover consumers who send remittances as well. Further, the legislation establishes an error resolution mechanism for remittance transfer errors that is responsive to the different types of errors that can occur in a remittance transaction and is reflective of the unique characteristics of the remittance market and its participants.

Under this legislation, a consumer has one year from the date that the remittance transfer company promised to deliver the money to notify the company that an error has occurred. The company is then required to resolve the error within 90 days. To resolve the error, the company must either 1. refund the full amount of the remittance that was not properly transferred, 2. resend that amount at no additional cost to the consumer or the designated recipient, or 3. demonstrate to the consumer that there was no error. The Federal Reserve Board is also granted the authority to establish additional remedies for specific situations that cannot be addressed by the three specific remedies that are described in the legislation.

It is urgent that we continue to encourage efforts to bring those who send remittances into the financial mainstream. In his testimony to the Banking Committee, Dr. Orozco pointed out that, ''About two-thirds of immigrants cash their salary checks in check cashing stores that charge exorbitant fees. Many of these same immigrants then use what remains of their income to send remittances back home. In this common scenario, immigrants are penalized in both receiving and sending their earnings.'' In order to further bank those who are currently unbanked, the legislation that I am introducing today requires that the Federal banking agencies and the National Credit Union Administration provide guidelines to financial institutions regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts. This legislation also amends the Federal Credit Union Act to allow credit unions to offer remittances and to cash checks for persons who are in their field of membership but are not credit union members. The guidelines set out in the legislation will help educate the financial services industry about the importance and potential profitability of providing these services.

The sending of remittances in a fair and scrupulous manner is likely to be profitable for the institution that provides the remittance service, and indeed we have begun to see aggressive moves into the remittance market by many of the largest banking institutions. Individuals who send remittances but are currently unbanked represent an expanded and profitable customer base for financial institutions.

By its very nature, the issues involved in sending remittances affect both the United States and other nations. As Professor Susan Martin of Georgetown University, who also testified at our hearing, told the Banking Committee: ''Until relatively recently, researchers and policy makers tended to dismiss the importance of remittances or emphasize only their negative aspects . . . but recent work on remittances show a far more complex and promising picture. . . . Experts now recognize that remittances have far greater positive impact on communities in developing countries than previously acknowledged.'' In fact, the size of the remittance market is such that for six Central American and Caribbean nations—Nicaragua, Haiti, El Salvador, Honduras, Guyana and Jamaica—remittances constitute more than 10 percent of GDP; Haiti and Jamaica receive more in remittances than in revenues from trade. The World Bank estimates that Mexico receives more in remittances than it does in foreign direct investment. Reducing the costs of remittances is in the interest of both the United States and the countries that receive them.

Given the growing importance of annual remittance flows, we must work to increase their efficiency. One mechanism for accomplishing this objective, and for increasing the ability of financial institutions to offer remittances, is linking our banking infrastructure with the banking infrastructures of other nations. The Federal Reserve operates an international automated clearing house system, ACHi, that is currently linked to seven countries, of which the vast majority are highly developed trading partners that receive relatively low levels of remittances. The ACHi was recently connected to Mexico, however, which will allow financial institutions throughout the United States, especially those institutions of smaller size, to provide remittance services more easily and cheaply to Mexico. This legislation directs the Fed to take into account the importance of remittance flows to other countries as it continues to expand the ACHi system. Linking the ACHi to countries that receive significant remittances has the potential to result in great benefits to consumers who send remittances from America as well as to those who receive the remittances around the world.

Finally, I am acutely aware of the need for better and more broadly available financial literacy and education for all Americans. I am pleased to report that in the last Congress, as part of the reauthorization of the Fair Credit Reporting Act, we established a Presidential Financial Literacy and Education Commission, which is charged with developing a national strategy to promote financial literacy and education. The Act addresses the issue of remittances by including in the Commission's work a focus on increasing the ''awareness of the particular financial needs and financial transactions, such as the sending of remittances, of consumers who are targeted in multilingual financial literacy and education programs.'' The legislation that I am introducing today builds on that framework by instructing the bank and credit union regulators to work with the Commission to specifically increase the financial education efforts that target those persons who send remittances.

Millions of Americans send remittances to family members around the world, for a total far exceeding the $30 billion that goes to Latin America alone. Yet almost all of these transactions take place without the basic consumer rights and protections that apply to other electronic transfers. Consumers who send remittances are often immigrants and workers who earn modest wages, who are not aware of the full costs of each remittance,

and as a practical matter have no way of finding out, and, as a consequence, in the aggregate pay billions of dollars in costs and hidden fees. They do not have available to them an established procedure for resolving transactional errors. This legislation rectifies this situation by extending to remittances the basic consumer rights established in EFTA. The bill also contains provisions that, when implemented, will allow more insured financial institutions to provide remittance services—and potentially at lower costs to consumers. The bill contains important provisions to help bring the unbanked—men and women without an account at a bank or credit union into the financial mainstream. Taken together, these measures will increase transparency, competition and efficiency in the remittance market, while helping to bring more Americans into the financial mainstream.

A broad range of community, civil rights, and consumer groups have endorsed this legislation including the National Council of La Raza, the Mexican American Legal Defense and Educational Fund, the League of United Latin American Citizens, the Leadership Conference on Civil Rights, United Farm Workers of America, the Farmworker Justice Fund, the NAACP, Casa de Maryland, the National Federation of Filipino American Associations, the Asian Pacific American Labor Alliance, National Asian Pacific American Legal Consortium, Consumers Union, Consumer Federation of America, the National Consumer Law Center, the National Community Reinvestment Coalition, the Center for Responsible Lending, U.S. PIRG, ACORN, Woodstock Institute, and the National Association of Consumer Advocates. The Credit Union National Association and the World Council of Credit Unions, both of whom provide remittance services, have also endorsed this legislation.

I ask unanimous consent that the text of International Remittance Consumer Protection Act be printed in the RECORD.

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

S. 31

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''International Remittance Consumer Protection Act of 2005''.

**SEC. 2. TREATMENT OF REMITTANCE TRANSFERS.**

(a) IN GENERAL.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) in section 902(b), by inserting ''and remittance'' after ''electronic fund'';

(2) by redesignating sections 918, 919, 920, and 921 as sections 919, 920, 921, and 922, respectively; and

(3) by inserting after section 917 the following:

**''SEC. 918. REMITTANCE TRANSFERS.**

''(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

''(1) IN GENERAL.—Each remittance transfer provider shall make disclosures to consumers, as specified by this section and augmented by regulation of the Board.

''(2) SPECIFIC DISCLOSURES.—In addition to any other disclosures applicable under this title, a remittance transfer provider shall clearly and conspicuously disclose, in writing and in a form that the consumer may keep, to each consumer requesting a remittance transfer—

''(A) at the time at which the consumer makes the request, and prior to the consumer making any payment in connection with the transfer—

''(i) the total amount of currency that will be required to be tendered by the consumer in connection with the remittance transfer;

''(ii) the amount of currency that will be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds will be exchanged;

''(iii) the total remittance transfer cost, identified as the 'Total Cost'; and

''(iv) an itemization of the charges included in clause (iii), as determined necessary by the Board; and

''(B) at the time at which the consumer makes payment in connection with the remittance transfer, if any—

''(i) a receipt showing—

''(I) the information described in subparagraph (A);

''(II) the promised date of delivery;

''(III) the name and telephone number or address of the designated recipient; and

''(ii) a notice containing—

''(I) information about the rights of the consumer under this section to resolve errors; and

''(II) appropriate contact information for the remittance transfer provider and its State licensing authority and Federal or State regulator, as applicable.

''(3) EXEMPTION AUTHORITY.—The Board may, by rule, and subject to subsection (d)(3), permit a remittance transfer provider—

''(A) to satisfy the requirements of paragraph (2)(A) orally if the transaction is conducted entirely by telephone;

''(B) to satisfy the requirements of paragraph (2)(B) by mailing the documents required under such paragraph to the consumer not later than 1 business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone; and

''(C) to satisfy the requirements of subparagraphs (A) and (B) of paragraph (2) with 1 written disclosure, but only to the extent that the information provided in accordance with paragraph (2)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer.

''(b) FOREIGN LANGUAGE DISCLOSURES.—The disclosures required under this section shall be made in English and in the same languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office, if other than English.

''(c) REMITTANCE TRANSFER ERRORS.—

''(1) ERROR RESOLUTION.—

''(A) IN GENERAL.—If a remittance transfer provider receives oral or written notice from the consumer within 365 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including that the full amount of the funds to be remitted was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection.

''(B) REMEDIES.—Not later than 90 days after the date of receipt of a notice from the consumer pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the consumer—

''(i) refund to the consumer the total amount of funds tendered by the consumer in connection with the remittance transfer which was not properly transmitted;

''(ii) make available to the designated recipient, without additional cost to the designated recipient or to the consumer, the amount appropriate to resolve the error;

''(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of consumers; or

''(iv) demonstrate to the consumer that there was no error.

''(2) RULES.—The Board shall establish, by rule, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect consumers from such errors.

''(d) APPLICABILITY OF OTHER PROVISIONS OF LAW.—

''(1) APPLICABILITY OF TITLE 18 AND TITLE 31 PROVISIONS.—A remittance transfer provider may only provide remittance transfers if such provider is in compliance with the requirements of section 5330 of title 31, United States Code, and section 1960 of title 18, United States Code, as applicable.

''(2) APPLICABILITY OF THIS TITLE.—A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title that are otherwise applicable to electronic fund transfers under this title.

''(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

''(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or

''(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (2) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

''(e) PUBLICATION OF EXCHANGE RATES.—The Secretary of the Treasury shall make available to the public in electronic form, not later than noon on each business day, the dollar exchange rate for all foreign currencies, using any methodology that the Secretary determines appropriate, which may include the methodology used pursuant to section 613(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2363(b)).

''(f) AGENTS AND SUBSIDIARIES.—A remittance transfer provider shall be liable for any violation of this section by any agent or subsidiary of that remittance transfer provider.

''(g) DEFINITIONS.—As used in this section—

''(1) the term 'exchange rate fee' means the difference between the total dollar amount transferred, valued at the exchange rate offered by the remittance transfer provider, and the total dollar amount transferred, valued at the exchange rate posted by the Secretary of the Treasury in accordance with subsection (e) on the business day prior to the initiation of the subject remittance transfer;

''(2) the term 'remittance transfer' means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)))

transfer of funds at the request of a consumer located in any State to a person in another country that is initiated by a remittance transfer provider, whether or not the consumer is an account holder of the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903;

''(3) the term 'remittance transfer provider' means any person or financial institution that provides remittance transfers on behalf of consumers in the normal course of its business, whether or not the consumer is an account holder of that person or financial institution;

''(4) the term 'State' means any of the several States, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States; and

''(5) the term 'total remittance transfer cost' means the total cost of a remittance transfer expressed in dollars, including all fees charged by the remittance transfer provider, including the exchange rate fee.''.

(b) EFFECT ON STATE LAWS.—Section 919 of the Electronic Fund Transfer Act (12 U.S.C. 1693q) is amended—

(1) in the first sentence, by inserting ''or remittance transfers (as defined in section 918)'' after ''transfers''; and

(2) in the fourth sentence, by inserting '', or remittance transfer providers (as defined in section 918), in the case of remittance transfers,'' after ''financial institutions''.

**SEC. 3. FEDERAL CREDIT UNION ACT AMENDMENT.**

Paragraph (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)) is amended to read as follows:

''(12) in accordance with regulations prescribed by the Board—

''(A) to provide remittance transfers, as defined in section 918(h) of the Electronic Fund Transfer Act, to persons in the field of membership; and

''(B) to cash checks and money orders for persons in the field of membership for a fee;''.

**SEC. 4. AUTOMATED CLEARINGHOUSE SYSTEM.**

(a) EXPANSION OF SYSTEM.—The Board of Governors of the Federal Reserve System shall work with the Federal reserve banks to expand the use of the automated clearinghouse system for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(1) the number, volume, and sizes of such transfers;

(2) the significance of the volume of such transfers, relative to the external financial flows of the receiving country; and

(3) the feasibility of such an expansion.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, and on April 30 biannually thereafter, the Board of Governors of the Federal Reserve System shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this section.

**SEC. 5. EXPANSION OF FINANCIAL INSTITUTION PROVISION OF REMITTANCE TRANSFERS.**

(a) PROVISION OF GUIDELINES TO INSTITUTIONS.—Each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(b) CONTENT OF GUIDELINES.—Guidelines provided to financial institutions under this section shall include—

(1) information as to the methods of providing remittance transfer services;

(2) the potential economic opportunities in providing low-cost remittance transfers; and

(3) the potential value to financial institutions of broadening their financial bases to include persons that use remittance transfers.

(c) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—The Secretary of the Treasury and each agency referred to in subsection (a) shall, as part of their duties as members of the Financial Literacy and Education Commission, assist that Commission in improving the financial literacy and education of consumers who send remittances.

**SEC. 6. STUDY AND REPORT ON REMITTANCES.**

(a) STUDY.—The Comptroller General of the United States shall conduct a study and analysis of the remittance transfer system, including an analysis of its impact on consumers.

(b) AREAS OF CONSIDERATION.—The study conducted under this section shall include, to the extent that information is available—

(1) an estimate of the total amount, in dollars, transmitted from individuals in the United States to other countries, including per country data, historical data, and any available projections concerning future remittance levels;

(2) a comparison of the amount of remittance funds, in total and per country, to the amount of foreign trade, bilateral assistance, and multi-development bank programs involving each of the subject countries;

(3) an analysis of the methods used to remit the funds, with estimates of the amounts remitted through each method and descriptive statistics for each method, such as market share, median transaction size, and cost per transaction, including through—

(A) depository institutions;

(B) postal money orders and other money orders;

(C) automatic teller machines;

(D) wire transfer services; and

(E) personal delivery services;

(4) an analysis of advantages and disadvantages of each remitting method listed in subparagraphs (A) through (E) of paragraph (3);

(5) an analysis of the types and specificity of disclosures made by various types of remittance transaction providers to consumers who send remittances; and

(6) if reliable data are unavailable, recommendations concerning options for Congress to consider to improve the state of information on remittances from the United States.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study conducted under this section.

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By Ms. CANTWELL (for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mrs. MURRAY, and Mr. FEINGOLD):

S. 33. A bill to prohibit energy market manipulation; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, today I am introducing the Electricity Needs Rules and Oversight Now, or ENRON, Act.

This legislation does two simple—yet critical—things. The ENRON Act would amend the Federal Power Act to put in place a broad prohibition on all manipulative practices in electricity markets—rather than just round-trip trading, as included in last year's comprehensive energy bill; and it would specify that electricity rates resulting from manipulative practices are not just and reasonable under the Federal Power Act.

Many of my colleagues are, by now, familiar with the provisions of this legislation, as I have often described the circumstances that led me to propose it. While the Senate has been considering comprehensive energy legislation over the past few years, various investigations have unearthed Enron's ''smoking gun'' memos—detailing the company's schemes to drive up electricity prices—and other evidence leading the Federal Energy Regulatory Commission (FERC) to conclude that market manipulation was ''epidemic'' in western markets during 2000–2001. Recently, even more information—including audio files detailing Enron traders' conversations—has come to light. Meanwhile, the energy crisis continues to take a serious toll on American consumers and businesses: it's been estimated that, as a result, the West has lost $35 billion in domestic economic product—in other words, a 1.5 percent decline in productivity and a total loss of 589,000 jobs. Adding insult to injury, Enron has now sued a number of utilities throughout the country—for almost a $1 billion—attempting to collect penalty charges on inflated contracts, cancelled when the company went bankrupt. In essence, Enron is asking the same consumers it gouged to pay yet again.

As I have discussed on the Senate floor many times, the Western market meltdown of 2000–2001 has had a profound impact on my state's economy, the pocketbooks and economic well-being of my constituents—too many of whom have had to make the choice between keeping their heat and lights on and buying food, paying rent, and purchasing prescription drugs. In some parts of Washington state, utility disconnection rates have risen more than 40 percent. People just can't pay their utility bills.

As my colleagues can imagine, what we have seen and heard since the height of the crisis—as we have learned about the market manipulation and fraud that took place in the Western market, while Enron energy traders laughed about the plight of ''Grandma Millie''—has added tremendous insult to substantial economic injury. Moreover, the Western crisis has brought to the forefront a number of very important policy questions about the kind of behavior that will be tolerated in our Nation's electricity markets, as the Federal Energy Regulatory Commission has continued to pursue its ''restructuring'' agenda.

I believe we need strong leadership that will condemn the types of schemes

used by Enron traders—manipulation tactics with infamous nicknames like Get Shorty, Death Star and Ricochet. We need to send a strong and unanimous message that these practices will not be tolerated in our nation's electricity markets. Next, we need to agree—as a matter of policy—that the victims of these schemes should not have to pay the inflated power prices resulting from market manipulation. The ENRON Act will make these commonsense principles the law of the land.

I would like to thank the original cosponsors of this legislation, the Senator from New Mexico, Mr. BINGAMAN, the Senator from California, Mrs. FEINSTEIN, the senior Senator from Washington, Mrs. MURRAY, and the junior Senator from Wisconsin, Mr. FEINGOLD, for joining me today. It is our hope that the Senate will move toward swift passage of the ENRON Act.

Mr. President, I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 33

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Electricity Needs Rules and Oversight Now (ENRON) Act''.

**SEC. 2. PROHIBITION OF ENERGY MARKET MANIPULATION.**

(a) PROHIBITION.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

**''SEC. 215. PROHIBITION OF MARKET MANIPULATION.**

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance''.

Mr. President, I am proud to cosponsor the Energy Needs Regulatory Oversight Now or ENRON Act of 2005, S. 33, introduced today by Senator CANTWELL. Last summer the release of audiotapes of Enron traders gloating about their ability to manipulate energy markets shocked the Nation. As more tapes surface and energy prices continue to rise, the need for the Senate to pass the ENRON Act has never been more clear.

A public utility near Seattle, which is trying to get back the money it lost to Enron's unscrupulous energy trading practices, received the tapes from the Justice Department. These tapes confirm what we all suspected: Enron manipulated energy markets and gouged consumers. According to these tapes, Enron traders celebrated when a forest fire shut down a major transmission line into California in 2000. This shutdown cut power supplies and raised energy prices. An energy trader sang: ''Burn, baby, burn. That's a beautiful thing.'' These taped conversations also provide evidence that Enron made secret pacts with power producers, and Enron traders deliberately drove up prices by ordering power plants to shut down. The traders also brag about their ability to manipulate markets and steal money from the ''grandmothers of California,'' who one trader called ''Grandma Millie.'' The arrogance of these traders shocks the conscience. It also demonstrates the need for Congress to protect consumers from energy market manipulation. We cannot let the market abuses that took place during the Western energy crisis of 2000 happen again.

S. 2105 requires the Federal Energy Regulatory Commission to prohibit the use of manipulative practices like these that put at risk consumers and the reliability of the transmission grid. We learned from this crisis that electricity markets need close government oversight to ensure that companies do not engage in risky and deceptive trading schemes leading to soaring energy prices and their own possible financial failure. In both cases, consumers—the people who depend upon the electricity these companies generate or trade—are the losers.

The Senate recently went on record in support of barring abusive energy market practices when it approved an amendment to the fiscal year 2004 agricultural appropriations bill offered by Senator CANTWELL. I am disappointed this language was stripped from the omnibus spending bill. These necessary protections were also omitted from the final energy conference report and the revised energy bill we voted on in April 2004.

We need to send a clear message to the energy industry that this behavior will not be tolerated, and we must show consumers that we will protect them from energy market manipulation. I encourage my fellow colleagues to pass this legislation.

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By Mr. LIEBERMAN:

S. 34. A bill to provide for the development of a global tsunami detection and warning system, to improve existing communication of tsunami warnings to all potentially affected nations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. LIEBERMAN. Mr. President, I rise today to introduce legislation that would close the gaps in our present tsunami warning system and establish a global network that will give all the world's coastal communities a chance to evacuate—much like the hurricane and typhoon warning system works today across international boundaries.

Although the probability is slim, the United States, like all coastal nations, is vulnerable to tsunamis. The threat to the Pacific is greatest because of its relatively extensive seismic activity. But while the threat is less in the Atlantic, it also does exist. Tsunamis early in the last century struck coastal Newfoundland and regions of the Caribbean including Puerto Rico, and the U.S. Virgin Islands.

As events last month in the Indian Ocean have shown, a large tsunami can be catastrophic when it catches a coastal population unwarned and unprepared. Existing technology, however, can detect tsunamis and with the right forecasting models, be used to predict potential landfall of a tsunami and provide the warning needed for those in the path of the destructive waves.

The United States has been a leader in developing instrumentation for detecting tsunamis and developing forecasting models used for predicting tsunami landfall. Such technology is used in two existing tsunami warning centers, one in Alaska and one in Hawaii. The recent tsunami in South Asia has alerted the world to the dangers of these destructive waves, and has caused many of us to seek ways that the United States can help the world avoid such tragic loss again.

The legislation I am introducing today builds on the existing United States model. It authorizes funding that will enable us to expand our existing capabilities, completes our network of seismic and tsunami sensors, and directs us to work in partnership with other nations as needed to build additional centers and the necessary network for disseminating warnings to the appropriate local officials. Similar efforts are being put forth by Senators STEVENS and INOUYE as leaders of the Commerce Committee, and by the Administration. I look forward to working with them to enact legislation which, at relatively low cost, will allow us to partner with other nations and complete a global detection and warning system. This will help ensure that the kind of tragedy that befell the nations of the Indian Ocean region never happens again.

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

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

S. 34

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION. 1. SHORT TITLE.**

This Act may be cited as the ''Global Tsunami Detection and Warning System Act of 2005''.

**SEC. 2. DEVELOPMENT AND DEPLOYMENT OF TSUNAMI SENSORS.**

(a) RESPONSIBILITIES OF SECRETARY OF COMMERCE.—The Secretary of Commerce shall—

(1) identify deficiencies in the existing system of worldwide seismic stations that can

identify in real or near real time potentially tsunamigenic earthquakes in any location in the Pacific, Atlantic, or Indian Oceans and associated seas;

(2) work with the Secretary of State to enlist international cooperation in deploying seismic sensors to eliminate such deficiencies;

(3) work with the Secretary of the Interior, through the Director of the United States Geological Survey to identify and implement any additions or improvements to the United States' maintained network of seismic stations that are necessary to improve real time or near real time signal acquisition and processing capability for detection of potentially tsunamigenic seismic events.

(4) identify tsunami sensors, such as those developed by the National Oceanic and Atmospheric Administration and deployed under its Deep Ocean Assessment and Report of Tsunamis Project, or other appropriate ocean-based sensors, that can be deployed to detect potential tsunamis generated by any type of disturbance, including earthquake, underwater landslide, above water landslide, eruption of an explosive volcano, and meteor impact;

(5) identify the number and location of such sensors that must be deployed throughout the Atlantic, Indian, and Pacific Oceans, and associated seas, and any other bodies of water of concern, to provide a system offering complete global coverage for detection of a tsunami, taking into consideration and coordinating with any regional systems in place or under development through other nations in the affected regions;

(6) procure and deploy such sensors;

(7) establish the measurement system, forecast system, and communication system and infrastructure needed to receive and process the signals generated by such tsunami sensors, by building on existing infrastructure at existing Centers of the National Oceanic and Atmospheric Administration, such as the Pacific Tsunami Warning Center and West Coast and Alaska Tsunami Center; and

(8) disseminate tsunami forecasts and warnings as necessary to all potentially affected nations.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Commerce shall submit to Congress a report on the progress made in carrying out the requirements of subsection (a).

**SEC. 3. INTERNATIONAL CONFERENCE ON GLOBAL TSUNAMI DETECTION AND WARNING.**

(a) SENSE OF CONGRESS ON CONVENING CONFERENCE.—It is the sense of Congress that the President, in consultation with the leaders of nations described in section 4(a)(1), should undertake to convene, within 180 days after the date of the enactment of this Act, an international conference on global tsunami detection and warning for the purposes of—

(1) supporting the common objective of such nations of preventing or reducing the toll of human loss from future tsunami-related natural disasters in the Pacific, Indian, and Atlantic Oceans and associated seas; and

(2) seeking international agreement on the most effective means for deploying and funding a global tsunami detection and warning system.

(b) SENSE OF CONGRESS ON ALTERNATIVE ACTION.—It is further the sense of Congress that a conference described in subsection (a) would not be necessary if, as determined by the President after consultation with the Secretary of State and the Secretary of Commerce, satisfactory international agreement as described in paragraph (2) of that subsection has been reached within 90 days after the date of the enactment of this Act.

**SEC. 4. NETWORK OF NATIONS POTENTIALLY AFFECTED BY TSUNAMIS.**

(a) REQUIREMENT FOR STRATEGY.—The Secretary of State, in consultation with the Secretary of Commerce, shall prepare and implement a comprehensive strategy to achieve the following objectives:

(1) Identify all coastal nations that have the potential to be adversely affected by tsunamis, particularly the nations that border the Pacific, Indian, and Atlantic Oceans, and associated seas.

(2) Identify appropriate organizations, agencies, and contacts within the governments of those nations for disseminating tsunami warnings by working with—

(A) the United Nations Educational, Scientific, and Cultural Organization; and

(B) other appropriate organizations.

(3) Develop, with cooperating nations and their agencies and organizations, a structure for a Global Tsunami Warning System that has an appropriate number of regional operational headquarters.

(4) Identify, with cooperating nations and their agencies and organizations, and establish an appropriate chain of command structure to ensure that warnings of potential or approaching tsunamis are directed to the appropriate contacts in potentially affected countries in a timely manner through the Global Tsunami Warning System network.

(5) Implement, with cooperating nations and their agencies and organizations, a tsunami forecasting system that includes tsunami early detection and monitoring instrumentation integrated with modeling technology essential to producing real-time tsunami forecasts.

(6) Utilize the forecasts developed under the tsunami forecasting system to form appropriate warnings, and rapidly disseminate such warnings to potentially affected nations.

(7) Develop an appropriate warning communications system involving telephone, Internet, radio, fax, and other appropriate means to convey warnings as rapidly as possible to all potentially affected nations.

(8) Work in partnership with the nations identified as described in paragraph (1), as needed, to develop, establish, and maintain appropriate educational and response planning partnerships to ensure that tsunami warnings are properly interpreted by officials in other nations and that coastal communities respond appropriately to tsunami warnings.

(9) Seek funding assistance from participating nations to fund the sensor systems identified under section 4 and the ongoing operation and maintenance of such systems.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall submit to Congress a report on the strategy required under subsection (a). The report shall include the following:

(1) The strategy.

(2) The progress made on implementing the strategy.

**SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated to carry out this Act as follows:

(1) For fiscal year 2005, $30,000,000.

(2) For each of fiscal years 2006 through 2014, $7,500,000.

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By Mr. CONRAD:

S. 35. A bill to amend the Internal Revenue Code of 1986 to extend the credit for production of electricity from wind; to the Committee on Finance.

Mr. CONRAD. Mr. President, I rise today to introduce the Wind Energy Production Tax Credit Extension Act. This legislation is very important for the expansion and competitiveness of the wind energy sector in North Dakota and the rest of the country.

There should be no doubt that the wind energy production tax credit, PTC, is vital for the continued growth of the wind energy sector. The PTC was enacted in 1992. Delays in renewing the PTC have caused a boom-and-bust cycle in the development of new wind projects. These delays of the credit inhibit the development of a favorable and secure investment climate for wind projects and are also economically damaging as companies involved in wind energy lay off workers or put off hiring until the credit is extended. Given the long lead time required to develop new wind projects, short-term extensions of the credit do not give companies enough certainty to expand wind energy production. We need a long-term extension to provide that certainty.

Wind energy is an important component of our Nation's energy portfolio. Wind is a clean source of energy that fosters economic development in rural communities. Combined with other domestic sources of energy, the use of wind energy helps reduce our dependence on foreign sources of energy. In addition, advanced wind energy technology could one day be an important component of a hydrogen-based economy. In order to ensure that wind power remains competitive with other fuels, passage of a longer-term wind PTC is necessary.

In my home State, a long-term extension of the wind PTC is especially important. North Dakota is ranked number one in wind energy potential. As in other parts of the country, reliance on Congress to re-extend the wind PTC prevents companies tied to wind energy from adding workers and negotiating long-term contracts. In general terms, this uncertainty inflicts economic costs on communities and certain manufacturers. For North Dakota, a long-term wind PTC extension is vital to continue the development of wind energy resources that are second to none.

The bill I am introducing today will extend the wind energy PTC, indexed to inflation, for five years. I believe that Congress has the responsibility to ensure that the wind energy sector in this country grows at its full potential. In my view, wind is a crucial part of our country's energy portfolio and energy security. This bill will help the wind energy industry grow and remain competitive with other types of energy. I urge my colleagues to support this legislation.

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By Mr. INOUYE:

S. 36. A bill to amend title 10, United States Code, to recognize the United States Military Cancer Institute as an establishment within the Uniformed

Services University of the Health Sciences, to require the Institute to promote the health of members of the Armed Forces and their dependents by enhancing cancer research and treatment, to provide for a study of the epidemiological causes of cancer among various ethnic groups for cancer prevention and early detection efforts, and for other purposes; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I introduce the United States Military Cancer Institute Research Collaborative Act. This legislation would formally establish the United States Military Cancer Institute (USMCI), and support the collaborative augmentation of research efforts in cancer epidemiology, prevention and control. Although the USMCI already exists as an informal collaborative effort, this bill will formally establish the institution with a mission of providing for the maintenance of health in the military by enhancing cancer research and treatment, and studying the epidemiological causes of cancer among various ethnic groups. By formally establishing the USMCI, it will be in a better position to unite military research efforts with other cancer research centers.

Cancer prevention, early detection, and treatment are significant issues for the military population, thus the USMCI was organized to coordinate the existing military cancer assets. The USMCI has a comprehensive database of its beneficiary population of 9 million people. The military's nationwide tumor registry, the Automated Central Tumor Registry, has acquired more than 180,000 cases in the last 14 years, and a serum repository of 30 million specimens from military personnel collected sequentially since 1987. This population is predominantly Caucasian, African-American, and Hispanic.

The Director of the USMCI, Dr. John Potter, is a Professor of Surgery at the Uniformed Services University of the Health Sciences (USUHS). A highly talented cancer epidemiologist, Dr. Kangmin Zhu, has also been recruited to lead the USMCI Prevention and Control Programs.

The USMCI currently resides in the Washington, D.C., area, and its components are located at the National Naval Medical Center, the Malcolm Grow Medical Center, the Armed Forces Institute of Pathology, and the Armed Forces Radiobiology Research Institute. There are more than 70 research workers, both active duty and Department of Defense civilian scientists, working in the USMCI.

The USMCI intends to expand its research activities to military medical centers across the Nation. Special emphasis will be placed on the study of genetic and environmental factors in carcinogenesis among the entire population, including Asian, Caucasian, African-American and Hispanic subpopulations.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 36

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. THE UNITED STATES MILITARY CANCER INSTITUTE.**

(a) ESTABLISHMENT.—Chapter 104 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 2117. United States Military Cancer Institute**

''(a) ESTABLISHMENT.—(1) There is a United States Military Cancer Institute in the University. The Director of the United States Military Cancer Institute is the head of the Institute.

''(2) The Institute is composed of clinical and basic scientists in the Department of Defense who have an expertise in research, patient care, and education relating to oncology and who meet applicable criteria for participation in the Institute.

''(3) The components of the Institute include military treatment and research facilities that meet applicable criteria and are designated as affiliates of the Institute.

''(b) RESEARCH.—(1) The Director of the United States Military Cancer Institute shall carry out research studies on the following:

''(A) The epidemiological features of cancer, including assessments of the carcinogenic effect of genetic and environmental factors, and of disparities in health, inherent or common among populations of various ethnic origins.

''(B) The prevention and early detection of cancer.

''(C) Basic, translational, and clinical investigation matters relating to the matters described in subparagraphs (A) and (B).

''(2) The research studies under paragraph (1) shall include complementary research on oncologic nursing.

''(c) COLLABORATIVE RESEARCH.—The Director of the United States Military Cancer Institute shall carry out the research studies under subsection (b) in collaboration with other cancer research organizations and entities selected by the Institute for purposes of the research studies.

''(d) ANNUAL REPORT.—(1) Promptly after the end of each fiscal year, the Director of the United States Military Cancer Institute shall submit to the President of the University a report on the results of the research studies carried out under subsection (b).

''(2) Not later than 60 days after receiving the annual report under paragraph (1), the President of the University shall transmit such report to the Secretary of Defense and to Congress.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2117. United States Military Cancer Institute.''.

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By Mrs. FEINSTEIN (for herself and Mrs. HUTCHISON):

S. 37. A bill to extend the special postage stamp for breast cancer research for 2 years; to the Committee on Homeland Security and Governmental Affairs.

Mrs. FEINSTEIN. Mr. President, on behalf of Senator HUTCHISON and myself, I rise today to introduce legislation to reauthorize the tremendously successful Breast Cancer Research Stamp for 2 additional years.

Without Congressional action, the Breast Cancer Research Stamp will expire on December 31 of this year.

The life of this extraordinary stamp deserves to be extended as it has proven to be a highly effective and self-supporting fundraiser.

Since 1998, the American people have bought over 588 million breast cancer stamps—raising $42.66 million for breast cancer research.

The National Cancer Institute and the Department of Defense have put these research dollars to good use by funding novel and innovative research in the area of breast cancer.

Over a 7 year period, the Breast Cancer Stamp has demonstrated a very sustained and committed customer base.

Millions of Americans have bought the stamps to honor loved ones with the disease, to highlight their own personal battle with breast cancer or to promote general public awareness—in hope of helping to find a cure.

One cannot calculate in dollars and cents how the stamp has focused public awareness on this devastating disease and the need for additional research funding.

There is still so much more to do because this disease has far reaching effects on our Nation:

Breast cancer is the most commonly diagnosed cancer among women in the United States, ranking second among cancer deaths in women after lung cancer.

In 2005, approximately 211,240 women in the U.S. will get breast cancer.

About 40,410 women will die from the disease this year.

There are over two million women living today in the U.S. who have been treated for breast cancer.

Though much less common, about 1,300 men in America are diagnosed with breast cancer each year.

It is imperative that we extend the life of this stamp so that we can continue to reach out to American women and men who do not know of their cancer and to those who are living with it.

This legislation would extend the authorization of the Breast Cancer Research stamp for two additional years until December 31, 2007.

The stamp would continue to have a surcharge of up to 25 percent above the value of a first-class stamp with the surplus revenues going to breast cancer research.

Extending the Breast Cancer Research stamp does not affect any other semi-postal proposals under consideration by the Postal Service.

We urge our colleagues to join us in passing this important legislation to extend the Breast Cancer Research Stamp for another 2 years.

Thanks to breakthroughs in cancer research, more and more people are becoming cancer survivors rather than cancer victims. Every dollar we continue to raise will help save lives.

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

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

S. 37

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. 2-YEAR EXTENSION OF POSTAGE STAMP FOR BREAST CANCER RESEARCH.**

Section 414(h) of title 39, United States Code, is amended by striking ''2005'' and inserting ''2007''.

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By Mr. NELSON of Nebraska (for himself, Mr. DOMENICI, and Mr. CRAIG):

S. 41. A bill to amend the Safe Drinking Water Act to exempt nonprofit small public water systems from certain drinking water standards relating to naturally occurring contaminants; to the Committee on Environment and Public Works.

Mr. NELSON of Nebraska. Mr. President, today I am offering legislation with Senator PETE DOMENICI and Senator LARRY CRAIG to allow small rural communities more time to meet an onerous and financially burdensome water quality regulation that is being imposed on local governments by the Environmental Protection Agency. The bipartisan Rural Community Arsenic Relief Act (RCARA) will amend the Safe Drinking Water Act to exempt small rural communities with population of up to ten thousand from the EPA's strict requirement to limit arsenic in drinking water to 10 parts per billion by January 1, 2006. Currently the allowable level of arsenic in drinking water is 50 ppb.

As a former governor who fought against unfunded Federal mandates from Washington, I understand the impact a policy such as this can have on local budgets.

Small rural communities simply don't have the resources and tax base to meet the arsenic standard arbitrarily set by the EPA. This unfunded mandate is a strain on local government budgets and will drive up local taxes. It is not right to ask the elected officials of our small communities to spend their limited funds on risks that we are learning are not as dangerous as they have been portrayed. This legislation will allow local governments more time to plan for and absorb the costs of meeting the EPA's standards for arsenic.

With each passing day it is increasingly evident that small communities will not be able to count on any immediate federal assistance in converting their water systems to meet the new arsenic standard. This bipartisan bill represents one means of giving more time to these communities, most of which have lived with arsenic—a widely distributed naturally occurring element—for ages.

Rural communities across America are grasping for solutions to comply with the new arsenic standard. Many reach the same conclusion—it is just too expensive. RCARA acknowledges that this is happening, recognizes that a one-size-fits-all solution doesn't work, and provides a framework to protect public health, while at the same time giving communities the flexibility they need to comply.

State officials in Nebraska estimate it could cost communities $120 million—$176 million to comply with the standard. Many communities, fearing that this regulation could bankrupt them, are considering dramatically raising rates for drinking water to cover the cost of new treatment and equipment. Extending the deadline is crucial for taxpayers and ratepayers throughout the country.

This bill allows small communities to adopt a locally supported public health policy as an alternative to the one prescribed by EPA. In many communities, the rule can reasonably be expected to more than double water rates on low-income families without improving the quality of their water in any appreciative manner. Our bill provides a reasonable amount of time for our small communities to understand and implement EPA's requirements, without bankrupting the system. It is the least we should do.

Mr. CRAIG. Mr. President, I rise to address an issue that has begun to emerge and gain our attention in rural America. This issue is an important one because it has the potential to devastate, economically, small cities and towns across the inter-mountain west—like in my State, of Idaho.

The new Environmental Protection Agency drinking water standard of 10 parts per billion for arsenic is something the current Administration inherited from the prior Administration and is now trying to implement. I would remind my colleagues, however, that the new lowered arsenic standard was not universally supported in Congress when it was proposed.

There were Senators—not many, but I was certainly one of them—that knew that the cost of complying with the new arsenic standard was going to cripple economically—was going to break the back financially—of rural communities and small towns across the western United States.

I fought this new standard on the floor of the Senate. I knew the costs were crippling and the health benefit was bogus. I also knew that the science to support the lower standard is being exposed as based on examples and sample populations that were very, very flawed. The science is now revealing that extrapolating from those sample communities to the whole of the United States was a very, very flawed basis for the drinking water standard.

I fought this new standard, but I did not succeed.

There are communities now in Idaho that will not be able to come into compliance with this new standard by the time it takes effect. Some of these Idaho communities have estimated that it would take double or triple their entire city budget, just to try to come into compliance—and that would mean that no other city services could be paid for.

That kind of situation is clearly ridiculous, and I will fight as long and as hard as I can to find solutions to this problem.

Last year, I raised this issue with then-EPA Administrator Mike Leavitt. Mike Leavitt is a Westerner—his folks in Utah are having some of the same problems.

I discussed the issue with him. I will raise it with any successor of his who is nominated to head the EPA. I will keep raising this issue and looking for solutions. The problem is that EPA bureaucrats—who are so good at being bureaucrats—think they know Idaho better than Idahoans do. Some of our Idaho communities have requested of EPA Region 10 that EPA exercise some flexibility with this standard. This is flexibility that EPA has already incorporated into its final agency rule on the arsenic standard.

Unfortunately, EPA bureaucrats are doing what they are good at. They are saying no to flexibility and hey, by the way, Castleford, Idaho or New Plymouth, Idaho—this won't disadvantage you economically as much as you say. That is what EPA says to the communities of Idaho. We know better than you.

Seeing that EPA cannot be reasonable, I have worked with my colleagues Senator NELSON of Nebraska and Senator DOMENICI of New Mexico. Both of their States have similar problems. The product of our collaboration is a bill that we introduced last year and are re-introducing today. The name of this bill is the Rural Community Arsenic Relief Act. While it may not provide all the relief that I would like to see, and it does not repeal the new arsenic standard—as I believe is merited by the science—this bill is a good compromise and a good start.

With this bill, we are trying to force States—and in Idaho's case, the EPA since Idaho is what they call a ''nonprimacy state''—to approve requests from communities to delay their compliance with the new arsenic standard.

The bill is straightforward, it is vital, and it is needed. It will save some of these communities from bankruptcy or from discontinuing essential community services. Many other States—other than Idaho, Nebraska, and New Mexico—face this same crisis. I implore my colleagues to learn about what their small communities are facing, and to join with us in enacting this essential regulatory relief.

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By Mr. ALLEN (for himself, Mr. NELSON of Florida, Mr. DEWINE, Mr. NELSON of Nebraska, Mrs. DOLE, Ms. MURKOWSKI, and Mr. VITTER).

S. 42. A bill to amend title 10, United States Code, to increase the death gratuity payable with respect to deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. ALLEN. Mr. President, I rise to bring to my colleagues' attention a bill I introduced today called the Honoring the Fallen Soldiers and Families Act of 2005, sharing the same views of Senator SESSIONS of Alabama, who has worked on this legislation, as well as many of us over the years, including my partner, Senator WARNER. This measure is originally cosponsored by Senators BILL NELSON, MIKE DEWINE, BEN NELSON, ELIZABETH DOLE, LISA MURKOWSKI, and DAVID VITTER.

Mr. President, as Americans, I believe we need to do everything we can to make sure our men and women in uniform are provided with the most technologically advanced armaments and equipment for their safety and their security when they are protecting our liberty. We also need to take care of the families of the soldiers who lose their lives, those who are killed in action and on duty. We need to care more about their surviving families.

Currently, there are a number of benefits that are provided to family members who lose a loved one while serving our great Nation. Some of these benefits include the Servicemen's Group Life Insurance policies, the Dependency and Indemnity Compensation Program, education benefits, and Government housing.

However, there is one benefit I have been concerned with during my tenure in the Senate. This is called the military death gratuity. It is a tax-exempt cash payment, currently at the amount of $12,000, which provides immediate financial compensation to families of those service men and women who have lost their lives serving our great Nation. During the past 108th Congress, I cosponsored legislation authored by Senator SUSAN COLLINS of Maine to double the death gratuity from $6,000 to $12,000, which at the time was apparently a big deal, since Congress had sparingly raised the death gratuity since its inception in 1908. The last increase before then was at the end of the first gulf war in 1991. Even then, half of that benefit was subjected to taxation.

Some of us in Congress understood the need to provide this financial assistance and were able to get this provision included in a larger bill, the Military Family Tax Relief Act of 2003. Not only did this legislation double the death gratuity from $6,000 to $12,000, but it also made the payments of these moneys tax exempt.

However, that is not enough, $12,000. I still believe this current amount of $12,000 is a miserly and paltry amount. Indeed, I consider it insulting. I have been speaking with people from Virginia and all across America and listening to them. It is confirmed to me how truly insulting this sum of money is. My sense is that a grateful Nation wants to better help the widows, widowers, and the children of those who have given their lives and their futures in defense of our country and our liberties, whether it was in Afghanistan, Iraq, or elsewhere in the world.

When I was bringing this issue up, I got an e-mail and many messages from people across the country. This one is from Mrs. Margaret Stubenhofer from Springfield, VA, who wrote:

DEAR SENATOR ALLEN: On December 7, 2004, our son Captain Mark Stubenhofer (U.S. Army) was killed in action while serving in Iraq. He was shot by insurgents. Mark, who was born and raised in Springfield, VA, leaves behind his wife (Patty, age 30) and 3 small children (Lauren, 5 yrs, Justin, 2½ yrs, and Hope, 4 months). I am writing to you in support of the proposed legislation to raise the military survivor benefits. It is appalling to me that our people, who also suffered a great tragedy, are receiving millions of dollars after their loved ones died on 9–11 . . . yet, dependents of military personnel killed in action while bravely serving their country in a foreign land receive only slightly more than $12,000 as a death gratuity and $100,000 in insurance benefits. I am very much in favor of these benefits being raised to a more reasonable level; and I ask you to continue to support such action as to make this possible. In all good conscience, how can we possibly ask these young men and women to be ready to die for their country . . . and then leave their survivors with almost nothing when their worst nightmare actually becomes a reality?

That is a good question. That is why I am introducing, with a number of my Senate colleagues who are cosponsoring, the Honoring Our Fallen Soldiers and Families Act of 2005. I am glad this is getting a lot of support from both sides of the aisle and leadership.

This legislation will raise the military death gratuity from $12,000 to $100,000 for the families of those service men and women who have lost their lives serving our great Nation since October 1, 2001. The reason for October 1, 2001—the retroactivity—is that is when the military action began in Afghanistan. As I mentioned, there a number of other benefits that family members whose loved one has died will receive, but unlike the death gratuity that reaches family members within 48 hours of the death, the other benefits can take some time—in fact, months—to make it to the family. That is just too long a period of time. They will eventually get it, but that short-term, immediate influx of money helps provide for the monetary stability at a time of great grief and uncertainty. The money can help pay for a home mortgage or for rent or gas or utilities bills, car payments, or schooling. School kids may be in schools where there are expenses. It will also help put food on the table. As a matter of fact, many of the fallen soldiers were the sole or significant breadwinner for the families, and the families are left without any immediate source of income.

It is doubly important for members of the Guard and Reserve. Approximately a quarter to a third of those who serve in the Guard and Reserve actually take a pay cut when they are called up or activated to serve. While it is a source of income that may be less than they were receiving in the private sector, it is still a significant, substantial part of that family household's income. So when a soldier loses his or her life, even if it is a lower amount, the money stops. That is why it is imperative that we in Congress raise the death gratuity to a level that will take care of the immediate financial needs of these families.

Some have questioned or critics may argue that raising the death gratuity to $100,000 is too costly. I contend that if you look at firefighters and police officers, these great citizens of our communities who are our warriors at home, saving lives from fires or in law enforcement actions, they generally get a death gratuity in the amount of $50,000 to $100,000. In our Commonwealth of Virginia, a police officer or firefighter who loses his or her life in the line of duty receives a $75,000 death gratuity. My proposal is to put some logical symmetry between what our warriors on the homefront—the police officers and firefighters—get and what our soldiers stationed at home and abroad get.

In addition, as long as we have an all-volunteer Army, we need to make sure our soldiers know and their families know they have the best possible benefits should the unthinkable happen. I believe this legislation will help put some of those worries at ease. Whatever the amount may be, I guarantee to each of my colleagues that any family would rather have their loved one there at holidays and birthdays and anniversaries than the $100,000, but there is a big financial hole in their lives. There is also one that cannot be compensated. But it is one that a grateful Nation would want to provide.

I will close by quoting George Washington, who was one of our greatest leaders, when he made a very wise and still cogent observation.

He cautioned that the willingness of future generations to fight for their country, no matter how just the cause, will be proportional to how they perceive previous veterans were treated.

It is important that we show a deeper appreciation for those heroic soldiers who died defending our liberty and also their brave families back home who have paid the ultimate sacrifice as well. This legislation is a significant striding step in that direction.

I urge my colleagues in the Senate to quickly act on this legislation and all others trying to help our families of fallen heroes and their loved ones and pass these measures as quickly as possible, and also make them retroactive for all of those nearly 1,500 who have lost their lives protecting our freedom, advancing liberty throughout the world, and people who are truly American heroes whom we will always remember.

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By Mr. HAGEL (for himself, Mr. COLEMAN, Mr. KENNEDY, Mr. DEWINE, and Mr. OBAMA):

S. 43. A bill to provide certain enhancements to the Montgomery GI Bill Program for certain individuals who serve as members of the Armed Forces

after the September 11, 2001, terrorist attacks, and for other purposes; to the Committee on Armed Services.

Mr. HAGEL. Mr. President, I rise today to re-introduce the ''Military Death Benefit Improvement Act of 2005'' and the ''G.I. Bill Enhancement Act of 2005.'' These pieces of legislation recognize the service and sacrifice of the men and women of our armed forces who are proudly and bravely serving our country around the world. These bills also recognize the sacrifices borne by the families of our men and women in uniform.

The ''Military Death Benefit Improvement Act of 2005'' would raise the military death gratuity paid to the families of military personnel killed while on active duty from $12,000 to $100,000. This increase would also be applied retroactively to all service members on active duty who have died since September 11, 2001.

The military death gratuity is money provided within 72 hours to families of service members who are killed while on active duty. These funds assist next-of-kin with their immediate financial needs.

Though nothing can replace the hole left in a family by the loss of a son, daughter, mother or father, this bill will help alleviate some of the financial hardships faced by the families of our brave service men and women who give their lives in service to our country. It will send a message to our brave young men and women and their families that their Nation appreciates their service and sacrifice.

As we face the challenges of the 21st Century, service men and women sacrificing for their country in a time of war should be assured that their families will be taken care of. The loss of a loved one is a tremendous emotional hardship for families. Congress must do what it can to ensure that it does not cause devastating financial hardship as well.

I also rise today to re-introduce the ''G.I. Bill Enhancement Act of 2005.'' This legislation would waive the Montgomery G.I. Bill program's $1,200 enrollment fee for active duty members of our Nation's military.

The G.I. Bill Enhancement Act covers any member of the United States military, including Reserve and National Guard members, serving on active duty during the period after President Bush's November 2001 Executive Order that placed the military on a wartime footing. This legislation would: Waive the G.I. Bill enrollment fee until President Bush's November 2001 Executive Order is rescinded; allow all service men and women to opt into the G.I. Bill with no penalty or enrollment fee; and reimburse those service men and women covered by this bill who have already paid the $1,200 enrollment fee prior to the enactment of this legislation.

The current Montgomery G.I. Bill is tailored to serve members of our military in a time of peace. Upon enlistment, recruits are given the option of enrolling in the G.I. Bill. If they choose to participate, they are charged a $1,200 enrollment fee which is deducted from their monthly pay over 12 months. However, we are now in a time of war and the demands on our service members and their families have been transformed and increased. To that end, changes must be made to the G.I. Bill to ensure that it continues to provide realistic and relevant educational opportunities to those who are defending our country.

This is an issue of fundamental fairness. The men and women serving our country in wartime should not have to choose between the long-term benefits of the G.I. Bill and the short-term demands of their paycheck. The G.I. Bill is one of the great legacies of military service to our country. Men and women sacrificing for their country in a time of war need to be assured that access to higher education is in their future. Congress must do all it can to ensure that education options for our veterans are accessible and real.

The G.I. Bill has long been recognized as one of the most important Congressional acts of post World War II America. This legislation ensured that all who served their Nation would not be penalized as a result of their time away from their careers and communities in service to their country. The G.I. Bill helped members of our ''greatest generation'' upon their return home by providing them with the educational tools necessary to pursue the opportunities enjoyed by all Americans.

Over the last 60 years, the Federal Government has invested billions of dollars in education benefits for our Nation's veterans. Over 21 million men and women have benefitted from the G.I. Bill, resulting in a workforce that transformed American society. The bill's far-reaching impact can be seen here today, as Members of this body, including this Senator, have prospered as a result of the benefits of the G.I. Bill.

Every American should be proud of how we have responded to the challenges of terrorism following September 11, 2001. We owe much to the men and women who have fought bravely in Afghanistan and Iraq. The ''Military Death Benefit Improvement Act of 2005'' and the ''G.I. Bill Enhancement Act of 2005'' recognize these sacrifices. I hope that my Senate colleagues will give serious consideration to these important pieces of legislation, and that we will pass these bills and they will be signed into law by President Bush. I ask unanimous consent that the text of these two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 43

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Montgomery GI Bill Enhancement Act of 2005''.

**SEC. 2. EXEMPTION FROM PAYMENT OF INDIVIDUAL CONTRIBUTIONS UNDER MONTGOMERY GI BILL OF INDIVIDUALS WHO SERVE AS ACTIVE DUTY MEMBERS OF THE ARMED FORCES UNDER EXECUTIVE ORDER 13235.**

(a) ACTIVE DUTY PROGRAM.—Notwithstanding section 3011(b) of title 38, United States Code, no reduction in basic pay otherwise required by such section shall be made in the case of a covered member of the Armed Forces.

(b) SELECTED RESERVE PROGRAM.—Notwithstanding section 3012(c) of such title, no reduction in basic pay otherwise required by such section shall be made in the case of a covered member of the Armed Forces.

(c) TERMINATION OF ON-GOING REDUCTIONS IN BASIC PAY.—In the case of a covered member of the Armed Forces who first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces before the date of the enactment of this Act and whose basic pay would, but for subsection (a) or (b) of this section, be subject to reduction under section 3011(b) or 3012(c) of such title for any month beginning on or after that date, the reduction of basic pay of such covered member of the Armed Forces under such section 3011(b) or 3012(c), as applicable, shall cease commencing with the first month beginning on or after that date.

(d) REFUND OF CONTRIBUTIONS.—(1) In the case of any covered member of the Armed Forces whose basic pay was reduced under section 3011(b) or 3012(c) of such title for any month beginning before the date of the enactment of this Act, the Secretary concerned shall pay to such covered member of the Armed Forces an amount equal to the aggregate amount of reductions of basic pay of such member of the Armed Forces under such section 3011(b) or 3012(c), as applicable, as of that date.

(2) Any amount paid to a covered member of the Armed Forces under paragraph (1) shall not be included in gross income under the Internal Revenue Code of 1986.

(3) Amounts for payments made by a Secretary concerned under paragraph (1) during fiscal year 2005 shall be derived from amounts made available for such fiscal year in an Act making supplemental appropriations for defense and the reconstruction of Iraq.

(4) In this subsection, the term ''Secretary concerned'' means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard.

(e) COVERED MEMBER OF THE ARMED FORCES DEFINED.—In this section, the term ''covered member of the Armed Forces'' means any individual who serves on active duty as a member of the Armed Forces during the period—

(1) beginning on November 16, 2001, the date of Executive Order 13235, relating to National Emergency Construction Authority; and

(2) ending on the termination date of the Executive order referred to in paragraph (1).

**SEC. 3. OPPORTUNITY FOR INDIVIDUALS WHO SERVE AS ACTIVE DUTY MEMBERS OF THE ARMED FORCES UNDER EXECUTIVE ORDER 13235 TO WITHDRAW ELECTION NOT TO ENROLL IN MONTGOMERY GI BILL.**

Section 3018 of title 38, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsection (d) and (e), respectively;

(2) by inserting after subsection (b) the following new subsection (c):

''(c)(1) Notwithstanding any other provision of this chapter, during the one-year period beginning on the date of the enactment of this subsection, an individual who—

''(A) serves on active duty as a member of the Armed Forces during the period beginning on November 16, 2001, and ending on the termination date of Executive Order 13235, relating to National Emergency Construction Authority; and

''(B) has served continuously on active duty without a break in service following the date the individual first becomes a member or first enters on active duty as a member of the Armed Forces,

shall have the opportunity, on such form as the Secretary of Defense shall prescribe, to withdraw an election under section 3011(c)(1) or 3012(d)(1) of this title not to receive education assistance under this chapter.

''(2) An individual described paragraph (1) who made an election under section 3011(c)(1) or 3012(d)(1) of this title and who—

''(A) while serving on active duty during the one-year period beginning on the date of the enactment of this subsection makes a withdrawal of such election;

''(B) continues to serve the period of service which such individual was obligated to serve;

''(C) serves the obligated period of service described in subparagraph (B) or before completing such obligated period of service is described by subsection (b)(3)(B); and

''(D) meets the requirements set forth in paragraphs (4) and (5) of subsection (b),

is entitled to basic educational assistance under this chapter.''; and

(3) in subsection (e), as so redesignated, by inserting ''or (c)(2)(A)'' after ''(b)(1)''.

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By Mr. HAGEL (for himself, Mr. DEWINE, Mrs. CLINTON, Mr. KENNEDY, Mr. LAUTENBERG, and Mr. SALAZAR):

S. 44. A bill to amend title 10, United States Code, to increase the amount of the military death gratuity from $12,000 to $100,000; to the Committee on Armed Services.

S. 44

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Military Death Benefit Improvement Act of 2005''.

**SEC. 2. INCREASE IN DEATH GRATUITY PAYABLE WITH RESPECT TO MEMBERS OF THE ARMED FORCES.**

(a) AMOUNT OF DEATH GRATUITY.—Section 1478(a) of title 10, United States Code, is amended by striking ''$12,000'' and inserting ''$100,000''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to deaths occurring on or after November 16, 2001, the date of Executive Order 13235, relating to National Emergency Construction Authority.

(c) FUNDING.—

(1) SOURCE OF FUNDS.—Amounts for the payment during fiscal year 2005 of death gratuities by a Secretary concerned under sections 1475 through 1477 of title 10, United States Code, as amended by subsection (a), shall be derived from amounts made available for such fiscal year in an Act making emergency supplemental appropriations for defense and for the reconstruction of Iraq.

(2) SECRETARY CONCERNED DEFINED.—In this subsection, the term ''Secretary concerned'' has the meaning given such term in section 101(a)(9) of title 10, United States Code.

By Mr. LEVIN (for himself, Mr. HATCH, and Mr. BIDEN):

S. 45. A bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. LEVIN. Mr. President, the legislation I am introducing today along with my colleagues Senator HATCH and Senator BIDEN, addresses an unintended effect of a provision in the original Drug Abuse and Treatment Act of 2000 (DATA) that hinders access to a revolutionary new treatment for thousands of individuals who seek it.

When Congress passed DATA as Title XXXV of the Children's Health Act of 2000, it allowed for the dispensing and prescribing of Schedule III drugs, like buprenorphine/naloxone, in an office-based setting, for the treatment of heroin addiction. As a result of DATA, access to treatment is significantly expanded; patients no longer are restricted to receiving treatment in a large public clinic, usually at a great distance, but now may receive such care in the private, nearby office of qualified physicians.

DATA limits individual physicians to treating no more than 30-patients at a time. Unfortunately, the law results in the same 30-patient limit on physician group practices. The difficulties that have arisen, including the dashed hopes for treatment of many, have resulted in the underutilization of this proven therapy all across this country, including my home state of Michigan.

One of the authors of DATA, I can tell you that it clearly was not our intention that individuals seeking this new treatment have less access simply because they receive care from a physician practicing in a group, or from a group-based or mixed-model health plan. Nevertheless, this is the effect and it is having a severe effect.

The problem is addressed by removing the 30-patient aggregate limit on medical groups. This is achieved in the bill we are introducing today. Our bill simply removes the statutory limit on physician group practices, while maintaining the 30-patient limit on each physician. I am pleased that the Senate has already gone on record in support of this modification to DATA. On October 11, 2004, the Senate Passed S. 2976, to remove the 30-patient limit on the group practices. However, the House adjourned before acting on the legislation. It is our hope that the bill we are introducing today will receive speedy action in both the Senate and House in the very near future.

Mr. President, I would like to share some of the sentiments that have been expressed in support of the group practice modification, as well as some first hand accounts of individuals who are being successfully treated with buprenorphine/naloxone. Dr. Charles Schuster, a former director of the National Institute on Drug Abuse who currently heads the Addiction Research Institute at Wayne State University, writes:

We have three physicians in a group, all of whom have been trained and granted waivers by the U.S. Department of Health and Human Services to prescribe Suboxone and Subutex for the treatment of opiate addiction. All are specialists in the treatment of addictive disorders. Rather than being able to bring this potentially life saving therapy to 90 members of our community, they are restricted to a total of thirty.

This situation is particularly heart breaking in places where there are a few or only one provider. This situation will only get worse as physicians and practice plans reach their 30-patient limitation.

I have been involved in the development of Suboxone and Subutex for the treatment of opiate addiction for many years. It is a safer medication with less abuse potential than methadone. It allows people who fear public knowledge of their addictive disease to more discreetly seek help from a private physician. It is a medication that can be used for a short period with adolescents who have become addicted to opiates because it is easier to taper them off of this drug than methadone. In short, office-based practice with Suboxone and Subutex is a major addition to our country's treatment system for opiate addiction. It is essential that we remove the impediment of limiting Physician Practice Plans to 30 patients so that each of the physicians in such Practice Plans who are trained to use this medication can bring their services to those in need.

Peter DeMarco, in an article in the May 30, 2004 Boston Globe, writes:

When buprenorphine became available as a treatment for OxyContin and heroin addiction 18 months ago, many medical professionals and addicts hailed it as a miracle drug, bringing addicts back from the brink and helping them lead normal lives when all else had failed. But for many addicts, buprenorphine remains one of the hardest drugs to obtain. . . . (B)prenorphine doesn't cloud the minds of patients, allowing them to work or study as if they're not on any drug at all. Nearly all who take buprenorphine, meanwhile, say they lose all physical cravings for street drugs.

But a combination of federal limits on the distribution of buprenorphine . . . has kept thousands of opiate addicts from receiving the drug in Massachusetts and across the country. At the heart of the issue is federal legislation passed in 2000—two years before the drug was approved by the FDA—that restricts individual clinical practices from treating more than 30 patients with buprenorphine at a time.

While many substance-abuse experts say the 30-patient figure is too low for some practices, their main quarrel with the Drug Addiction Treatment Act of 2000 is its failure to differentiate single-physician practices, hospitals, and health care organizations. For example, all the doctors who work for Tufts Health Plan can treat a combined 30 patients—the same total as can be seen by a physician practicing alone.

Boston health officials, along with their counterparts in the State and Federal governments, say the Federal legislation erred on the side of caution, and needs to be changed to allow wider access to buprenorphine.

''Boston Medical Center's main practice has 200 or more general internal-medicine doctors, and within that practice, we can only treat 30 people. It's the craziest loophole,'' said Colleen Labelle, nurse-manager of the hospital's Office-Based Opioid Treatment Program. ''We get 20 calls a day from

across the state. People are begging, desperate to get treated, who we can't treat.''

The Federal Substance Abuse and Mental Health Services Administration has begun an internal process to increase the 30-patient cap. But because any proposed change would be subject to the public-review process, approval could take as long as two years, said Nick Reuter, a senior public health analyst with the agency.

Timothy Tigges says his addiction began after he wrenched his back and bummed a few Percocet pills, a prescription analgesic, from a friend to dull the pain. Before he knew it, he was hooked on opiates, alternating between OxyContin and shooting up heroin as his life went to pieces.

In October, Tigges, a 27-year-old East Boston carpet installer, began taking buprenorphine, placing an orange pill the size of a dime under his tongue until it dissolves, four times daily. He hasn't touched an illegal drug since the day he started the program, has put on 80 pounds from lifting weights at the gym, and has yet to miss a day of work. For the first time in three years, Tigges hopes to see his 5-year-old daughter, whose mother has refused to let him visit.

''I've had clean urines, 100 percent, for nine months now. There's nothing I'm prouder of than that,'' he said, choking back emotion. ''What I read on the front page of the paper every day is 18- and 20-year-old kids dying of garbage drugs. There's just no need for it. I would take every ounce of heroin off the street and give them this stuff. You watch the crime rate go down.''

Mr. President, I ask unanimous consent that the text of the legislation be included at the end of my remarks.

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

S. 45

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. MAINTENANCE OR DETOXIFICATION TREATMENT WITH CERTAIN NARCOTIC DRUGS; ELIMINATION OF 30-PATIENT LIMIT FOR GROUP PRACTICES.**

(a) IN GENERAL.—Section 303(g)(2)(B) of the Controlled Substance Act (21 U.S.C. 823(g)(2)(B)) is amended by striking clause (iv).

(b) CONFORMING AMENDMENT.—Section 303(g)(2)(B) of the Controlled Substance Act (21 U.S.C. 823(g)(2)(B)) is amended in clause (iii) by striking ''In any case'' and all that follows through ''the total'' and inserting ''The total''.

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

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

S. 46. A bill to authorize the extension of unconditional and permanent nondiscriminatory treatment (permanent normal trade relations treatment) to the products of Ukraine, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, today I introduce with my colleague, Senator LUGAR, a bill to grant normal trade treatment to the products of Ukraine. My brother, Congressman SANDER LEVIN and other members are introducing a similar bill in the House. It is our hope that enactment of this legislation will help to build stronger economic ties between the United States and Ukraine.

The Cold War era Jackson-Vanik trade restrictions that deny most favored nation trade status to imports from former Soviet-Bloc countries are outdated and, when applied to Ukraine, inappropriate. Those restrictions were established as a tool to pressure Communist nations to allow their people to freely emigrate in exchange for favorable trade treatment by the United States.

Ukraine does allow its citizens the right and opportunity to emigrate. It has met the Jackson-Vanik test. In fact, Ukraine has been found to be in full compliance with the freedom of emigration requirements under the Jackson-Vanik law. Ukraine has been certified as meeting the Jackson-Vanik requirements on an annual basis since 1992 when a bilateral trade agreement went into effect.

It is time the United States recognizes this reality by eliminating the Jackson-Vanik restrictions and granting Ukraine normal trading status on a permanent basis. Our bill does this as well as addressing traditional Jackson-Vanik issues such as emigration, religious freedom, restoration of property, and human rights. It also deals with the important trade issues that must be considered when granting a country permanent normal trade relations (PNTR), such as making progress toward World Trade Organization (WTO), accession and tariff and excise tax reductions.

Since reestablishing independence in 1991, Ukraine has taken important steps toward the creation of democratic institutions and a free-market economy. As a member state of the Organization for Security and Cooperation in Europe (OSCE), Ukraine is committed to developing a system of governance in accordance with the principles regarding human rights that are set forth in the Final Act of the Conference on Security and Cooperation in Europe, the Helsinki Final Act.

On December 26, 2004, Ukraine took another historic step in its pursuit of democracy with the legitimate election of its new President Viktor Yuschenko. This election showed the world that Ukraine has joined the family of democracies. The United States can help advance this young democracy by repealing our Cold War-era laws that should no longer apply to them and welcoming them to the international economic community as a full partner. This bill will accomplish these goals.

In addition to welcoming the Ukrainian government to the family of democracies, we must also take a moment to honor the Ukranian people for their commitment to democratic institutions in civil society through peaceful demonstrations. Free and fair elections were conducted only because of the courage and hard work of the Ukranian people. Without their persistence Ukraine was in danger of moving forward with an illegitimately elected president.

By drawing Ukraine into normal trade relations, the international community will be helping Ukraine to achieve greater market reform and continue its commitment to safeguarding religious liberty and enforcing laws to combat discrimination. PNTR status will hopefully do more than increase bilateral trade between the United States and Ukraine and encourage increased international investment in Ukraine. Hopefully it will also stimulate the reform we all want and the Ukrainian people deserve on their way to achieving a more mature and stable democracy.

It's time we recognize Ukraine's accomplishments and status as an emerging democracy and market economy by lifting the Jackson-Vanik restrictions. I hope my colleagues will support this important bill.

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

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

S. 46

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FINDINGS.**

Congress finds that—

(1) Ukraine allows its citizens the right and opportunity to emigrate, free of anything more than a nominal tax on emigration or on the visas or other documents required for emigration and free of any tax, levy, fine, fee, or other charge on any citizens as a consequence of the desire of such citizens to emigrate to the country of their choice;

(2) Ukraine has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 since 1997;

(3) since reestablishing independence in 1991, Ukraine has taken important steps toward the creation of democratic institutions and a free-market economy and, as a participating state of the Organization for Security and Cooperation in Europe (OSCE), is committed to developing a system of governance in accordance with the principles regarding human rights and humanitarian affairs that are set forth in the Final Act of the Conference on Security and Cooperation in Europe (also known as the ''Helsinki Final Act'') and successive documents;

(4) the people of Ukraine deserve praise for demonstrating a deep commitment to democracy and through peaceful civil action demanding a process that achieved a fair election in Ukraine's most recent Presidential runoff;

(5) Ukraine has made progress toward meeting international commitments and standards in the most recent Presidential runoff elections, including in the implementation of Ukraine's new elections laws;

(6) as a participating state of the Organization for Security and Co-operation in Europe (OSCE), Ukraine is committed to addressing issues relating to its national and religious minorities and to adopting measures to ensure that persons belonging to national minorities have full equality both individually and communally;

(7) Ukraine has enacted legislation providing protection against incitement to violence against persons or groups based on national, racial, ethnic, or religious discrimination, including anti-Semitism, and has committed itself, including through a letter to the President of the United States, to ensuring freedom of religion and combating racial and ethnic intolerance and hatred;

(8) Ukraine has engaged in efforts to combat ethnic and religious intolerance by cooperating with various United States nongovernmental organizations;

(9) Ukraine is continuing the restitution of religious properties, including religious and communal properties confiscated from national and religious minorities during the Soviet era, is facilitating the revival of those minority groups, and remains committed to developing a legislative framework for completing this process, as promised in a letter to the President of the United States;

(10) Ukraine has received normal trade relations treatment since concluding a bilateral trade agreement with the United States that entered into force on June 23, 1992;

(11) Ukraine's accession to the World Trade Organization would be a welcome step, recognizing that many issues remain to be resolved, including commitments relating to access of United States agricultural products, protection of intellectual property rights, tariff and excise tax reductions for goods (including automobiles), trade in services, elimination of export incentives for industrial goods, and reform of customs procedures and other non-tariff barriers;

(12) Ukraine has enacted protections reflecting internationally recognized labor rights;

(13) as a participating state of the OSCE, Ukraine has committed itself to respecting freedom of the press, and the new administration has affirmed this commitment;

(14) Ukraine has stated its desire to pursue a course of Euro-Atlantic integration with a commitment to ensuring democracy and prosperity for its citizens; and

(15) Ukraine has participated with the United States in its peacekeeping operations in Europe and has provided important cooperation in the global struggle against international terrorism.

**SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO UKRAINE.**

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF UNCONDITIONAL AND PERMANENT NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Ukraine; and

(2) after making a determination under paragraph (1) with respect to Ukraine, proclaim the extension of unconditional and permanent nondiscriminatory treatment (permanent normal trade relations treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Ukraine, chapter 1 of title IV of the Trade Act of 1974 shall cease to apply to that country.

**SEC. 3. SENSE OF CONGRESS.**

It is the sense of Congress that the United States remain fully committed to a multifaceted engagement with Ukraine, including by—

(1) encouraging Ukraine to continue to meet its commitments as a participating member of the OSCE and welcoming further progress on implementing policy—

(A) of providing for the free emigration of its citizens;

(B) of safeguarding religious liberty throughout Ukraine;

(C) of enforcing existing Ukrainian laws at the national and local levels to combat ethnic, religious, and racial discrimination and violence;

(D) of expanding the restitution of religious and communal properties, including establishing a legal framework for the completion of such restitution in the future;

(E) of meeting international standards of democracy, including implementation of newly adopted election laws;

(F) of creating a more independent legal and judicial system, governed by the rule of law, and free of political interference and corruption; and

(G) of respecting media freedoms fully, including by prohibiting physical harm to and intimidation of journalists;

(2) supporting Ukraine's efforts to make further market-oriented reforms, to pursue a policy of Euro-Atlantic integration, to join the WTO, and to combat corruption;

(3) supporting Ukraine's efforts to make substantial and meaningful progress in enacting and enforcing the protection of intellectual property rights; and

(4) working with Ukraine to ensure quick resolution of trade disputes that may arise, particularly in the intellectual property, poultry, and other agricultural sectors.

**SEC. 4. CONTINUED ENJOYMENT OF RIGHTS UNDER THE JUNE 23, 1992, BILATERAL TRADE AGREEMENT.**

(a) FINDING.—Congress finds that the trade agreement between the United States and Ukraine that entered into force on June 23, 1992, remains in force between the 2 countries and provides the United States with important rights, including the right to use specific safeguard rules to respond to import surges from Ukraine.

(b) APPLICABILITY OF SAFEGUARD.—Section 421 of the Trade Act of 1974 (19 U.S.C. 2451) shall apply to Ukraine to the same extent as such section applies to the People's Republic of China, so long as the trade agreement described in subsection (a) remains in force.

**SEC. 5. EXERCISE OF CONGRESSIONAL OVERSIGHT OVER WTO ACCESSION NEGOTIATIONS.**

(a) NOTICE OF AGREEMENT ON ACCESSION TO WTO BY UKRAINE.—Not later than 5 days after the date on which the United States has entered into a bilateral agreement with Ukraine on the terms of accession by Ukraine to the World Trade Organization, the President shall so notify Congress, and the President shall transmit to Congress, not later than 15 days after that agreement is entered into, a report that sets forth the provisions of that agreement.

(b) CONGRESSIONAL OVERSIGHT RESOLUTION.—

(1) INTRODUCTION.—If a Congressional Oversight Resolution is introduced in the House of Representatives or the Senate during the 30-day period (not counting any day which is excluded under section 154(b) of the Trade Act of 1974 (19 U.S.C. 2194(b)), beginning on the date on which the President first notifies Congress under subsection (a) of the agreement referred to in that subsection, that Congressional Oversight Resolution shall be considered in accordance with this subsection.

(2) CONGRESSIONAL OVERSIGHT RESOLUTION.—In this subsection, the term ''Congressional Oversight Resolution'' means only a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: ''That it is the sense of the Congress that the agreement between the United States and Ukraine on the terms of accession by Ukraine to the World Trade Organization, of which Congress was notified on _____, does not adequately advance the interests of the United States.'', with the blank space being filled with the appropriate date.

(3) PROCEDURES FOR CONSIDERING RESOLUTIONS.—

(A) INTRODUCTION AND REFERRAL.—A Congressional Oversight Resolution—

(i) in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate—

(I) may be introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(B) COMMITTEE DISCHARGE AND FLOOR CONSIDERATION.—The provisions of subsections (c) through (f) of section 152 of the Trade Act of 1974 (19 U.S.C. 2192 (c) through (f)) (relating to committee discharge and floor consideration of certain resolutions in the House and Senate) apply to a Congressional Oversight Resolution to the same extent as such subsections apply to resolutions under such section.

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (b) is enacted by Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and the procedures described in such subsection supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

Mr. LUGAR. Mr. President, I rise today in support of a bill that I have introduced with Senator CARL LEVIN authorizing the extension of permanent normal trade relations treatment. Ukraine is still subject to the provisions of the Jackson-Vanik amendment to the Trade Act of 1974, which sanctions nations for failure to comply with freedom of emigration requirements. Our bill would repeal permanently the application of Jackson-Vanik to Ukraine.

In the post-cold-war era, Ukraine has demonstrated a commitment to meet these requirements, and in addition, has expressed a strong desire to abide by free market principles and good governance. Last November, I served as President Bush's personal representative to the runoff election between Prime Minister Yanukovich and Viktor Yushchenko. During that visit, I promoted free and fair election procedures that would strengthen worldwide respect for the legitimacy of the winning candidate. Unfortunately, that was not possible. The Government of Ukraine allowed, or aided and abetted, wholesale fraud and abuse that changed the results of the election. It is clear that Prime Minister Yanukovich did not win the election.

In response, the people of Ukraine rallied in the streets and demanded justice. After tremendous international

pressure and mediation, Ukraine repeated the runoff election on December 26. A newly named Central Election Commission and a new set of election laws led to a much-improved process. International monitors concluded that the process was generally free and fair. This past weekend Viktor Yushchenko was inaugurated as President of Ukraine.

Extraordinary events have occurred in Ukraine over the last three months. A free press has revolted against government intimidation and reasserted itself. An emerging middle class has found its political footing. A new generation has embraced democracy and openness. A society has rebelled against the illegal activities of its government. It is in our interest to recognize and protect these advances in Ukraine.

The United States has a long record of cooperation with Ukraine through the Nunn-Lugar Cooperative Threat Reduction. Ukraine inherited the third largest nuclear arsenal in the world with the fall of the Soviet Union. Through the Nunn-Lugar program the United States has assisted Ukraine in eliminating this deadly arsenal and joining the Nonproliferation Treaty as a non-nuclear State.

One of the areas where we can deepen United States-Ukrainian relations is bilateral trade. Our trade relations between the United States and Ukraine are currently governed by a bilateral trade agreement signed in 1992. There are other economic agreements in place seeking to further facilitate economic cooperation between the United States and Ukraine, including a bilateral investment treaty which was signed in 1996, and a taxation treaty signed in 2000. In addition, Ukraine commenced negotiations to become a member of the World Trade Organization in 1993, further demonstrating its commitment to adhere to free market principles and fair trade. In light of its adherence to freedom of emigration requirements, democratic principles, compliance with threat reduction and several agreements on economic cooperation, the products of Ukraine should not be subject to the sanctions of Jackson-Vanik.

There are areas in which Ukraine needs to continue to improve. These include market access, protection of intellectual property and reduction of tariffs. The U.S. must remain committed to assisting Ukraine in pursuing market economic reforms. The permanent waiver of Jackson-Vanik and establishment of permanent normal trade relations will be the foundation on which further progress in a burgeoning economic partnership can be made.

I am hopeful that my colleagues will review this legislation and join Senator LEVIN and I in supporting this important legislation.

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By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 47. A bill to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today, I am introducing along with Mr. DOMENICI the ''Pecos National Historical Park Land Exchange Act of 2005''. This bill will authorize a land exchange between the Federal government and a private landowner that will benefit the Pecos National Historical Park in my State of New Mexico.

Specifically, the bill will enable the Park Service to acquire a private inholding within the Park's boundaries in exchange for the transfer of a nearby tract of National Forest System land. The National Forest parcel has been identified as available for exchange in the Santa Fe National Forest Land and Resource Management Plan and is surrounded by private lands on three sides.

The Pecos National Historical Park possesses exceptional historic and archaeological resources. The Park preserves the ruins of the great Pecos pueblo, which was a major trade center, and the ruins of two Spanish colonial missions dating from the 17th and 18th centuries.

The Glorieta Unit of the Park protects key sites associated with the 1862 Civil War Battle of Glorieta Pass, a significant event that ended the Confederate attempt to expand the war into the West. This Unit will directly benefit from the land exchange.

Similar bills passed the Senate in both the 106th and the 108th Congresses, and I hope it finally will be enacted this Congress.

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

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

S. 47

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Pecos National Historical Park Land Exchange Act of 2005''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) FEDERAL LAND.—The term ''Federal land'' means the approximately 160 acres of Federal land within the Santa Fe National Forest in the State, as depicted on the map.

(2) LANDOWNER.—The term ''landowner'' means the 1 or more owners of the non-Federal land.

(3) MAP.—The term ''map'' means the map entitled ''Proposed Land Exchange for Pecos National Historical Park'', numbered 430/80,054, dated November 19, 1999, and revised September 18, 2000.

(4) NON-FEDERAL LAND.—The term ''non-Federal land'' means the approximately 154 acres of non-Federal land in the Park, as depicted on the map.

(5) PARK.—The term ''Park'' means the Pecos National Historical Park in the State.

(6) SECRETARIES.—The term ''Secretaries'' means the Secretary of the Interior and the Secretary of Agriculture, acting jointly.

(7) STATE.—The term ''State'' means the State of New Mexico.

**SEC. 3. LAND EXCHANGE.**

(a) IN GENERAL.—On conveyance by the landowner to the Secretary of the Interior of the non-Federal land, title to which is acceptable to the Secretary of the Interior—

(1) the Secretary of Agriculture shall, subject to the conditions of this Act, convey to the landowner the Federal land; and

(2) the Secretary of the Interior shall, subject to the conditions of this Act, grant to the landowner the easement described in subsection (b).

(b) EASEMENT.—

(1) IN GENERAL.—The easement referred to in subsection (a)(2) is an easement (including an easement for service access) for water pipelines to 2 well sites located in the Park, as generally depicted on the map.

(2) ROUTE.—The Secretary of the Interior, in consultation with the landowner, shall determine the appropriate route of the easement through the Park.

(3) TERMS AND CONDITIONS.—The easement shall include such terms and conditions relating to the use of, and access to, the well sites and pipeline, as the Secretary of the Interior, in consultation with the landowner, determines to be appropriate.

(4) APPLICABLE LAW.—The easement shall be established, operated, and maintained in compliance with applicable Federal law.

(c) VALUATION, APPRAISALS, AND EQUALIZATION.—

(1) IN GENERAL.—The value of the Federal land and non-Federal land—

(A) shall be equal, as determined by appraisals conducted in accordance with paragraph (2); or

(B) if the value is not equal, shall be equalized in accordance with paragraph (3).

(2) APPRAISALS.—

(A) IN GENERAL.—The Federal land and non-Federal land shall be appraised by an independent appraiser selected by the Secretaries.

(B) REQUIREMENTS.—An appraisal conducted under subparagraph (A) shall be conducted in accordance with—

(i) the Uniform Appraisal Standards for Federal Land Acquisition; and

(ii) the Uniform Standards of Professional Appraisal Practice.

(C) APPROVAL.—The appraisals conducted under this paragraph shall be submitted to the Secretaries for approval.

(3) EQUALIZATION OF VALUES.—

(A) IN GENERAL.—If the values of the non-Federal land and the Federal land are not equal, the values may be equalized by—

(i) the Secretary of the Interior making a cash equalization payment to the landowner;

(ii) the landowner making a cash equalization payment to the Secretary of Agriculture; or

(iii) reducing the acreage of the non-Federal land or the Federal land, as appropriate.

(B) CASH EQUALIZATION PAYMENTS.—Any amounts received by the Secretary of Agriculture as a cash equalization payment under section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) shall—

(i) be deposited in the fund established by Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a); and

(ii) be available for expenditure, without further appropriation, for the acquisition of land and interests in land in the State.

(d) COSTS.—Before the completion of the exchange under this section, the Secretaries

and the landowner shall enter into an agreement that allocates the costs of the exchange among the Secretaries and the landowner.

(e) APPLICABLE LAW.—Except as otherwise provided in this Act, the exchange of land and interests in land under this Act shall be in accordance with—

(1) section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716); and

(2) other applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretaries may require, in addition to any requirements under this Act, such terms and conditions relating to the exchange of Federal land and non-Federal land and the granting of easements under this Act as the Secretaries determine to be appropriate to protect the interests of the United States.

(g) COMPLETION OF THE EXCHANGE.—

(1) IN GENERAL.—The exchange of Federal land and non-Federal land shall be completed not later than 180 days after the later of—

(A) the date on which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met;

(B) the date on which the Secretary of the Interior approves the appraisals under subsection (c)(2)(C); or

(C) the date on which the Secretaries and the landowner agree on the costs of the exchange and any other terms and conditions of the exchange under this section.

(2) NOTICE.—The Secretaries shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives notice of the completion of the exchange of Federal land and non-Federal land under this Act.

**SEC. 4. ADMINISTRATION.**

(a) IN GENERAL.—The Secretary of the Interior shall administer the non-Federal land acquired under this Act in accordance with the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the ''National Park Service Organic Act'') (16 U.S.C. 1 et seq.).

(b) MAPS.—

(1) IN GENERAL.—The map shall be on file and available for public inspection in the appropriate offices of the Secretaries.

(2) TRANSMITTAL OF REVISED MAP TO CONGRESS.—Not later than 180 days after completion of the exchange, the Secretaries shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a revised map that depicts—

(A) the Federal land and non-Federal land exchanged under this Act; and

(B) the easement described in section 3(b).

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By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 48. A bill to reauthorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. LAUTENBERG. Mr. President, I rise today to speak about a bill that Senator CORZINE and I are introducing, the New Jersey Coastal Heritage Trail Route bill. Our bill would reauthorize a law based on a bill that former Senator Bill Bradley and I first introduced in 1988. That law was extended once but its authorization has now expired, bringing work on the Trail to a complete standstill.

This bill would reauthorize federal appropriations for New Jersey's Coastal Heritage Trail. This authority would sunset in 2009, allowing enough time for unfinished trail projects to be completed.

The 300-mile Trail is divided into five sections that extend south from Perth Amboy to Cape May and west to Deepwater. New Jersey's Coastal Heritage Trail is unique. It is neither a National Heritage Area, nor a National Trail. Collaboration on this Trail marked the National Park Service's first attempt at protecting a significant resource without actually acquiring it. This experiment has been a resounding success.

The State of New Jersey is heavily developed, and the National Park Service, the State, and many other public and private organizations have worked hard to preserve the natural and cultural heritage along the Trail.

This experiment has also been a bargain. Between 1988 and 2004, the Park Service spent 3.9 million dollars on Trail projects, while non-federal sources contributed 5.4 million dollars in matching funds. These funds represent an important investment in New Jersey's economy. Last year, 65 million visitors came to New Jersey, and the majority of those visitors went to the shore where many spent time on sections of the Coastal Heritage Trail.

In the past, Federal funds have contributed to signs and exhibits along the Trail which entice tourists and local New Jerseyans to explore our maritime history, coastal habitats, and wildlife migration.

Most people think that New Jersey is a crowded, highly industrialized State. That is true. But New Jersey also contains incredible beauty, such as a Bald Eagle silhouetted against a Delaware Bay sunset; a lone fishing boat making its way through Barnegat Inlet at dawn; or the quiet, dark waters flowing slowly through the Pine Barrens.

Such sights can be enjoyed in New Jersey, and the Coastal Heritage Trail invites New Jerseyans and our many visitors to enjoy these splendors.

Mr. President, in the House, Congressman LOBIONDO is sponsoring a companion bill to this legislation, so this is truly a bipartisan effort. The Congressman and I have worked with our respective committees of jurisdiction and have come to agreement on identical language in our bills. So, it is my hope that the Senate will be able to pass this bill promptly. Getting it passed and signed into law will help to protect our environment and markedly improve the quality of life for millions of Americans—all at a very low cost to the Nation's taxpayers.

Mr. President, I ask for unanimous consent that the text of the bill be printed in the RECORD.

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

S. 48

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REAUTHORIZATION OF APPROPRIATIONS FOR NEW JERSEY COASTAL HERITAGE TRAIL ROUTE.**

(a) REAUTHORIZATION.—Section 6 of Public Law 100–515 (16 U.S.C. 1244 note) is amended—

(1) in subsection (b)(1), by striking ''$4,000,000'' and all that follows and inserting ''such sums as are necessary''; and

(2) in subsection (c), by striking ''10'' and inserting ''12''.

(b) STRATEGIC PLAN.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior shall prepare a strategic plan for the New Jersey Coastal Heritage Trail Route.

(2) CONTENTS.—The strategic plan shall describe—

(A) opportunities to increase participation by national and local private and public interests in the planning, development, and administration of the New Jersey Coastal Heritage Trail Route; and

(B) organizational options for sustaining the New Jersey Coastal Heritage Trail Route.

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By Mr. STEVENS (for himself and Ms. MURKOWSKI):

S. 49. A bill to establish a joint Federal-State Floodplain and Erosion Mitigation Commission for the State of Alaska; to the Committee on Energy and Natural Resources.

Mr. STEVENS. Mr. President, on behalf of myself and Senator MURKOWSKI, I introduce S. 49, the Alaska Floodplain and Erosion Mitigation Commission Act.

For the last several years, we have seen coastal river flooding and erosion destroy homes, public buildings, and runways, threatening the traditional lifestyle of our Alaska Native people and rural residents. Over 100 feet of land can be lost in a single storm, with homes and buildings literally being washed into the ocean.

Last year, the Federal Emergency Management Agency was called in after one storm and assessed millions of dollars in damages.

In Alaska, there are over 213 communities that have been identified as being affected by erosion, 4 of which are in imminent danger and will be forced to relocate.

Given the devastating impacts of erosion on Alaska Native villages, I held a full 2-day Appropriations field hearing in July of 2004. Senator CONRAD BURNS of Montana, Senator JOHN SUNUNU of New Hampshire, and Senator LISA MURKOWSKI were all in attendance.

Testifying at the hearing were witnesses from the Federal Government, State of Alaska, and representatives from the villages most affected by coastal erosion and flooding.

These hearings examined the findings and recommendations from the Government Accounting Office, GAO, report on the severe flooding and erosion problems faced in many Native Alaska villages. Congress had previously directed GAO to study flooding and erosion of Alaska Native villages and to determine the extent to which these villages are affected, identify Federal and State flooding and erosion programs, determine the current status of

efforts to respond to flooding and erosion in nine villages, and identify alternatives that Congress may wish to consider when providing assistance for flooding and erosion.

This bill is a culmination of the GAO report and the field hearings I have mentioned. It will focus the efforts of the Federal agencies and the State of Alaska to better serve the impacted Native villages and rural residents. This bill is intended to provide relief for these communities. It is going to be a very difficult problem to solve.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 49

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Alaska Floodplain and Erosion Mitigation Commission Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—JOINT FEDERAL-STATE FLOODPLAIN AND EROSION MITIGATION COMMISSION FOR ALASKA

Sec. 101. Establishment of commission.
Sec. 102. Duties.
Sec. 103. Administration.
Sec. 104. Commission personnel matters.
Sec. 105. Reports.
Sec. 106. Termination of commission.

TITLE II—FLOOD AND EROSION CONTROL AND MITIGATION

Sec. 201. Evaluation and prioritization.
Sec. 202. Flood and erosion control and mitigation.
Sec. 203. Mitigation.
Sec. 204. Administration.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

Sec. 301. Authorization of appropriations.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) COMMISSION.—The term ''Commission'' means the Joint Federal-State Floodplain and Erosion Mitigation Commission for Alaska established by section 101(a).

(2) ALASKA NATIVE.—The term ''Alaska Native'' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(3) ALASKA NATIVE VILLAGE.—The term ''Alaska Native village'' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) STATE.—The term ''State'' means the State of Alaska.

**TITLE I—JOINT FEDERAL-STATE FLOODPLAIN AND EROSION MITIGATION COMMISSION FOR ALASKA**

**SEC. 101. ESTABLISHMENT OF COMMISSION.**

(a) ESTABLISHMENT.—There is established a commission to be known as the ''Joint Federal-State Floodplain and Erosion Mitigation Commission for Alaska''.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 7 members, of whom—

(A) 1 member shall be the Governor of the State, who shall serve as Cochairperson;

(B) 3 members shall be appointed by the Governor of the State, of whom—

(i) 1 member shall be a nonvoting ex officio Alaska Native; and

(ii) at least 1 member shall represent city or borough governments;

(C) 1 shall be appointed by the Secretary, shall be an employee of the Department of the Interior, and shall serve as Cochairperson;

(D) 1 member appointed by the Secretary of Agriculture shall be an employee of the Natural Resources Conservation Service of the Department of Agriculture; and

(E) 1 member, appointed by the Secretary of Defense, shall be an employee of—

(i) the Department of Defense; or

(ii) the Corps of Engineers.

(2) DATE OF APPOINTMENTS.—The appointment of a member of the Commission shall be made not later than 90 days after the date of enactment of this Act.

(c) APPOINTMENT; VACANCIES.—

(1) APPOINTMENT.—A member of the Commission shall serve at the pleasure of the appointing authority.

(2) VACANCIES.—A vacancy on the Commission—

(A) shall not affect the powers of the Commission; and

(B) shall be filled in the same manner as the original appointment was made.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(e) MEETINGS.—Subject to section 102(a), the Commission shall meet at the call of the Cochairpersons.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CONCURRENCE OF COCHAIRPERSONS.—A decision of the Commission shall require the concurrence of the Cochairpersons.

(h) PRINCIPAL OFFICE.—The principal office of the Commission shall be in the State of Alaska.

**SEC. 102. DUTIES.**

(a) MEETINGS.—For the first 2 years following the date of enactment of this Act, the Commission shall meet not less than 2 times per year.

(b) STUDY.—

(1) IN GENERAL.—The Commission shall conduct a study of all matters relating to—

(A) the feasibility of alternatives for flooding or erosion assistance; and

(B) the development of a policy to guide infrastructure investments in the Alaska Native villages, cities, and boroughs that are most affected by flooding or erosion.

(2) MATTERS TO BE STUDIED.—The matters to be studied by the Commission include—

(A) flood and erosion processes;

(B) the planning needs associated with flood and erosion processes, including identifying and making recommendations concerning—

(i) specific flood and erosion circumstances that affect life and property in the State;

(ii) land use regulations, including area standards for designation of flood- and erosion-prone land;

(iii) uses to be made of flood- and erosion-prone land, and how State and Federal grants, loans, and capital improvements shall be invested in designated areas; and

(iv) how to regulate and implement the uses described in clause (iii) on—

(I) land designated as an allotment for Alaska Native people;

(II) land owned by an Alaska Native village corporation or a regional village corporation under the Alaska Native Claims Settlement Act (Public Law 92-203);

(III) land owned by the Federal or State government;

(IV) city and borough land; and

(V) other private land; and

(C) the establishment of procedures to obtain the view of the public on land use planning needs, such as implementation and enforcement of flood and erosion control and mitigation solutions, including—

(i) increased hydrologic and other specialized data collection; and

(ii) public hearings.

(c) EVALUATION.—Not later than 120 days after the date of enactment of this Act and annually thereafter, the Commission shall evaluate specific flood and erosion circumstances that affect life and property in the State.

(d) RECOMMENDATIONS.—The Commission shall develop recommendations on—

(1) the development and implementation of flood and erosion control and mitigation solutions in villages and communities identified by the Commission as being most in need of those solutions;

(2) programs and budgets of Federal and State agencies responsible for administrating Federal and State floodplain management authorities;

(3) the establishment of State erosion management responsibilities and authorities;

(4) changes in law, policies, and programs that the Commission determines are necessary or desirable to provide an integrated Federal-State erosion and flood management authority;

(5) improving coordination and consultation between the Federal and State governments in making resource allocation and flood and erosion control and mitigation decisions;

(6) ways to avoid conflict between the State and Alaska Native people in the allocation of resources;

(7) ensuring that higher priority is given to achieving long-term sustainability of communities from debilitating flood and erosion losses than to short-term project and infrastructure development needs, if the flood and erosion control and mitigation solution is publicly funded; and

(8) ensuring that the economic and social well-being of Alaska Native people and other residents of the State is not compromised by a risk of erosion or flood that could be avoided through long-term planning.

**SEC. 103. ADMINISTRATION.**

(a) ADVISERS.—To assist the Commission in carrying out this Act, the Commission shall establish a committee of technical advisers to the Commission with expertise in—

(1) coastal engineering;

(2) the adverse impact of flood and erosion management;

(3) rural community planning in the State;

(4) how city and borough governments are affected by erosion;

(5) the relationship between State and local governments and Alaska Native villages; and

(6) any other interest that the Commission determines is appropriate.

(b) RECORDS.—

(1) IN GENERAL.—The Commission shall maintain complete records of the activities of the Commission.

(2) PUBLIC INSPECTION.—Records maintained under paragraph (1) shall be available for public inspection.

(c) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this title.

(2) PROVISION OF INFORMATION.—On request of a Cochairperson of the Commission, the head of the agency shall provide the information to the Commission.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property to carry out the duties of the Commission.

**SEC. 104. COMMISSION PERSONNEL MATTERS.**

(a) COMPENSATION OF MEMBERS.—

(1) NON-FEDERAL EMPLOYEES.—A member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

(2) FEDERAL OR STATE EMPLOYEES.—A member of the Commission who is an officer or employee of the Federal or State government shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal or State Government.

(b) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Cochairpersons of the Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(2) CONFIRMATION OF EXECUTIVE DIRECTOR.—The employment of an executive director shall be subject to confirmation by the Commission.

(3) COMPENSATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Cochairpersons of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(B) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(d) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—

(1) IN GENERAL.—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(2) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Cochairpersons of the Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

**SEC. 105. REPORTS.**

(a) INTERIM REPORTS.—Not later than September 30 of each year, the Commission shall submit to Congress, the Secretary, and the legislature of the State—

(1) a report that describes the activities of the Commission in the preceding calendar year; and

(2) a report that describes—

(A) any immediate need of the Commission; and

(B) any imminent threat action directive for the coordinated response to erosion and flooding in the case of an emergency.

(b) FINAL REPORT.—Not later than September 30, 2011, the Commission shall submit to Congress, the Secretary, and the legislature of the State a final report that describes—

(1) the activities and findings of the Commission; and

(2) the recommendations of the Commission for legislation and administrative actions the Commission considers appropriate.

**SEC. 106. TERMINATION OF COMMISSION.**

The Commission shall terminate on September 30, 2011.

## TITLE II—FLOOD AND EROSION CONTROL AND MITIGATION

**SEC. 201. EVALUATION AND PRIORITIZATION.**

Not later than 120 days after the date of enactment of this Act and annually thereafter, the Secretary, in consultation with the Commission, shall evaluate and prioritize specific flood and erosion circumstances that affect life and property in the State.

**SEC. 202. FLOOD AND EROSION CONTROL AND MITIGATION.**

(a) IN GENERAL.—Not later than September 15, 2006, the Secretary, in consultation with the Commission, shall examine the most cost-effective ways of carrying out flood and erosion control and mitigation solutions devised by the Commission for the 9 villages in the State identified in the Government Accountability Office Report 04-142.

(b) COST-EFFECTIVE TECHNOLOGY.—The Secretary, in consultation with the Commission, shall implement a solution described in subsection (a) using the most cost-effective technology to protect life and property in the State, including—

(1) movement of structures;

(2) nonstructural land management of erosion-prone areas; and

(3) structural erosion control techniques.

(c) GRANTS TO STATE AND LOCAL GOVERNMENTS.—For any fiscal year after fiscal year 2006, the Secretary may implement a solution described in subsection (a) through the State government or a local government by making a grant to a government using the remainder of any funds appropriated to the Secretary for appropriate flood and erosion control and mitigation solutions.

(d) FACTORS.—In implementing a solution under this section, the Secretary, in consultation with the Commission, shall consider—

(1) the design life of structural erosion control projects;

(2) the cost effectiveness of all erosion control projects; and

(3) the availability of a revolving loan fund administered by the State for relocation, elevation, and flood proofing of flood- or erosion-prone structures.

(e) FEDERAL SHARE.—The Federal share of the cost of carrying out a project or activity under this section shall be 75 percent.

**SEC. 203. MITIGATION.**

(a) IN GENERAL.—The Secretary, in consultation with the Commission, may take any action necessary to mitigate the loss of structures and infrastructure from flood and erosion using the most cost effective means practicable to provide the longest-term benefit, including—

(1) relocation;

(2) elevation;

(3) flood proofing; and

(4) land management alternatives.

**SEC. 204. ADMINISTRATION.**

(a) CONSULTATION.—The Secretary shall—

(1) consult with the Commission and appropriate Federal and State agencies; and

(2) provide oversight authority, responsibility, and directives to agencies developing relocation and flood and erosion control and mitigation plans.

(b) VALID EXISTING RIGHTS.—This subsection does not limit any right recognized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is in existence at the time of the enactment of this Act.

(c) AUTHORITY OF THE SECRETARY.—This title does not impair the authority of the Secretary to make contracts and grant leases, permits, rights-of-way, and easements.

## TITLE III—AUTHORIZATION OF APPROPRIATIONS

**SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There is authorized to be appropriated for each of fiscal years 2006 through 2011 such sums as are necessary to carry out this Act, to remain available until expended.

(b) COMMISSION.—The Secretary may use not to exceed $250,000 of the funds made available under subsection (a) for the expenses of the Commission, including hiring any necessary staff.

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By Mr. INOUYE (for himself, Mr. STEVENS, Ms. CANTWELL, Mr. BURNS, Mr. LAUTENBERG, Ms. SNOWE, Mr. AKAKA, Ms. MURKOWSKI, Mrs. CLINTON, Mr. SMITH, and Mrs. MURRAY):

S. 50. A bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President, today I introduce the Tsunami Preparedness Act with my friend and distinguished colleague, Senator TED STEVENS, in our new capacities as Co-Chair and Chair of the Commerce Committee. Our bill today provides a scientific and technological response to minimize the threats posed by tsunami to our own shores, and the coastal communities of the world, as exemplified by the appalling scope of the Indian Ocean tragedy. The bill builds on our work to establish a system in the Pacific that is a model for the world, and also provides for its expansion and improvement to repair gaps that have been identified recently.

Protecting human life and property from natural disaster requires the ability to reliably detect and forecast, the capacity to broadcast warnings in a timely and informative manner, and the knowledge in communities of how to respond and evacuate to safety. Above all, however, it requires the willingness to invest resources to prepare for a threat that is largely unseen and unpredictable until the last moment, when a monstrous wave actually strikes.

The people of Alaska and Hawaii have long memories of the threat of tsunami. Perhaps it is because Hawaii sits in a position of terrible vulnerability in the Pacific Ocean, which is the site of 85 percent of the world's tsunami activity, and because Alaska, perched on the northern edge of the Pacific's Ring of Fire, suffers frequent tsunami-generating earthquakes.

In order to protect local communities, Hawaii established in 1949 a tsunami warning center, following a tragic Hilo tsunami. In response to the Good Friday earthquake and tsunami of 1964, which accounted for 90 percent of the deaths in the state that year, Alaska followed suit by establishing an observatory in Palmer, Alaska, in 1967. Collaborations between the two centers and other partners led to a nascent capacity for predicting and warning coastal communities about potential tsunami in Alaska and Hawaii and beyond.

As we came to understand the broader threat that tsunami posed, TED STEVENS and I worked together to pass legislation in 1994 to direct the National Oceanic and Atmospheric Administration (NOAA) to develop a Tsunami Hazard Mitigation Program.

We are pleased to report that the program has laid the foundation for tsunami preparedness. Through its Pacific Marine Environmental Laboratory (PMEL), NOAA has developed Deep ocean Assessment and Reporting of Tsunami—or ''DART''—buoys, which accurately measure the subtle variations in the ocean's sea level caused by tsunami traveling over open water. With these measurements, as well as readings from coastal gauges, the mathematical models PMEL and others have developed can forecast tsunami direction, speed, and inundation with astonishing accuracy. Although the worldwide network of seismic sensors operated by the U.S. Geological Survey (USGS) provides excellent notice of earthquakes with the potential to generate tsunami, the DART buoys represent a next-generation approach to detection and forecasting of tsunami that will form the backbone of our domestic preparedness.

Interpreting these data and issuing warnings are Hawaii's Pacific Tsunami Warning Center, and Alaska's West Coast/Alaska Tsunami Warning Center, which jointly have the capacity to cover our domestic shores, and, at the same time, to reach out to all cooperating nations of the world.

Forecasting and warning networks, however, depend on ears who know how to respond, and so the Tsunami Hazard Mitigation Program has partnered with states and local authorities to produce inundation mapping, develop evacuation routes, and conduct tsunami education. As a result of much hard work, fifteen counties up and down the west coast, and in Alaska and Hawaii have become national and world leaders by becoming ''tsunami ready.''

The appalling scope of the Indian Ocean tragedy illustrates the importance and necessity of our work of the past ten years, and with stark clarity, we can see that despite our best efforts, much remains to be done. Now, as before, Senator STEVENS and I have come together to lead the charge toward national and international tsunami preparedness.

Our legislation today formally authorizes NOAA to establish, operate, and maintain a dependable national tsunami warning system that would provide maximum tsunami detection capability for the nation. The system would build on the model established in the Pacific, and provide for its repair, expansion and modernization by the close of calendar year 2007. The system would include four components: an expanded and upgraded detection and warning system, a federal-state tsunami hazard mitigation program, a tsunami research program, and a modernization and upgrade program. In addition, the bill would direct NOAA to provide any necessary technical or other assistance to international efforts to establish regional systems in other parts of the world, including the Indian Ocean.

The detection and warning system established by the bill would cover the Pacific Ocean region, as well as the Atlantic-Caribbean-Gulf of Mexico region, and incorporate a variety of seismic and tsunami detection technologies, including deep ocean buoys, as well as encompass tsunami warning centers charged with collecting and analyzing the data and distributing warnings—including the existing Pacific Tsunami Warning Center in Hawaii and the West Coast/Alaska Tsunami Warning Center in Alaska, as well as any others deemed necessary by the NOAA Administrator.

The bill also formally authorizes NOAA's Tsunami Hazard Mitigation Program and its community-based tsunami hazard mitigation program to improve tsunami preparedness of at-risk areas. The bill directs a Federal-State coordinating committee for the program, consisting (FEMA), the United States Geological Survey (USGS), the National Science Foundation (NSF), and affected coastal states and territories, to work together to improve inundation mapping, community outreach and education, and promote and integrate tsunami warning and mitigation measures, including rescue and recovery guidelines. The program would provide grants to states to ensure the program elements are implemented in coastal communities.

The bill also requires NOAA to establish, along with other agencies and academic institutions, a tsunami research program to continuously improve detection, prediction, communication, and mitigation science and technology to support tsunami forecasts and warnings. This program would also focus on the potential for improved communications systems for tsunami and other hazard warnings, including telephones, wireless and satellite technology, the Internet, television and radio, and any innovative combination of these technologies.

A critical component of the bill requires NOAA to upgrade and modernize the U.S. tsunami detection system by December 2007, as well as provide accountability for the long-term operation of the system. NOAA is required to repair and upgrade the system, ensuring deployment of existing deep ocean detection buoys and related detection equipment, as well as notify Congress upon any equipment or system failures that will impair regional detection, and of significant contractor failures or delays. In addition, the bill calls for the National Academy of Sciences to review the system for further modernization recommendations.

The bill recognizes the need for global coordination on tsunami preparedness, requiring NOAA, and the interagency coordinating committee of the U.S. Tsunami Hazard Mitigation Program, to provide technical assistance and advice to international entities as part of an international effort to develop a fully functional global tsunami warning system.

Finally, the bill authorizes $35 million annually for six years to support these activities. Through this legislation, the work Senator STEVENS and I started over ten years ago will step up to the next level, and provide our nation with coverage and protection that it needs, while fulfilling our duties as citizens of the global community.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 50

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Tsunami Preparedness Act''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds the following:

(1) Tsunami are a series of large waves of long wavelength created by the displacement of water by violent undersea disturbances such as earthquakes, volcanic eruptions, landslides, explosions, and the impact of cosmic bodies.

(2) Tsunami have caused, and can cause in the future, enormous loss of human life, injury, destruction of property, and economic and social disruption in coastal and island communities.

(3) While 85 percent of tsunami occur in the Pacific Ocean, and coastal and island communities in this region are the most vulnerable to the destructive results, tsunami can occur at any point in any ocean or related body of water where there are earthquakes, volcanoes, or any other activity that displaces a large volume of water.

(4) A number of States and territories are subject to the threat of tsunamis, including Alaska, California, Hawaii, Oregon, Washington, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

(5) The National Oceanic and Atmospheric Administration is responsible for maintaining a tsunami detection and warning system for the Nation, issuing warnings to United States communities at risk from tsunami, and preparing those communities to respond appropriately, through—

(A) the Pacific Tsunami Warning Center in Ewa Beach, Hawaii, which serves as a warning center for Hawaii, all other United States assets in the Pacific, and Puerto Rico;

(B) the Alaska/West Coast Tsunami Warning Center in Palmer, Alaska, which is responsible for issuing warnings for Alaska, British Columbia, California, Oregon, and Washington;

(C) the Federal-State national tsunami hazard mitigation program;

(D) a tsunami research and assessment program, including programs conducted by the Pacific Marine Environmental Laboratory;

(E) the TsunamiReady Program, which educates and prepares communities for survival before and during a tsunami; and

(F) other related programs.

(6) The National Oceanic and Atmospheric Administration also represents the United States as a member of the International Coordination Group for the Tsunami Warning System in the Pacific, administered by the Intergovernmental Oceanographic Commission of UNESCO, for which the Pacific Tsunami Warning Center acts as the operational center and shares seismic and water level information with 26 member states, and maintains UNESCO's International Tsunami Information Center, in Honolulu, Hawaii, which provides technical and educational assistance to member states.

(7) The Tsunami Warning Centers receive seismographic information from the Global Seismic Network, an international system of earthquake monitoring stations, from the United States Geological Survey National Earthquake Information Center, and from cooperative regional seismic networks, and use these data to issue tsunami warnings and integrate the information with data from their own tidal and deep ocean monitoring stations, to cancel or verify the existence of a damaging tsunami. Warnings are disseminated by the National Oceanic and Atmospheric Administration to State emergency operation centers.

(8) Current gaps in the International Tsunami Warning System, such as the lack of regional warning systems in the Indian Ocean, the southwest Pacific Ocean, Central and South America, the Mediterranean Sea, and Caribbean, pose risks for coastal and island communities.

(9) The tragic and extreme loss of life experienced by countries in the Indian Ocean following the magnitude 9.0 earthquake and resulting tsunami in that region on December 26, 2004, illustrates the destructive consequences which can occur in the absence of an effective tsunami warning and notification system.

(10) An effective tsunami warning and notification system is part of a multi-hazard disaster warning and preparedness program and requires near real-time seismic, sea level, and oceanographic data, high-speed data analysis capabilities, a high-speed tsunami warning communication system, a sustained program of education and risk assessment, and an established local communications infrastructure for timely and effective dissemination of warnings to activate evacuation of tsunami hazard zones.

(11) The Tsunami Warning System for the Pacific is a model for other regions of the world to adopt, and can be expanded and modernized to increase detection, forecast, and warning capabilities for vulnerable states and territories, reduce the incidence of costly false alarms, improve reliability of measurement and assessment technology, and increase community preparedness.

(12) Tsunami warning and preparedness capability can be developed in other vulnerable areas of the world, such as the Indian Ocean, by identifying tsunami hazard zones, educating populations, developing alert and notification communications infrastructure, and by deploying near real-time tsunami detection sensors and gauges, establishing hazard communication and warning networks, expanding global monitoring of seismic activity, encouraging the increased exchange of seismic and tidal data between nations, and improving international coordination when a tsunami is detected.

(13) UNESCO has recognized the need to establish tsunami warning systems for regions beyond the Pacific Basin that are vulnerable to tsunami, including the Indian Ocean, and has convened a working group to lead an effort to expand the International Tsunami Warning System in the Pacific to such vulnerable regions.

(14) The international community and all vulnerable nations should take coordinated efforts to establish and participate in regional tsunami warning systems and other hazard warnings systems developed to meet the goals of the United Nations International Strategy for Disaster Reduction.

(b) PURPOSES.—The purposes of this Act are—

(1) to improve tsunami detection, forecast, warnings, notification, preparedness, and mitigation in order to protect life and property both in the United States and elsewhere in the world;

(2) to improve and modernize the existing Pacific Tsunami Warning System to increase coverage, reduce false alarms and increase accuracy of forecasts and warnings, and expand detection and warning systems to include other vulnerable States and United States territories, including the Caribbean/Atlantic/Gulf region;

(3) to increase and accelerate mapping, modeling, research, assessment, education, and outreach efforts in order to improve forecasting, preparedness, mitigation, response, and recovery of tsunami and related coastal hazards;

(4) to provide technical and other assistance to speed international efforts to establish regional tsunami warning systems in vulnerable areas worldwide, including the Indian Ocean; and

(5) to improve Federal, State, and international coordination for tsunami and other coastal hazard warnings and preparedness.

**SEC. 3. TSUNAMI DETECTION AND WARNING SYSTEM.**

(a) IN GENERAL.—The Administrator of the National Oceanic and Atmospheric Administration shall operate regional tsunami detection and warning systems for the Pacific Ocean region and for the Atlantic Ocean, Caribbean, and Gulf of Mexico region that will provide maximum detection capability for United States coastal tsunami.

(b) SYSTEM REQUIREMENTS.—

(1) PACIFIC SYSTEM.—The Pacific tsunami warning system shall cover the entire Pacific Ocean area, including the Western Pacific, the Central Pacific, the North Pacific, the South Pacific, and the East Pacific and Arctic areas.

(2) ATLANTIC, CARIBBEAN, AND GULF OF MEXICO SYSTEM.—The Atlantic, Caribbean, and Gulf system shall cover areas of the Atlantic Ocean, Caribbean Sea, and the Gulf of Mexico that the Administrator determines—

(A) to be geologically active, or to have significant potential for geological activity; and

(B) to pose measurable risks of tsunamis for States along the coastal areas of the Atlantic Ocean or the Gulf of Mexico.

(3) COMPONENTS.—The systems shall—

(A) utilize an array of deep ocean detection buoys, including redundant and spare buoys;

(B) include an associated tide gauge and water level system designed for long-term continuous operation tsunami transmission capability;

(C) provide for establishment of a cooperative effort between the National Oceanic and Atmospheric Administration and the United States Geological Survey under which the Geological Survey provides rapid and reliable seismic information to the Administration from international and domestic seismic networks;

(D) provide for information and data processing through the tsunami warning centers established under subsection (c);

(E) be integrated into United States and global ocean and earth observing systems; and

(F) provide a communications infrastructure for at-risk tsunami communities that supports rapid and reliable alert and notification to the public such as the National Oceanic and Atmospheric Administration weather radio and the All Hazard Alert Broadcasting Radio.

(c) TSUNAMI WARNING CENTERS.—

(1) IN GENERAL.—The Administrator shall establish tsunami warning centers to provide a link between the detection and warning system and the tsunami hazard mitigation program established under section 4 including—

(A) a Pacific Tsunami Warning Center in Hawaii;

(B) a West Coast and Alaska Tsunami Warning Center in Alaska; and

(C) any additional warning centers determined by the Administrator to be necessary.

(2) RESPONSIBILITIES.—The responsibilities of each tsunami warning center shall include—

(A) continuously monitoring data from seismological, deep ocean, and tidal monitoring stations;

(B) evaluating earthquakes that have the potential to generate tsunami;

(C) evaluating deep ocean buoy data and tidal monitoring stations for indications of tsunami resulting from sources other than earthquakes; and

(D) disseminating information and warning bulletins appropriate for local and distant tsunamis to government agencies and the public and alerting potentially impacted coastal areas for evacuation.

(d) TRANSFER OF TECHNOLOGY; MAINTENANCE AND UPGRADES.—In carrying out this section, the Administrator shall—

(1) promulgate specifications and standards for forecast, detection, and warning systems, including detection equipment;

(2) develop and execute a plan for the transfer of technology from ongoing research to long-term operations;

(3) ensure that detection equipment is maintained in operational condition to fulfill the forecasting, detection and warning requirements of the regional tsunami detection and warning systems;

(4) obtain, to the greatest extent practicable, priority treatment in budgeting for, acquiring, transporting, and maintaining weather sensors, tide gauges, water level gauges, and tsunami buoys incorporated into the system including obtaining ship time; and

(5) ensure integration of the tsunami detection system with other United States and global ocean and coastal observation systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System.

(e) CERTIFICATION.—Amounts appropriated for any fiscal year pursuant to section 8 to carry out this section may not be obligated

or expended for the acquisition of services for construction or deployment of tsunami detection equipment unless the Administrator certifies in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science within 60 calendar days after the date on which the President submits the Budget of the United States for that fiscal year to the Congress that—

(1) each contractor for such services has met the requirements of the contract for such construction or deployment;

(2) the equipment to be constructed or deployed is capable of becoming fully operational without the obligation or expenditure of additional appropriated funds; and

(3) the Administrator does not reasonably foresee unanticipated delays in the deployment and operational schedule specified in the contract.

**SEC. 4. TSUNAMI HAZARD MITIGATION PROGRAM.**

(a) IN GENERAL.—The Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct a community-based tsunami hazard mitigation program to improve tsunami preparedness of at-risk areas.

(b) COORDINATING COMMITTEE.—In conducting the program, the Administrator shall establish a coordinating committee comprising representatives of—

(1) the National Oceanic and Atmospheric Administration;

(2) the United States Geological Survey;

(3) the Federal Emergency Management Agency;

(4) the National Science Foundation; and

(5) affected coastal States and territories.

(c) PROGRAM COMPONENTS.—The program shall—

(1) improve the quality and extent of inundation mapping, including assessment of vulnerable inner coastal areas;

(2) promote and improve community outreach and education networks and programs to ensure community readiness, including the development of multi-hazard risk and vulnerability assessment training and decision support tools, implementation of technical training and public education programs, and provide for certification of prepared communities;

(3) integrate tsunami preparedness and mitigation programs into ongoing hazard warning and risk management programs in affected areas including the National Response Plan;

(4) promote the adoption of tsunami warning and mitigation measures by Federal, State, tribal, and local governments and non-governmental entities through a grant program for training, development of guidelines, and other purposes;

(5) through the Federal Emergency Management Agency as the lead agency, develop tsunami specific rescue and recovery guidelines for the National Response Plan, including long-term mitigation measures, educational programs to discourage development in high-risk areas, and use of remote sensing and other technology in rescue and recovery operations;

(6) require budget coordination, through the Administration, to carry out the purposes of this Act and to ensure that participating agencies provide necessary funds for matters within their respective areas of authority and expertise; and

(7) provide for periodic external review of the program and for inclusion of the results of such reviews in the report required by section 6(c).

**SEC. 5. TSUNAMI RESEARCH PROGRAM.**

(a) ESTABLISHMENT.—The Administrator of the National Oceanic and Atmospheric Administration shall, in coordination with other agencies and academic institutions, establish a tsunami research program to develop detection, prediction, communication, and mitigation science and technology that supports tsunami forecasts and warnings, including advanced sensing techniques, information and communication technology, data collection, analysis and assessment for tsunami tracking and numerical forecast modeling that will—

(1) help determine—

(A) whether an earthquake or other seismic event will result in a tsunami; and

(B) the likely path, severity, duration, and travel time of a tsunami;

(2) develop techniques and technologies that may be used to communicate tsunami forecasts and warnings as quickly and effectively as possible to affected communities;

(3) develop techniques and technologies to support evacuation products, including real-time notice of the condition of critical infrastructure along tsunami evacuation routes for public officials and first responders; and

(4) develop techniques for utilizing remote sensing technologies in rescue and recovery operations.

(b) COMMUNICATIONS TECHNOLOGY.—The Administrator, in consultation with in consultation with the Assistant Secretary of Commerce for Communications and Information and the Federal Communications Commission, shall investigate the potential for improved communications systems for tsunami and other hazard warnings by incorporating into the existing network a full range of options for providing those warnings to the public, including, as appropriate—

(1) telephones, including special alert rings;

(2) wireless and satellite technology, including cellular telephones and pagers;

(3) the Internet, including e-mail;

(4) automatic alert televisions and radios;

(5) innovative and low-cost combinations of such technologies that may provide access to remote areas; and

(6) other technologies that may be developed.

**SEC. 6. TSUNAMI SYSTEM UPGRADE AND MODERNIZATION.**

(a) SYSTEM UPGRADES.—The Administrator of the National Oceanic and Atmospheric Administration shall—

(1) authorize and direct the immediate repair of existing deep ocean detection buoys and related components of the system;

(2) ensure the deployment of an array of deep ocean detection buoys in the regions described in section 3(a) of this Act;

(3) ensure expansion or upgrade of the tide gauge network in the regions described in section 3(a); and

(4) complete the upgrades not later than December 31, 2007.

(b) CONGRESSIONAL NOTIFICATIONS.—The Administrator shall notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science of—

(1) impaired regional detection coverage due to equipment or system failures; and

(2) significant contractor failures or delays in completing work associated with the tsunami detection and warning system.

(c) ANNUAL REPORT.—The Administrator shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science the status of the tsunami detection and warning system, including accuracy, false alarms, equipment failures, improvements over the previous year, and goals for further improvement (or plans for curing failures) of the system, as well as progress and accomplishments of the national tsunami hazard mitigation program.

(d) EXTERNAL REVIEW.—The National Academy of Science shall review the tsunami detection, forecast, and warning system operated by the National Oceanic and Atmospheric Administration under this Act to assess further modernization and coverage needs, as well as long-term operational reliability issues, taking into account measures implemented under this Act, and transmit a report containing its recommendations, including an estimate of the costs of implementing those recommendations, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science within 24 months after the date of enactment of this Act.

**SEC. 7. GLOBAL TSUNAMI WARNING AND MITIGATION NETWORK.**

(a) INTERNATIONAL TSUNAMI WARNING SYSTEM.—The Administrator of the National Oceanic and Atmospheric Administration, in coordination with other members of the United States Interagency Committee of the National Tsunami Mitigation Program, shall provide technical assistance and advice to the Intergovernmental Oceanographic Commission of UNESCO, the World Meteorological Organization, and other international entities, as part of international efforts to develop a fully functional global tsunami warning system comprised of regional tsunami warning networks, modeled on the International Tsunami Warning System of the Pacific.

(b) DETECTION EQUIPMENT; TECHNICAL ADVICE.—In carrying out this section, the Administrator—

(1) shall give priority to assisting nations in identifying vulnerable coastal areas, creating inundation maps, obtaining or designing real-time detection and reporting equipment, and establishing communication and warning networks and contact points in each vulnerable nation; and

(2) may establish a process for transfer of detection and communication technology to affected nations for the purposes of establishing the international tsunami warning system.

(c) DATA-SHARING REQUIREMENT.—The Administrator may not provide assistance under this section for any region unless all affected nations in that region participating in the tsunami warning network agree to share relevant data associated with the development and operation of the network.

(d) RECEIPT OF INTERNATIONAL REIMBURSEMENT AUTHORIZED.—The Administrator may accept payment to, or reimbursement of, the National Oceanic and Atmospheric Administration in cash or in kind from international organizations and foreign authorities, or payment or reimbursement made on behalf of such an authority, for expenses incurred by the Administrator in carrying out any activity under this Act. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Administration.

**SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Administrator of the National Oceanic and Atmospheric Administration $35,000,000 for each of fiscal years 2006 through 2012 to carry out this Act.

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Mr. President, the Tsunami Preparedness Act, S. 50, will authorize much of the work that Senator INOUYE and I have done on the Appropriations Committee. It establishes a National Tsunami Hazard Mitigation Program in the National Oceanic and Atmospheric Administration. The recent

events in Indonesia reminds us all how critical it is to have a strong detection network and warning system for coastal communities. Currently there are 15 communities from Alaska, the west coast and Hawaii that are ''Tsunami Ready'', a certification by NOAA that the community has a communication and coordination plan in case of a Tsunami event.

The Tsunami Preparedness Act provides the essential component of any warning system—a program for outreach and education to inform potentially Tsunami-impacted communities and for these coastal areas to plan accordingly.

I have worked closely with Senator INOUYE on this legislation and it is an example of how we plan to coordinate on bills from the Commerce Committee. This legislation also represents the importance of tsunami detection and early warning for our States, both of which have experienced deadly tsunamis in the past and are ever vigilant to remain prepared for future possible events.

The administration released its plan for an improved tsunami monitoring system on January 14, 2005, committing $37.5 million to improving early detection and warning of tsunami events. The administration's proposal is a good one and this bill will build on many of the commitments made in their plan. In addition, the bill improves the federal coordination and dissemination of tsunami information and research. It establishes a multi-agency task force consisting of representatives from NOAA, FEMA, USGS, NSF and potentially impacted coastal states and territories.

The tsunami preparedness act will expand tsunami research, and consistently upgrade and maintain the improved system, which would cover the Pacific and Atlantic-Caribbean-Gulf of Mexico regions. In an effort to lend help internationally, the bill also directs NOAA to assist other countries that could be impacted by tsunamis and build on the United States efforts to establish an international earth observing system.

It is a pleasure to work with my good friend from Hawaii on this important legislation.

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By Mr. INOUYE:

S. 58. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing a bill which is of great importance to a group of patriotic Americans. This legislation is designed to extend space-available travel privileges on military aircraft to those who have been totally disabled in the service of our country.

Currently, retired members of the Armed Services are permitted to travel on a space-available basis on non-scheduled military flights within the continental United States, and on scheduled overseas flights operated by the Military Airlift Command. My bill would provide the same benefits for veterans with 100 percent service-connected disabilities.

We owe these heroic men and women who have given so much to our country a debt of gratitude. Of course, we can never repay them for the sacrifices they have made on behalf of our Nation, but we can surely try to make their lives more pleasant and fulfilling. One way in which we can help is to extend military travel privileges to these distinguished American veterans. I have received numerous letters from all over the country attesting to the importance attached to this issue by veterans. Therefore, I ask that my colleagues show their concern and join me in saying ''thank you'' by supporting this legislation.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 58

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TRAVEL ON MILITARY AIRCRAFT OF CERTAIN DISABLED FORMER MEMBERS OF THE ARMED FORCES.**

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by inserting after section 1060b the following new section:

**''§ 1060c. Travel on military aircraft: certain disabled former members of the armed forces**

''The Secretary of Defense shall permit any former member of the armed forces who is entitled to compensation under the laws administered by the Secretary of Veterans Affairs for a service-connected disability rated as total to travel, in the same manner and to the same extent as retired members of the armed forces, on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Air Mobility Command. The Secretary of Defense shall permit such travel on a space-available basis.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1060b the following new item:

''1060c. Travel on military aircraft: certain disabled former members of the armed forces.''.

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By Mr. INOUYE:

S. 59. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing legislation to enable those former prisoners of war who have been separated honorably from their respective services and who have been rated as having a 30 percent service-connected disability to have the use of both the military commissary and post exchange privileges. While I realize it is impossible to adequately compensate one who has endured long periods of incarceration at the hands of our Nation's enemies, I do feel this gesture is both meaningful and important to those concerned because it serves as a reminder that our Nation has not forgotten their sacrifices.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 59

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. USE OF COMMISSARY AND EXCHANGE STORES BY CERTAIN DISABLED FORMER PRISONERS OF WAR.**

(a) IN GENERAL.—Chapter 54 of title 10, United States Code, is amended by inserting after section 1064 the following new section:

**''§ 1064a. Use of commissary and exchange stores by certain disabled former prisoners of war**

''(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, former prisoners of war described in subsection (b) may use commissary and exchange stores.

''(b) COVERED INDIVIDUALS.—Subsection (a) applies to any former prisoner of war who—

''(1) separated from active duty in the armed forces under honorable conditions; and

''(2) has a service-connected disability rated by the Secretary of Veterans Affairs at 30 percent or more.

''(c) DEFINITIONS.—In this section:

''(1) The term 'former prisoner of war' has the meaning given that term in section 101(32) of title 38.

''(2) The term 'service-connected' has the meaning given that term in section 101(16) of title 38.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1064 the following new item:

''1064a. Use of commissary and exchange stores by certain disabled former prisoners of war.''.

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By Mr. FEINGOLD:

S. 60. A bill to repeal the provision of law that provides automatic pay adjustments for Members of Congress; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, I am pleased to reintroduce legislation that would put an end to automatic cost-of-living adjustments for congressional pay.

As I have noted when I raised this issue in past years, it is an unusual thing to have the power to raise our own pay. Most of our constituents do not have that power. And that this power is so unusual is good reason for the Congress to exercise that power openly, and to exercise it subject to regular procedures that include debate, amendment, and a vote on the record.

I regret to say, that current law permits Congress to avoid that public debate and vote. All that is necessary for Congress to get a pay raise is that

nothing be done to stop it. The annual pay raise takes effect unless Congress acts.

This stealth pay raise mechanism began with a change Congress enacted in the Ethics Reform Act of 1989. In section 704 of that act, Members of Congress voted to make themselves entitled to an annual raise equal to half a percentage point less than the employment cost index, one measure of inflation.

It is true, that on occasion Congress has voted to deny itself the raise, and the traditional vehicle for the pay raise vote is the Treasury appropriations bill. But that vehicle is not always made available to those who want a public debate and vote on the matter. Just last year, for example, the Treasury appropriations bill was slipped into the massive Omnibus Appropriations conference report, and thus it was completely shielded from amendment. Senators were effectively prevented from offering an amendment to force an up or down vote on the annual pay raise. And that situation was not unique.

Getting a vote on the annual congressional pay raise is a haphazard affair at best, and it should not be that way. The burden should not be on those who seek a public debate and recorded vote on the Member pay raise. On the contrary, Congress should have to act if it decides to award itself a hike in pay. This process of pay raises without accountability must end.

This issue is not a new question. It was something that our Founders considered from the beginning of our Nation. In August 1789, as part of the package of 12 amendments advocated by James Madison that included what has become our Bill of Rights, the House of Representatives passed an amendment to the Constitution providing that Congress could not raise its pay without an intervening election. On September 9, 1789, the Senate passed that amendment. In late September 1789, Congress submitted the amendments to the States.

Although the amendment on pay raises languished for two centuries, in the 1980s, a campaign began to ratify it. While I was a member of the Wisconsin State Senate, I was proud to help ratify the amendment. Its approval by the Michigan Legislature on May 7, 1992, gave it the needed approval by three-fourths of the States.

The 27th amendment to the Constitution now states: ''No law, varying the compensation for the services of the senators and representatives, shall take effect, until an election of representatives shall have intervened.''

I try to honor that limitation in my own practices. In my own case, throughout my 6–year term, I accept only the rate of pay that Senators receive on the date on which I was sworn in as a Senator. And I return to the Treasury any additional income Senators get, whether from a cost-of-living adjustment or a pay raise we vote for ourselves. I don't take a raise until my bosses, the people of Wisconsin, give me one at the ballot box. That is the spirit of the 27th amendment. The stealth pay raises like the one that Congress allowed last year, at a minimum, certainly violate the spirit of that amendment.

This practice must end. This bill will end it. Senators and Congressmen should have to vote up-or-down to raise congressional pay. My bill would simply require us to vote in the open. We owe our constituents nothing less.

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

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

S. 60

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ELIMINATION OF AUTOMATIC PAY ADJUSTMENTS FOR MEMBERS OF CONGRESS.**

(a) IN GENERAL.—Paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 601(a)(1) of such Act is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)'';

(2) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(3) by striking ''as adjusted by paragraph (2) of this subsection'' and inserting ''adjusted as provided by law''.

(c) EFFECTIVE DATE.—This section shall take effect on February 1, 2007.

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By Mr. INOUYE:

S. 61. A bill to amend title XVIII of the Social Security Act to provide improved reimbursement for clinical social worker services under the medicare program; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I am introducing legislation to amend Title XVIII of the Social Security Act to correct discrepancies in the reimbursement of clinical social workers covered through Medicare, Part B. The three proposed changes contained in this legislation clarify the current payment process for clinical social workers and establish a reimbursement methodology for the profession that is similar to other health care professionals reimbursed through the Medicare program.

First, this legislation sets payment for clinical social worker services according to a fee schedule established by the Secretary. Second, it explicitly states that services and supplies furnished by a clinical social worker are a covered Medicare expense, just as these services are covered for other mental health professionals in Medicare. Third, the bill allows clinical social workers to be reimbursed for services provided to a client who is hospitalized.

Clinical social workers are valued members of our health care provider network. They are legally regulated in every state of the nation and are recognized as independent providers of mental health care throughout the health care system. It is time to correct the disparate reimbursement treatment of this profession under Medicare.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 61

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Equity for Clinical Social Workers Act of 2005''.

**SEC. 2. IMPROVED REIMBURSEMENT FOR CLINICAL SOCIAL WORKER SERVICES UNDER MEDICARE.**

(a) IN GENERAL.—Section 1833(a)(1)(F)(ii) of the Social Security Act (42 U.S.C. 1395l(a)(1)(F)(ii)) is amended to read as follows: ''(ii) the amount determined by a fee schedule established by the Secretary,''.

(b) DEFINITION OF CLINICAL SOCIAL WORKER SERVICES EXPANDED.—Section 1861(hh)(2) of the Social Security Act (42 U.S.C. 1395x(hh)(2)) is amended by striking ''services performed by a clinical social worker (as defined in paragraph (1))'' and inserting ''such services and such services and supplies furnished as an incident to such services performed by a clinical social worker (as defined in paragraph (1))''.

(c) CLINICAL SOCIAL WORKER SERVICES NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of the Social Security Act (42 U.S.C. 1395x(b)(4)) is amended by striking ''and services'' and inserting ''clinical social worker services, and services''.

(d) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING.—Section 1832(a)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395k(a)(2)(B)(iii)) is amended by striking ''and services'' and inserting ''clinical social worker services, and services''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made for clinical social worker services furnished on or after January 1, 2006.

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By Mr. INOUYE:

S. 62. A bill for the relief of Jim K. Yoshida; to the Committee on Veterans' Affairs.

Mr. INOUYE. Mr. President, today I am introducing a private relief bill on behalf of Jim K. Yoshida, to obtain recognition of his service with the U.S. military in Korea so that he may obtain veteran's status.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 62

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. VETERAN STATUS.**

(a) ENTITLEMENT TO STATUS.—Notwithstanding any other provision of law, Jim K. Yoshida of Honolulu, Hawaii, is deemed to be a veteran for the purposes of all laws administered by the Secretary of Veterans Affairs.

(b) TREATMENT OF SERVICE.—Notwithstanding any other provision of law, the service of Jim K. Yoshida of Honolulu, Hawaii, as a volunteer member of the United

States Army during the period beginning on July 2, 1950, and ending on January 17, 1951, shall be deemed to be active military service from which Jim K. Yoshida was discharged under honorable conditions for the purposes of all laws administered by the Secretary of Veterans Affairs.

(c) PROSPECTIVE APPLICABILITY.—No benefits may be paid or otherwise provided to Jim K. Yoshida of Honolulu, Hawaii, by reason of the enactment of this Act with respect to any period before the date of the enactment of this Act.

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By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 63. A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to reintroduce legislation to establish the Northern Rio Grande National Heritage Area in northern New Mexico. I am pleased that Senator DOMENICI is again joining me in sponsoring this bill. The Northern Rio Grande National Heritage Area will be established as part of a collaborative effort between local residents, Indian tribes, businesses and local governments, who are working together to preserve the area.

By establishing the Northern Rio Grande National Heritage Area, I hope to commemorate the significant but complex heritage of northern New Mexico communities and Indian tribes, from the pre-Spanish colonization period to present day. Establishing a National Heritage Area will benefit the northern New Mexico communities, local residents, students, and visitors, as well as help the local protection and interpretation of the unique cultural, historical, and natural resources of northern New Mexico.

Last Congress, identical legislation passed the Senate by unanimous consent and again as part of a comprehensive heritage area bill. The House of Representatives amended the bill to add authorizations for other heritage areas but unfortunately the different versions were not able to be reconciled prior to the sine die adjournment of the Congress. However, I am encouraged that the Senate and House have each approved authorization for the Northern Rio Grande National Heritage Area, and it is my hope that since both Houses have now passed legislation that is essentially identical to the bill I am introducing today, it can be swiftly considered and enacted into law.

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

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

S. 63

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Northern Rio Grande National Heritage Area Act''.

**SEC. 2. CONGRESSIONAL FINDINGS.**

The Congress finds that—

(1) northern New Mexico encompasses a mosaic of cultures and history, including eight Pueblos and the descendants of Spanish ancestors who settled in the area in 1598;

(2) the combination of cultures, languages, folk arts, customs, and architecture make northern New Mexico unique;

(3) the area includes spectacular natural, scenic, and recreational resources;

(4) there is broad support from local governments and interested individuals to establish a National Heritage Area to coordinate and assist in the preservation and interpretation of these resources;

(5) in 1991, the National Park Service study Alternative Concepts for Commemorating Spanish Colonization identified several alternatives consistent with the establishment of a National Heritage Area, including conducting a comprehensive archaeological and historical research program, coordinating a comprehensive interpretation program, and interpreting a cultural heritage scene; and

(6) establishment of a National Heritage Area in northern New Mexico would assist local communities and residents in preserving these unique cultural, historical and natural resources.

**SEC. 3. DEFINITIONS.**

As used in this Act—

(1) the term ''heritage area'' means the Northern Rio Grande Heritage Area; and

(2) the term ''Secretary'' means the Secretary of the Interior.

**SEC. 4. NORTHERN RIO GRANDE NATIONAL HERITAGE AREA.**

(a) ESTABLISHMENT.—There is hereby established the Northern Rio Grande National Heritage Area in the State of New Mexico.

(b) BOUNDARIES.—The heritage area shall include the counties of Santa Fe, Rio Arriba, and Taos.

(c) MANAGEMENT ENTITY.—

(1) The Northern Rio Grande National Heritage Area, Inc., a non-profit corporation chartered in the State of New Mexico, shall serve as the management entity for the heritage area.

(2) The Board of Directors for the management entity shall include representatives of the State of New Mexico, the counties of Santa Fe, Rio Arriba and Taos, tribes and pueblos within the heritage area, the cities of Santa Fe, Espanola and Taos, and members of the general public. The total number of Board members and the number of Directors representing State, local and tribal governments and interested communities shall be established to ensure that all parties have appropriate representation on the Board.

**SEC. 5. AUTHORITY AND DUTIES OF THE MANAGEMENT ENTITY.**

(a) MANAGEMENT PLAN.—

(1) Not later than 3 years after the date of enactment of this Act, the management entity shall develop and forward to the Secretary a management plan for the heritage area.

(2) The management entity shall develop and implement the management plan in cooperation with affected communities, tribal and local governments and shall provide for public involvement in the development and implementation of the management plan.

(3) The management plan shall, at a minimum—

(A) provide recommendations for the conservation, funding, management, and development of the resources of the heritage area;

(B) identify sources of funding;

(C) include an inventory of the cultural, historical, archaeological, natural, and recreational resources of the heritage area;

(D) provide recommendations for educational and interpretive programs to inform the public about the resources of the heritage area; and

(E) include an analysis of ways in which local, State, Federal, and tribal programs may best be coordinated to promote the purposes of this Act.

(4) If the management entity fails to submit a management plan to the secretary as provided in paragraph (1), the heritage area shall no longer be eligible to receive Federal funding under this Act until such time as a plan is submitted to the Secretary.

(5) The Secretary shall approve or disapprove the management plan within 90 days after the date of submission. If the Secretary disapproves the management plan, the Secretary shall advise the management entity in writing of the reasons therefore and shall make recommendations for revisions to the plan.

(6) The management entity shall periodically review the management plan and submit to the Secretary any recommendations for proposed revisions to the management plan. Any major revisions to the management plan must be approved by the Secretary.

(b) AUTHORITY.—The management entity may make grants and provide technical assistance to tribal and local governments, and other public and private entities to carry out the management plan.

(c) DUTIES.—The management entity shall—

(1) give priority in implementing actions set forth in the management plan;

(2) coordinate with tribal and local governments to better enable them to adopt land use policies consistent with the goals of the management plan;

(3) encourage by appropriate means economic viability in the heritage area consistent with the goals of the management plan; and

(4) assist local and tribal governments and non-profit organizations in—

(A) establishing and maintaining interpretive exhibits in the heritage area;

(B) developing recreational resources in the heritage area;

(C) increasing public awareness of, and appreciation for, the cultural, historical, archaeological and natural resources and sits in the heritage area;

(D) the restoration of historic structures related to the heritage area; and

(E) carrying out other actions that the management entity determines appropriate to fulfill the purposes of this Act, consistent with the management plan.

(d) PROHIBITION ON ACQUIRING REAL PROPERTY.—The management entity may not use Federal funds received under this Act to acquire real property or an interest in real property.

(e) PUBLIC MEETINGS.—The management entity shall hold public meetings at least annually regarding the implementation of the management plan.

(f) ANNUAL REPORTS AND AUDITS.—

(1) For any year in which the management entity receives Federal funds under this Act, the management entity shall submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each entity to which any grant was made by the management entity.

(2) The management entity shall make available to the Secretary for audit all records relating to the expenditure of Federal funds and any matching funds. The management entity shall also require, for all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organization make available to the Secretary for audit all records concerning the expenditure of those funds.

**SEC. 6. DUTIES OF THE SECRETARY.**

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary may, upon request of the management entity, provide technical and financial assistance to develop and implement the management plan.

(b) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the conservation of the significant natural, cultural, historical, archaeological, scenic, and recreational resources of the heritage area; and

(2) the provision of educational, interpretive, and recreational opportunities consistent with the resources and associated values of the heritage area.

**SEC. 7. SAVINGS PROVISIONS.**

(a) NO EFFECT ON PRIVATE PROPERTY.—Nothing in this Act shall be construed—

(1) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands; or

(2) to grant the management entity any authority to regulate the use of privately owned lands.

(b) TRIBAL LANDS.—Nothing in this Act shall restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

(c) AUTHORITY OF GOVERNMENTS.—Nothing in this Act shall—

(1) modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(2) authorize the management entity to assume any management authorities over such lands.

(d) TRUST RESPONSIBILITIES.—Nothing in this Act shall diminish the Federal Government's trust responsibilities or government-to-government obligations to any federally recognized Indian tribe.

**SEC. 8. SUNSET.**

The authority of the Secretary to provide assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

**SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this Act shall be not more than 50 percent.

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By Mr. INOUYE (for himself, Mr. STEVENS, and Mr. BURNS):

S. 65. A bill to amend the age restrictions for pilots; to the Committee on Commerce, Science, and Transportation.

Mr. INHOFE. Mr. President, I rise today, as an experienced pilot over age 60, along with my colleagues, Senator STEVENS and Senator BURNS, to introduce a bill that will help end age discrimination among airline pilots. I also want to thank my colleague in the other chamber, Congressman JIM GIBBONS, for his leadership on this issue and for introducing the companion version of this bill.

This bill will abolish the Federal Aviation Administration's Age 60 Rule—the regulation that for more than 40 years has forced the retirement of airline pilots the day they turn 60 and replace it with a rational plan that ties the commercial pilot retirement age to the Social Security retirement age currently 65.

Most nations have abolished mandatory age 60 retirement rules. The United States is one of only two countries in the Joint Aviation Authority that requires its commercial pilots to retire at the age of 60. Some countries, including Canada, Australia, and New Zealand have no upper age limit at all.

The Age 60 Rule has no basis in science or safety and never did. FAA data shows that pilots over age 60 are as safe as, and in some cases safer than, their younger colleagues. There have been numerous studies and statements in support of abolishing the Age 60 Rule.

In 1981, the National Institute of Aging stated that ''the Age 60 Rule appears indefensible on medical grounds'' and ''there is no convincing medical evidence to support age 60, or any other specific age, for mandatory pilot retirement.''

The FAA released the Hilton Study in 1993, which stated ''the data for all groups of pilots were remarkably consistent in showing a modest decrease in accident rate with age no hint of an increase in accident rates as pilots near age 60.''

Furthermore, in May 1999, the Senate Appropriations Committee asked the FAA to report on why the US should not cautiously increase the age to 63, ''like other countries have for commercial aviation.''

Airline Pilots magazine stated in a September 2003 article, ''If a permanent replacement for the 30 year Treasury bond rate is also applied to the calculation of lump-sum payments, we recommend a long transition period, similar to that proposed in H.R. 1776, the pension legislation introduced by Rep. BOB PORTMAN. For pilots who must retire at age 60, this is particularly important. It would be unfair to pull the rug out from under employees who have carefully planned their retirement finances, especially pilots who can't fly longer to make up for the amounts lost because of a change in the basis used to calculate lump-sum payments.''

As recently as September 14, 2004, in a hearing before the Senate Special Committee on Aging, Captain Joseph ''Ike'' Eichelkraut, President of Southwest Airlines Pilots' Association, testified:

''The 4400 plus pilots of the Southwest Airlines Pilots' Association, oppose the Age 60 Rule.

''Flying a commercial airliner is not the physically demanding environment I encountered 15 years ago in the 7 9 ''G'' world of the F–16 I flew in the Air Force. Commercial piloting is, however, a job requiring key management skills and sound judgment. These are talents that I have found typically come with age and experience.

''The facts are that plain. The FAA has the ideal mechanisms for ensuring safe pilots at any age are already in place. To retain my license and fly as a pilot for Southwest Airlines, I must pass semi-annual flight physicals administered by a qualified (FAA licensed) Aero-Medical Examiner (AME). When a pilot turns 40 years of age, he must undergo an EKG every other flight physical, which is electronically transmitted by the AME directly to FAA headquarters where a computer program alerts if parameters dictate.

''Pilots must also successfully pass semiannual simulator training and flight checks designed to evaluate the crewmember's ability to respond to various aircraft emergencies and/or competently handle advances in flight technology and the Air Traffic Control (ATC) environment. Captains must demonstrate, twice yearly, complete knowledge of systems and procedures, safe piloting skills and multi-tasking by managing emergency and normal flight situations, typically in instrument flight conditions conducted in advanced simulators. There is no greater test of cognitive ability and mental dexterity than these simulator rides. Flight crews are also administered random inflight check rides by FAA inspectors and Southwest check airmen. Further, we are subject to random alcohol and drug testing at any time while on duty. There is no other profession examined to this level. The 59 year old Captain arrives at this point in his career having demonstrated successful performance following years of this kind of scrutiny. FAA studies have verified the superior level of safety exhibited by this senior Captain.

''At Southwest, our pilots are trained to fly the aircraft on instruments down to 50′ above the ground in poor visibility conditions before acquiring the intended runway and landing visually. In simulators, both pilots must demonstrate the ability to immediately determine whether a safe landing can be made at this point and then either execute a ''go-around'' or land. The First Officer is trained to assume control of the aircraft and execute a ''go-around'' if the Captain fails to respond to procedures at this critical decision point. If either pilot should become incapacitated, even at touchdown, the other pilot is capable of assuming control in order to fly the airplane to a safe landing. The passengers would probably remain unaware that a pilot had become ill until the aircraft is met at the gate by Emergency Medical Technicians (EMT).

''Simulator failure rates among SWA pilots are low. Last year there were only 31 out of 4,200 simulator checkrides. But as pilots approach age 60 the failure numbers are at their lowest. The graph attached shows this and I believe that experience is the key. As pilots get older, they know how to better handle the extreme situations they may have encountered in simulator checks. The mean failure rate declines at an even rate from a pilot's thirties through his fifties. Of course, because of the Age 60 rule, I don't have data to

show that this trend would continue throughout a pilot's sixties, but I suspect it would.''

I urge the Commerce Committee to hold hearings along these lines.

Furthermore, on September 29, 2004, thousands of people watched as 63-year-old Michael Melvill made history by becoming the first civilian to pilot a craft into space. In doing so, he helped Paul Allen, the owner of Mojave Aerospace Ventures, which owns SpaceShipOne technology, along with the designer of SpaceShipOne, Burt Rutan, win the coveted $10 million Ansari X-Prize.

Melvill took SpaceShipOne above the 62-mile altitude point, ultimately soaring to 337,500 feet. Despite rolling nearly 30 times, Melvill was able to gain control of the vehicle, re-enter the atmosphere, and glide to a landing. I attribute this recovery and subsequent landing to Melvill's years of extensive experience as a test pilot.

This bill will allow our most experienced pilots, those like Michael Melvill demonstrably healthy, and fit for duty-to retain their jobs, a step that will benefit pilots, the financially burdened airlines, and most importantly, passengers. Now, more than ever before, we need to keep our best pilots flying.

Again, there is no scientific justification for requiring pilots to retire at age 60. Our pilots, our airlines, and our passengers deserve our consideration. I urge the rest of my colleagues to support this important legislation.

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By Mr. INOUYE:

S. 66. A bill to amend title XIX of the Social Security Act to provide for coverage of services provided by nursing school clinics under medicaid programs; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I introduce the Nursing School Clinics Act. This measure builds on our concerted efforts to provide access to quality health care for Americans by offering grants and incentives for nursing schools to establish primary care clinics in underserved areas where additional medical services are most needed. In addition, this measure provides the opportunity for nursing schools to enhance the scope of student training and education by providing firsthand clinical experience in primary care facilities.

Primary care clinics administered by nursing schools are university or nonprofit primary care centers developed mainly in collaboration with university schools of nursing and the communities they serve. These centers are staffed by faculty and staff who are nurse practitioners and public health nurses. Students supplement patient care while receiving preceptorships provided by college of nursing faculty and primary care physicians, often associated with academic institutions, who serve as collaborators with nurse practitioners. To date, the comprehensive models of care provided by nursing clinics have yielded excellent results, including significantly fewer emergency room visits, fewer hospital inpatient days, and less use of specialists, as compared to conventional primary health care.

This bill reinforces the principle of combining health care delivery in underserved areas with the education of advanced practice nurses. To accomplish these objectives, Title XIX of the Social Security Act would be amended to designate that the services provided in these nursing school clinics are reimbursable under Medicaid. The combination of grants and the provision of Medicaid reimbursement furnishes the financial incentives for clinic operators to establish the clinics.

In order to meet the increasing challenges of bringing cost-effective and quality health care to all Americans, we must consider a wide range of proposals, both large and small. Most importantly, we must approach the issue of health care with creativity and determination, ensuring that all reasonable avenues are pursued. Nurses have always been an integral part of health care delivery. The Nursing School Clinics Act recognizes the central role nurses can perform as care givers to the medically underserved.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 66

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Nursing School Clinics Act of 2005''.

**SEC. 2. MEDICAID COVERAGE OF SERVICES PROVIDED BY NURSING SCHOOL CLINICS.**

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (27), by striking ''and'' at the end;

(2) by redesignating paragraph (28) as paragraph (29); and

(3) by inserting after paragraph (27), the following new paragraph:

''(28) nursing school clinic services (as defined in subsection (x)) furnished by or under the supervision of a nurse practitioner or a clinical nurse specialist (as defined in section 1861(aa)(5)), whether or not the nurse practitioner or clinical nurse specialist is under the supervision of, or associated with, a physician or other health care provider; and''.

(b) NURSING SCHOOL CLINIC SERVICES DEFINED.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

''(y) The term 'nursing school clinic services' means services provided by a health care facility operated by an accredited school of nursing which provides primary care, long-term care, mental health counseling, home health counseling, home health care, or other health care services which are within the scope of practice of a registered nurse.''.

(c) CONFORMING AMENDMENT.—Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting ''and (28)'' after ''(24)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to payments made under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for calendar quarters commencing with the first calendar quarter beginning after the date of enactment of this Act.

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By Mr. INOUYE:

S. 67. A bill to amend the Public Health Act to provide health care practitioners in rural areas with training in preventive health care, including both physical and mental care, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, I rise today to introduce the Rural Preventive Health Care Training Act, a bill that responds to the dire need of our rural communities for quality health care and disease prevention programs. Almost one fourth of Americans live in rural areas and frequently lack access to adequate physical and mental health care. As many as 21 million of the 34 million people living in underserved rural areas are without access to a primary care provider. Even in areas where providers do exist, there are numerous limits to access, such as geography, distance, lack of transportation, and lack of knowledge about available resources. Due to the diversity of rural populations, language and cultural obstacles are often a factor in the access to medical care.

Compound these problems with limited financial resources, and the result is that many Americans living in rural communities go without vital health care, especially preventive care. Children fail to receive immunizations and routine checkups. Preventable illnesses and injuries occur needlessly, and lead to expensive hospitalizations. Early symptoms of emotional problems and substance abuse go undetected, and often develop into full-blown disorders.

An Institute of Medicine IOM report entitled, ''Reducing Risks for Mental Disorders: Frontiers for Preventive Intervention Research,'' highlights the benefits of preventive care for all health problems. The training of health care providers in prevention is crucial in order to meet the demand for care in underserved areas. Currently, rural health care providers lack preventive care training opportunities.

Interdisciplinary preventive training of rural health care providers must be encouraged. Through such training, rural health care providers can build a strong educational foundation from the behavioral, biological, and psychological sciences. Interdisciplinary team prevention training will also facilitate operations at sites with both health and mental health clinics by facilitating routine consultation between groups. Emphasizing the mental health disciplines and their services as part of the health care team will contribute to the overall health of rural communities.

The Rural Preventive Health Care Training Act would implement the

risk-reduction model described in the IOM study. This model is based on the identification of risk factors and targets specific interventions for those risk factors. The human suffering caused by poor health is immeasurable, and places a huge financial burden on communities, families, and individuals. By implementing preventive measures to reduce this suffering, the potential psychological and financial savings are enormous.

Mr. President. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 67

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Rural Preventive Health Care Training Act of 2005''.

**SEC. 2. PREVENTIVE HEALTH CARE TRAINING.**

Part D of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.) is amended by inserting after section 754 the following:

**''SEC. 754A. PREVENTIVE HEALTH CARE TRAINING.**

''(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, eligible applicants to enable such applicants to provide preventive health care training, in accordance with subsection (c), to health care practitioners practicing in rural areas. Such training shall, to the extent practicable, include training in health care to prevent both physical and mental disorders before the initial occurrence of such disorders. In carrying out this subsection, the Secretary shall encourage, but may not require, the use of interdisciplinary training project applications.

''(b) LIMITATION.—To be eligible to receive training using assistance provided under subsection (a), a health care practitioner shall be determined by the eligible applicant involved to be practicing, or desiring to practice, in a rural area.

''(c) USE OF ASSISTANCE.—Amounts received under a grant made or contract entered into under this section shall be used—

''(1) to provide student stipends to individuals attending rural community colleges or other institutions that service predominantly rural communities, for the purpose of enabling the individuals to receive preventive health care training;

''(2) to increase staff support at rural community colleges or other institutions that service predominantly rural communities to facilitate the provision of preventive health care training;

''(3) to provide training in appropriate research and program evaluation skills in rural communities;

''(4) to create and implement innovative programs and curricula with a specific prevention component; and

''(5) for other purposes as the Secretary determines to be appropriate.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $5,000,000 for each of fiscal years 2006 through 2009.''.

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By Mr. INOUYE:

S. 68. A bill to amend title XIX of the Social Security Act to provide 100 percent reimbursement for medical assistance provided to a Native Hawaiian through a federally-qualified health center or a Native Hawaiian health care system; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I introduce the Native Hawaiian Medicaid Coverage Act. This legislation would authorize a Federal Medicaid Assistance Percent (FMAP) of 100 percent for the payment of health care costs of Native Hawaiians who receive health care from Federally Qualified Health Centers or the Native Hawaiian Health Care System.

This bill was originally a provision within the Medicare Prescription Drug Bill, which the Senate passed by an overwhelming majority of 76 to 21, but was dropped from the final Medicare Prescription Drug Conference Report.

This bill is modeled on the Native Alaskan Health Care Act, which provides for a Federal Medicaid Assistance Percent (FMAP) of 100 percent for payment of health care costs for Native Alaskans by the Indian Health Service, an Indian tribe, or a tribal organization.

Community health centers serve as the ''safety net'' for uninsured and medically underserved Native Hawaiians and other United States citizens, providing comprehensive primary and preventive health services to the entire community. Outpatient services offered to the entire family include comprehensive primary care, preventive health maintenance, and education outreach in the local community. Community health centers, with their multidisciplinary approach, offer cost effective integration of health promotion and wellness with chronic disease management and primary care focused on serving vulnerable populations.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 68

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Native Hawaiian Medicaid Coverage Act of 2005''.

**SEC. 2. 100 PERCENT FMAP FOR MEDICAL ASSISTANCE PROVIDED TO A NATIVE HAWAIIAN THROUGH A FEDERALLY-QUALIFIED HEALTH CENTER OR A NATIVE HAWAIIAN HEALTH CARE SYSTEM UNDER THE MEDICAID PROGRAM.**

(a) MEDICAID.—The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by inserting '', and with respect to medical assistance provided to a Native Hawaiian (as defined in section 12 of the Native Hawaiian Health Care Improvement Act) through a federally-qualified health center or a Native Hawaiian health care system (as so defined) whether directly, by referral, or under contract or other arrangement between a federally-qualified health center or a Native Hawaiian health care system and another health care provider'' before the period.

(b) EFFECTIVE DATE.—The amendment made by this section applies to medical assistance provided on or after the date of enactment of this Act.

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By Mr. INOUYE:

S. 69. A bill for the relief of Donald C. Pence; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing a private relief mill on behalf of Donald C. Pence of Stanford, North Carolina, for compensation for the failure of the Department of Veterans Affairs to pay dependency and indemnity compensation to Kathryn E. Box, the now-deceased mother of Donald C. Pence. It is rare that a federal agency admits a mistake. In this case, the Department of Veterans Affairs has admitted that a mistake was made and explored ways to permit payment under the law, including equitable relief, but has found no provision authorizing the Department to release the remaining benefits that were unpaid to Mrs. Box at the time of her death. My bill would correct this injustice, and I urge my colleagues to support this measure.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 69

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. RELIEF OF DONALD C. PENCE.**

(a) RELIEF.—The Secretary of the Treasury shall pay, out of any moneys in the Treasury not otherwise appropriated, to Donald C. Pence, of Sanford, North Carolina, the sum of $31,128 in compensation for the failure of the Department of Veterans Affairs to pay dependency and indemnity compensation to Kathryn E. Box, the now-deceased mother of Donald C. Pence, for the period beginning on July 1, 1990, and ending on March 31, 1993.

(b) LIMITATION ON FEES.—Not more than a total of 10 percent of the payment authorized by subsection (a) shall be paid to or received by agents or attorneys for services rendered in connection with obtaining such payment, any contract to the contrary notwithstanding. Any person who violates this subsection shall be fined not more than $1,000.

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By Mr. INOUYE:

S. 70. A bill to amend title XVIII of the Social Security Act to remove the restriction that a clinical psychologist or a clinical social worker provide services in a comprehensive outpatient rehabilitation facility to a patient only under the care of a physician; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I introduce legislation to authorize the autonomous functioning of clinical psychologists and clinical social workers within the Medicare comprehensive outpatient rehabilitation facility program.

In my judgment, it is unfortunate that Medicare requires clinical supervision of the services provided by certain health professionals and does not allow them to function to the full extent of their State practice licenses. Those who need the services of outpatient rehabilitation facilities should have access to a wide range of social and behavioral science expertise. Clinical psychologists and clinical social workers are recognized as independent providers of mental health care services under the Federal Employee Health Benefits Program, the TRICARE Military Health Program of the Uniformed Services, the Medicare (Part B) Program, and numerous private insurance plans. This legislation will ensure that these qualified professionals achieve the same recognition under the Medicare comprehensive outpatient rehabilitation facility program.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 70

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Autonomy for Psychologists and Social Workers Act of 2005''.

**SEC. 2. REMOVAL OF RESTRICTION THAT A CLINICAL PSYCHOLOGIST OR CLINICAL SOCIAL WORKER PROVIDE SERVICES IN A COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY TO A PATIENT ONLY UNDER THE CARE OF A PHYSICIAN.**

(a) IN GENERAL.—Section 1861(cc)(2)(E) of the Social Security Act (42 U.S.C. 1395x(cc)(2)(E)) is amended by striking ''physician'' and inserting ''physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii)) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law and except that a patient receiving clinical social worker services (as defined in subsection (hh)(2)) may be under the care of a clinical social worker with respect to such services to the extent permitted under State law''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services provided on or after January 1, 2006.

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By Mr. INOUYE:

S. 71. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work at certain medicare providers, and for other purposes; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I introduce the Registered Nurse Safe Staffing Act. I am introducing this bill on behalf of the American Nurses Association's Chief Executive Officer and President Linda Stierle, MSN, RN, CNAA and Barbara A. Blakeney, MS, APRN, BC, ANP, respectively. For over four decades I have been a committed supporter of nurses and the delivery of safe patient care. While enforceable regulations will help to ensure patient safety, the complexity and variability of today's hospitals require that staffing patterns be determined at the hospital and unit level, with the professional input of registered nurses. More than a decade of research demonstrates that nurse staff levels and the skill mix of nursing staff directly affect the clinical outcomes of hospitalized patients. Studies show that when there are more registered nurses, there are lower mortality rates, shorter lengths of stay, reduced costs, and fewer complications.

A study published in the Journal of the American Medical Association found that the risks of patient mortality rose by 7 percent for every additional patient added to the average nurse's workload. In the midst of a nursing shortage and increasing financial pressures, hospitals often find it difficult to maintain adequate staffing. While nursing research indicates that adequate registered nurse staffing is vital to the health and safety of patients, there is no standardized public reporting mechanism, nor enforcement of adequate staffing plans. The only regulations addressing nursing staff exists vaguely in Medicare Conditions of Participation which states: ''The nursing service must have an adequate number of licensed registered nurses, licensed practice (vocational) nurse, and other personnel to provide nursing care to all patients as needed''.

This bill will require Medicare Participating Hospitals to develop and maintain reliable and valid systems to determine sufficient registered nurse staffing. Given the demands that the healthcare industry faces today, it is our responsibility to ensure that patients have access to adequate nursing care. However, we must ensure that the decisions by which care is provided are made by the clinical experts, the registered nurses caring for these patients. Support of this bill supports our nation's nurses during a critical shortage, but more importantly, works to ensure the safety of their patients.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 71

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Registered Nurse Safe Staffing Act of 2005''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) There are hospitals throughout the United States that have inadequate staffing of registered nurses to protect the well-being and health of the patients.

(2) Studies show that the health of patients in hospitals is directly proportionate to the number of registered nurses working in the hospital.

(3) There is a critical shortage of registered nurses in the United States.

(4) The effect of that shortage is revealed in unsafe staffing levels in hospitals.

(5) Patient safety is adversely affected by these unsafe staffing levels, creating a public health crisis.

(6) Registered nurses are being required to perform professional services under conditions that do not support quality health care or a healthful work environment for registered nurses.

(7) As a payer for inpatient and outpatient hospital services for individuals entitled to benefits under the medicare program established under title XVIII of the Social Security Act, the Federal Government has a compelling interest in promoting the safety of such individuals by requiring any hospital participating in such program to establish minimum safe staffing levels for registered nurses.

**SEC. 3. ESTABLISHMENT OF MINIMUM STAFFING RATIOS BY MEDICARE PARTICIPATING HOSPITALS.**

(a) REQUIREMENT OF MEDICARE PROVIDER AGREEMENT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (R), by striking ''and'' after the comma at the end;

(2) in subparagraph (S), by striking the period at the end and inserting '', and''; and

(3) by inserting after subparagraph (S) the following new subparagraph:

''(T) in the case of a hospital, to meet the requirements of section 1889.''.

(b) REQUIREMENTS.—Part D of title XVIII of the Social Security Act is amended by inserting after section 1888 the following new section:

''STAFFING REQUIREMENTS FOR MEDICARE PARTICIPATING HOSPITALS

''SEC. 1889. (a) ESTABLISHMENT OF STAFFING SYSTEM.—

''(1) IN GENERAL.—Each participating hospital shall adopt and implement a staffing system that ensures a number of registered nurses on each shift and in each unit of the hospital to ensure appropriate staffing levels for patient care.

''(2) STAFFING SYSTEM REQUIREMENTS.—Subject to paragraph (3), a staffing system adopted and implemented under this section shall—

''(A) be based upon input from the direct care-giving registered nurse staff or their exclusive representatives, as well as the chief nurse executive;

''(B) be based upon the number of patients and the level and variability of intensity of care to be provided, with appropriate consideration given to admissions, discharges, and transfers during each shift;

''(C) account for contextual issues affecting staffing and the delivery of care, including architecture and geography of the environment and available technology;

''(D) reflect the level of preparation and experience of those providing care;

''(E) account for staffing level effectiveness or deficiencies in related health care classifications, including but not limited to, certified nurse assistants, licensed vocational nurses, licensed psychiatric technicians, nursing assistants, aides, and orderlies;

''(F) reflect staffing levels recommended by specialty nursing organizations;

''(G) establish upwardly adjustable registered nurse-to-patient ratios based upon registered nurses' assessment of patient acuity and existing conditions;

''(H) provide that a registered nurse shall not be assigned to work in a particular unit without first having established the ability to provide professional care in such unit; and

''(I) be based on methods that assure validity and reliability.

''(3) LIMITATION.—A staffing system adopted and implemented under paragraph (1) may not—

''(A) set registered-nurse levels below those required by any Federal or State law or regulation; or

''(B) utilize any minimum registered nurse-to-patient ratio established pursuant to paragraph (2)(G) as an upper limit on the staffing of the hospital to which such ratio applies.

''(b) REPORTING, AND RELEASE TO PUBLIC, OF CERTAIN STAFFING INFORMATION.—

''(1) REQUIREMENTS FOR HOSPITALS.—Each participating hospital shall—

''(A) post daily for each shift, in a clearly visible place, a document that specifies in a uniform manner (as prescribed by the Secretary) the current number of licensed and unlicensed nursing staff directly responsible for patient care in each unit of the hospital, identifying specifically the number of registered nurses;

''(B) upon request, make available to the public—

''(i) the nursing staff information described in subparagraph (A); and

''(ii) a detailed written description of the staffing system established by the hospital pursuant to subsection (a); and

''(C) submit to the Secretary in a uniform manner (as prescribed by the Secretary) the nursing staff information described in subparagraph (A) through electronic data submission not less frequently than quarterly.

''(2) SECRETARIAL RESPONSIBILITIES.—The Secretary shall—

''(A) make the information submitted pursuant to paragraph (1)(C) publicly available, including by publication of such information on the Internet site of the Department of Health and Human Services; and

''(B) provide for the auditing of such information for accuracy as a part of the process of determining whether an institution is a hospital for purposes of this title.

''(c) RECORDKEEPING; DATA COLLECTION; EVALUATION.—

''(1) RECORDKEEPING.—Each participating hospital shall maintain for a period of at least 3 years (or, if longer, until the conclusion of pending enforcement activities) such records as the Secretary deems necessary to determine whether the hospital has adopted and implemented a staffing system pursuant to subsection (a).

''(2) DATA COLLECTION ON CERTAIN OUTCOMES.—The Secretary shall require the collection, maintenance, and submission of data by each participating hospital sufficient to establish the link between the staffing system established pursuant to subsection (a) and—

''(A) patient acuity from maintenance of acuity data through entries on patients' charts;

''(B) patient outcomes that are nursing sensitive, such as patient falls, adverse drug events, injuries to patients, skin breakdown, pneumonia, infection rates, upper gastrointestinal bleeding, shock, cardiac arrest, length of stay, and patient readmissions;

''(C) operational outcomes, such as work-related injury or illness, vacancy and turnover rates, nursing care hours per patient day, on-call use, overtime rates, and needle-stick injuries; and

''(D) patient complaints related to staffing levels.

''(3) EVALUATION.—Each participating hospital shall annually evaluate its staffing system and establish minimum registered nurse staffing ratios to assure ongoing reliability and validity of the system and ratios. The evaluation shall be conducted by a joint management-staff committee comprised of at least 50 percent of registered nurses who provide direct patient care.

''(d) ENFORCEMENT.—

''(1) RESPONSIBILITY.—The Secretary shall enforce the requirements and prohibitions of this section in accordance with the succeeding provisions of this subsection.

''(2) PROCEDURES FOR RECEIVING AND INVESTIGATING COMPLAINTS.—The Secretary shall establish procedures under which—

''(A) any person may file a complaint that a participating hospital has violated a requirement or a prohibition of this section; and

''(B) such complaints are investigated by the Secretary.

''(3) REMEDIES.—If the Secretary determines that a participating hospital has violated a requirement of this section, the Secretary—

''(A) shall require the facility to establish a corrective action plan to prevent the recurrence of such violation; and

''(B) may impose civil money penalties under paragraph (4).

''(4) CIVIL MONEY PENALTIES.—

''(A) IN GENERAL.—In addition to any other penalties prescribed by law, the Secretary may impose a civil money penalty of not more than $10,000 for each knowing violation of a requirement of this section, except that the Secretary shall impose a civil money penalty of more than $10,000 for each such violation in the case of a participating hospital that the Secretary determines has a pattern or practice of such violations (with the amount of such additional penalties being determined in accordance with a schedule or methodology specified in regulations).

''(B) PROCEDURES.—The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A.

''(C) PUBLIC NOTICE OF VIOLATIONS.—

''(i) INTERNET SITE.—The Secretary shall publish on the Internet site of the Department of Health and Human Services the names of participating hospitals on which civil money penalties have been imposed under this section, the violation for which the penalty was imposed, and such additional information as the Secretary determines appropriate.

''(ii) CHANGE OF OWNERSHIP.—With respect to a participating hospital that had a change in ownership, as determined by the Secretary, penalties imposed on the hospital while under previous ownership shall no longer be published by the Secretary of such Internet site after the 1-year period beginning on the date of change in ownership.

''(e) WHISTLEBLOWER PROTECTIONS.—

''(1) PROHIBITION OF DISCRIMINATION AND RETALIATION.—A participating hospital shall not discriminate or retaliate in any manner against any patient or employee of the hospital because that patient or employee, or any other person, has presented a grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any kind, relating to the staffing system or other requirements and prohibitions of this section.

''(2) RELIEF FOR PREVAILING EMPLOYEES.—An employee of a participating hospital who has been discriminated or retaliated against in employment in violation of this subsection may initiate judicial action in a United States district court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to reasonable attorney's fees and costs associated with pursuing the case.

''(3) RELIEF FOR PREVAILING PATIENTS.—A patient who has been discriminated or retaliated against in violation of this subsection may initiate judicial action in a United States district court. A prevailing patient shall be entitled to liquidated damages of $5,000 for a violation of this statute in addition to any other damages under other applicable statutes, regulations, or common law. Prevailing patients are entitled to reasonable attorney's fees and costs associated with pursuing the case.

''(4) LIMITATION ON ACTIONS.—No action may be brought under paragraph (2) or (3) more than 2 years after the discrimination or retaliation with respect to which the action is brought.

''(5) TREATMENT OF ADVERSE EMPLOYMENT ACTIONS.—For purposes of this subsection—

''(A) an adverse employment action shall be treated as retaliation or discrimination; and

''(B) the term 'adverse employment action' includes—

''(i) the failure to promote an individual or provide any other employment-related benefit for which the individual would otherwise be eligible;

''(ii) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual; and

''(iii) a personnel action that is adverse to the individual concerned.

''(f) RELATIONSHIP TO STATE LAWS.—Nothing in this section shall be construed as exempting or relieving any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful practice under this title.

''(g) RELATIONSHIP TO CONDUCT PROHIBITED UNDER THE NATIONAL LABOR RELATIONS ACT OR OTHER COLLECTIVE BARGAINING LAWS.—Nothing in this section shall be construed as permitting conduct prohibited under the National Labor Relations Act or under any other Federal, State, or local collective bargaining law.

''(h) REGULATIONS.—The Secretary shall promulgate such regulations as are appropriate and necessary to implement this section.

''(i) DEFINITIONS.—In this section:

''(1) PARTICIPATING HOSPITAL.—The term 'participating hospital' means a hospital that has entered into a provider agreement under section 1866.

''(2) REGISTERED NURSE.—The term 'registered nurse' means an individual who has been granted a license to practice as a registered nurse in at least 1 State.

''(3) UNIT.—The term 'unit' of a hospital is an organizational department or separate geographic area of a hospital, such as a burn unit, a labor and delivery room, a post-anesthesia service area, an emergency department, an operating room, a pediatric unit, a stepdown or intermediate care unit, a specialty care unit, a telemetry unit, a general medical care unit, a subacute care unit, and a transitional inpatient care unit.

''(4) SHIFT.—The term 'shift' means a scheduled set of hours or duty period to be worked at a participating hospital.

''(5) PERSON.—The term 'person' means 1 or more individuals, associations, corporations, unincorporated organizations, or labor unions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

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By Mr. INOUYE:

S. 72. A bill to amend title 5, United States Code, to require the issuance of a prisoner-of-war medal to civilian employees of the Federal Government who are forcibly detained or interned by an enemy government or a hostile force under wartime conditions; to the Committee on Homeland Security and Governmental Affairs.

Mr. INOUYE. Mr. President, all too often we find that our Nation's civilian employees of the Federal Government who have been forcibly detained or interned by a hostile government do not receive the recognition they deserve. My bill would correct this inequity and provide a prisoner of war medal for such citizens.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 72

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PRISONER-OF-WAR MEDAL FOR CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT.**

(a) AUTHORITY TO ISSUE PRISONER-OF-WAR MEDAL.—(1) Subpart A of part III of title 5, United States Code, is amended by inserting after chapter 23 the following new chapter:

**"CHAPTER 25—MISCELLANEOUS AWARDS**

''Sec.

''2501. Prisoner-of-war medal: issue.

**"§ 2501. Prisoner-of-war medal: issue**

''(a) The President shall issue a prisoner-of-war medal to any person who, while serving in any capacity as an officer or employee of the Federal Government, was forcibly detained or interned, not as a result of such person's own willful misconduct—

''(1) by an enemy government or its agents, or a hostile force, during a period of war; or

''(2) by a foreign government or its agents, or a hostile force, during a period other than a period of war in which such person was held under circumstances which the President finds to have been comparable to the circumstances under which members of the armed forces have generally been forcibly detained or interned by enemy governments during periods of war.

''(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

''(c) Not more than one prisoner-of-war medal may be issued to a person under this section or section 1128 of title 10. However, for each succeeding service that would otherwise justify the issuance of such a medal, the President (in the case of service referred to in subsection (a) of this section) or the Secretary concerned (in the case of service referred to in section 1128(a) of title 10) may issue a suitable device to be worn as determined by the President or the Secretary, as the case may be.

''(d) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

''(e) If a person dies before the issuance of a prisoner-of-war medal to which the person is entitled, the medal may be issued to that person's representative, as designated by the President.

''(f) Under regulations prescribed by the President, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

''(g) In this section, the term 'period of war' has the meaning given such term in section 101(11) of title 38.''.

(2) The table of chapters at the beginning of part III of such title is amended by inserting after the item relating to chapter 23 the following new item:

**"25. Miscellaneous Awards ..... 2501".**

(b) APPLICABILITY.—Section 2501 of title 5, United States Code, as added by subsection (a), applies with respect to any person who, after April 5, 1917, is forcibly detained or interned as described in subsection (a) of such section.

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By Ms. CANTWELL:

S. 73. A bill to promote food safety and to protect the animal feed supply from bovine spongiform encephalopathy; to the Committee on Agriculture, Nutrition, and Forestry.

Ms. CANTWELL. Mr. President, today I am introducing the Animal Feed Protection Act of 2005. It is similar to legislation that I introduced in the 108th Congress.

Last week, during the Senate's consideration of the nomination of Governor Mike Johanns to be the Secretary of Agriculture, I spoke in favor of exercising caution with respect to re-opening the U.S.-Canadian border to imports of live animals and processed beef products until the Animal Protective Health Inspection Service fully investigates the most recent case of Mad Cow in that country. This legislation is important to our ongoing efforts to eradicate the possibility that Mad Cow disease will infect U.S. cattle herds.

My legislation provides necessary enhancements to current Federal feed regulations. It reduces the chance that the riskiest materials, those most likely to transmit Mad Cow disease, cross-contaminate cattle feed or are accidentally fed to cattle.

Specifically, my legislation would ban the inclusion of specified risk materials, or SRM, in all animal feed. Currently these materials are only banned from ruminant feed.

As we continue to negotiate the reopening of export markets to U.S. beef, a comprehensive SRM ban is a prudent step. It is necessary to assure our trading partners that we have secured our domestic feed, and eliminated the risk of spreading Mad Cow disease through feed.

As our domestic beef producers continue to suffer from the closure of our largest export markets, I encourage my colleagues to join me by cosponsoring this legislation—a measure that will strengthen our Mad Cow firewalls and our assurances to foreign beef consumers. I also hope that as the Senate Agriculture Committee conducts hearings next month into the appropriate Federal response to the most recent Canadian Mad Cow case, the committee will consider examining this legislation as well. The Senate should move toward its swift passage. Mr. President, I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 73

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Animal Feed Protection Act of 2005''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) BSE.—The term ''BSE'' means bovine spongiform encephalopathy.

(2) COVERED ARTICLE.—

(A) IN GENERAL.—The term ''covered article'' means—

(i) feed for an animal;

(ii) a nutritional supplement for an animal;

(iii) medicine for an animal; and

(iv) any other article of a kind that is ordinarily ingested, implanted, or otherwise taken into an animal.

(B) EXCLUSIONS.—The term ''covered article'' does not include—

(i) an unprocessed agricultural commodity that is readily identifiable as nonanimal in origin, such as a vegetable, grain, or nut;

(ii) an article described in subparagraph (A) that, based on compelling scientific evidence, the Secretary determines does not pose a risk of transmitting prion disease; or

(iii) an article regulated by the Secretary that, as determined by the Secretary—

(I) poses a minimal risk of carrying prion disease; and

(II) is necessary to protect animal health or public health.

(3) SPECIFIED RISK MATERIAL.—

(A) IN GENERAL.—The term ''specified risk material'' means—

(i) the skull, brain, trigeminal ganglia, eyes, tonsils, spinal cord, vertebral column, or dorsal root ganglia of—

(I) cattle and bison 30 months of age and older; or

(II) sheep, goats, deer, and elk 12 months of age and older;

(ii) the intestinal tract of a ruminant of any age; and

(iii) any other material of a ruminant that may carry a prion disease, as determined by the Secretary, based on scientifically credible research.

(B) MODIFICATION.—The Secretary shall conduct an annual review of scientific research and may modify the definition of specified risk material based on scientifically credible research (including the conduct of ante-mortem and post-mortem tests certified by the Secretary of Agriculture).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

**SEC. 3. PROTECTION OF ANIMAL FEED AND PUBLIC HEALTH.**

It shall be unlawful for any person to introduce into interstate or foreign commerce a covered article if the covered article contains—

(1)(A) specified risk material from a ruminant; or

(B) any material from a ruminant that—

(i) was in any foreign country at a time at which there was a risk of transmission of BSE in the country, as determined by the Secretary of Agriculture; and

(ii) may contain specified risk material from a ruminant; or

(2) any material from a ruminant exhibiting signs of a neurological disease.

**SEC. 4. ENFORCEMENT.**

(a) COOPERATION.—The Secretary and the heads of other Federal agencies, as appropriate, shall cooperate with the Attorney General in enforcing this Act.

(b) DUE PROCESS.—Any person subject to enforcement action under this section shall have the opportunity for an informal hearing on the enforcement action as soon as practicable after, but not later than 10 days after, the enforcement action is taken.

(c) REMEDIES.—In addition to any remedies available under other provisions of law, the head of a Federal agency may enforce this Act by—

(1) seizing and destroying an article that is introduced into interstate or foreign commerce in violation of this Act; or

(2) issuing an order requiring any person that introduces an article into interstate or foreign commerce in violation of this Act—

(A) to cease the violation;

(B)(i) to recall any article that is sold; and

(ii) to refund the purchase price to the purchaser;

(C) to destroy the article or forfeit the article to the United States for destruction; or

(D) to cease operations at the facility at which the article is produced until the head of the appropriate Federal agency determines that the operations are no longer in violation of this Act.

(d) CIVIL AND MONETARY PENALTIES.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations establishing the appropriate level of civil and monetary penalties necessary to carry out this Act.

**SEC. 5. TRAINING STANDARDS.**

The Secretary, in consultation with the Secretary of Agriculture, shall issue training standards to industry for the removal of specified risk materials.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated $5,000,000 to carry out this Act.

**SEC. 7. EFFECTIVE DATE.**

This Act takes effect on the date that is 180 days after the date of enactment of this Act.

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By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 74. A bill to designate a portion of the White Salmon River as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, today I am introducing the White Salmon Wild and Scenic Rivers Act. I am pleased to be joined by the Senior Senator from Washington (Mrs. MURRAY), who has been a strong supporter of this legislation.

This bill would designate some 20 miles of the main stem of the upper White Salmon River Salmon and one of its tributaries, Cascade Creek, all within the Gifford Pinchot National Forest, as components of the National Wild and Scenic Rivers System. By designating this upper third of the White Salmon, we can permanently protect this special river as a premiere recreational destination, a Southwest Washington economic resource, and an important wildlife habitat.

I am happy to note that my delegation colleague, Congressman BAIRD, recently offered identical legislation in the House.

The White Salmon River's remarkable beauty and pristine condition are not in question. In fact, the lower eight miles of the river received protection when Congress granted that stretch of the river Wild and Scenic status in 1986. As we saw then, its protected status hasn't prevented residents and visitors from taking advantage of the unique recreational opportunities the White Salmon River offers. Extending Wild and Scenic protection to the river's upper reaches today is an important step forward in protecting even more of its wild character for fishing, boating, and other recreational activities.

As one of the best whitewater rivers in the Pacific Northwest, the White Salmon already supports a number of whitewater rafting companies. About 12,000 whitewater boaters visit the river each year. So I see this designation as not just protecting a pristine river, but also its beneficial impact on the local economy downstream.

Protecting the White Salmon River will help increase opportunities for other outdoor sports, as well. This is an important sector of our state's economy. According to the Washington Department of Fish and Wildlife, fish and wildlife related recreation pumps nearly $2.2 billion per year into our economy. And we rank first in the Northwest and eighth in the nation in spending by sport fishers.

Safeguarding the White Salmon through this designation will also be an important step toward restoring wildlife habitat. Once the Condit Dam is removed from the lower reach of the river, the White Salmon will again become valuable spawning habitat for salmon and steelhead.

I am proud that identical legislation to the measure I introduce today passed the Senate unanimously on October 10, 2004. While the bill narrowly missed clearing the House of Representatives, I am confident that because this bill has a broad range of support, and is a true win-win proposal for local interests, that it will become law during the 109th Congress.

Mr. President, I look forward to working with my colleagues in the Senate, as well as other members of the Washington state congressional delegation, to ensure swift passage of this important legislation. I ask unanimous consent that a copy of the legislation be printed in the RECORD at the conclusion of my remarks.

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

S. 74

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Upper White Salmon Wild and Scenic Rivers Act''.

**SEC. 2. UPPER WHITE SALMON WILD AND SCENIC RIVER.**

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

'' ( ) WHITE SALMON RIVER, WASHINGTON.—The 20 miles of river segments of the main stem of the White Salmon River and Cascade Creek, Washington, to be administered by the Secretary of Agriculture in the following classifications:

''(A) The approximately 1.6-mile segment of the main stem of the White Salmon River from the headwaters on Mount Adams in section 17, township 8 north, range 10 east, downstream to the Mount Adams wilderness boundary as a wild river.

''(B) The approximately 5.1-mile segment of Cascade Creek from its headwaters on Mount Adams in section 10, township 8 north, range 10 east, downstream to the Mount Adams Wilderness boundary as a wild river.

''(C) The approximately 1.5-mile segment of Cascade Creek from the Mount Adams Wilderness boundary downstream to its confluence with the White Salmon River as a scenic river.

''(D) The approximately 11.8-mile segment of the main stem of the White Salmon River from the Mount Adams Wilderness boundary downstream to the Gifford Pinchot National Forest boundary as a scenic river.''.

**SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

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By Ms. CANTWELL:

S. 75. A bill to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts; to the Committee on Finance.

Ms. CANTWELL. Mr. President, today I am introducing two pieces of legislation to help families save for their children's education.

In today's global marketplace, ensuring access to high-quality education—starting in early childhood and grade school, moving on to college and beyond—is central in maintaining America's competitive edge. To make paying for school easier, I am introducing two pieces of legislation that would expand Coverdell Education Savings Accounts or ESAs: The Education Savings for Students Act and College Savings Act.

Coverdell ESAs are trusts created solely for the educational benefit of any child under the age of 18. Contributions to a Coverdell Education Savings account can be used toward a child's education from kindergarten through 12th grade, college, and even graduate school. All earnings in the account grow tax-free and can be withdrawn on a tax-deferred basis, if used for educational expenses. Currently, annual contributions to each Coverdell ESA cannot exceed $2,000. But this particular provision will sunset on 12/31/2010 unless Congress takes action to extend it, otherwise the maximum contribution will drop back to a previously set stipulation of $500.

My bill, the Education for Students Act would expand the existing Coverdell ESA by permanently increasing the maximum annual contribution from $2,000 to $5,000. This bill keeps the current Coverdell ESA provision that investment earnings accumulate tax-free and withdrawals from the account are tax-exempt when the child uses the funds for school.

My other bill, the College Savings Act would also permanently increase the maximum annual contribution to a Coverdell ESA to $5,000. Instead of anticipating future earnings, families would be able to deduct the amount they contribute to their education savings account from income.

Rather than putting away money ad-hoc, both bills provide a financial incentive to save for college or other educational expenses. And since there is no limit on the number of Coverdell ESAs that may be opened for a child under age 18, parents have the flexibility to set aside money now through deductible contributions or bank on projected savings through tax-deferred earnings and withdrawals, or even take on both options. The College Savings and Education Savings for Students Acts will help families plan for future educational expenses, paving a path to financial self-sufficiency.

I understand that all families are different. Saving for college may be the last thing on a parent's mind, especially when their child is young and their family has significant financial needs. But just as fast as our children

grow, so does the cost of tuition. Mounting prices for books and materials, plus room and board have made colleges and universities less affordable for most families.

College is expensive. There are many parents whose children aim to go to college, but soon discover they can't afford it because the price of pursuing a higher education costs too much. If the College Savings and Education for Students Acts became law, families would have another powerful tool to help their children realize their educational dreams.

By saving money early and often, families won't feel as hard hit by skyrocketing college prices because you'll know what's coming in and what's going out of these accounts.

In 2002, the National Center for Public Policy and Higher Education reported on the national trends of rising college prices. The Center determined that if educational costs are unaddressed there will be adverse consequences for expanding students' opportunities to pursue a higher education and future career.

This report found that over the last two decades, the cost of attending two- and four-year public and private colleges have not only grown more rapidly than inflation, but faster than family incomes, increasing the share of family income that is needed to pay for tuition and other college expenses. From 1991 through 2001, tuition at four-year public colleges and universities rose faster than family income in 41 states, including my home state of Washington.

The Washington State Higher Education Coordinating Board reports that, over the last ten years, tuition and fees have far outpaced family income, increasing 89 percent compared to 51 percent in per capita personal income in my state. In comparison, the cost of most consumer goods increased an average of 20 percent during the same time. Per capita personal income in Washington increased 51 percent during this same period.

As a result, more students and families at all income levels are borrowing more money than ever before to pay for college. According to a recent study by the College Board, nonfederal borrowing reached $11.3 billion in 2003–04, up 39 percent over the previous year, and jumping nearly 150 percent in three years. Over $10 billion of these loans are private. Over the past five years, borrowing through banks and other private lenders has increased from 7 percent to 16 percent of education loan volume.

Although borrowing is an acceptable way to pay for college, the financial consequences of high debt can still ensue, and students spend years paying back loans, undermining their ability to purchase a home or save for retirement. Additionally, college students on average graduate with about $3,300 in credit card debit alone. Concern about the increase in educational loan debt may cause students to spend more time working than attending class or to opt out of enrolling in college altogether.

Moreover, the steepest increases in college and university tuition have been imposed during times of greatest economic hardship. Just in the past three years, our economy has experienced a loss of 1.8 million private sector jobs and 2.7 million manufacturing jobs. Preparing America's workforce and keeping up with the demand for skilled workers across all sectors of the 21st century economy is my priority. If we want to maintain our economic competitiveness, it is imperative that there are opportunities for individuals to fully take advantage of educational opportunities.

The Bureau of Labor Statistics reports that six of the ten fastest-growing occupations in the U.S. economy require an associate's degree or bachelor's degree, and that all ten of these careers will require some type of skills training. By 2010, 40 percent of all job growth will require some form of post-secondary education.

On average, a college graduate earns nearly 73 percent more than a typical high school graduate. In 2003, the average worker in the U.S. with a four-year college degree earned just under $50,000, over 60 percent more than the $30,800 earned by the average worker with a high school diploma, reports the College Board. Those with advanced degrees earn two to three times as much as high school graduates. In addition, society reaps the benefits of an educated workforce by improving quality of life and overall, the well-being of our communities.

Affordability is key to expanding opportunities to go to college. Saving for college early and often will help lift the pressures off of parents who are feeling the financial squeeze of increased tuition and fees.

Because my family qualified for financial aid, I was able to work my way through college using Pell grant funding. But there are many families who do not qualify for Pell or other sources of financial aid.

For these families, Coverdell Education Savings plans provide necessary relief for the middle class. The purpose of education savings plans are to increase saving by increasing net returns. Today, parents can put up to $2,000 a year into a Coverdell Education Savings account. The actual contribution is not tax deductible, but all earnings in this account are free from taxes when they are withdrawn to pay for school.

However, the current $2,000 annual limit on Coverdell contributions will be repealed in 2010 unless Congress acts to extend it. If we don't extend the contribution level, the maximum contribution will drop to $500.

While the current tax benefit makes it easier to save for college, the Education Savings for Students Act would increase the annual contributions from $2,000 to $5,000; making this change permanent ensures greater savings for families. By increasing the amount parents can put aside for their children's college savings, middle-income parents will be able to save more easily for their child's college education.

Say, for example, parents start saving when their child turns eight years old. If they put away just $100.00 a month—at an interest rate of savings of four percent—by the time their kid turns 18, their account would have earned more than $12,400 in interest. Parents will save over $3,100 in taxes when that child is old enough to go to school.

In addition to projected savings, parents also have the option to save now. The College Savings Act would allow families to deduct Coverdell ESA contributions from their taxes each year.

Mr. President, both of these bills, the College Savings Act and the Education Savings for Students Act are financial incentives for people to save by allowing families to deduct the amount they contribute and take tax-free earnings when their child is ready to go to school. These bills would further lessen the financial burden that parents bear by saving money early and often.

Permanently expanding the Coverdell maximum contribution from its current threshold of $2,000 to $5,000 a year and allowing this contribution to be tax deductible is a common-sense savings vehicle that keeps future college costs from spinning out of control. Increasing contribution caps will make school more affordable at a time when a college education and advanced job training is becoming more and more important for economic success.

I urge my colleagues to support these measures and I ask unanimous consent that the full text of these bills be printed in the RECORD.

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

S. 75

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''The Education Savings for Students Act of 2005''.

**SEC. 2. INCREASE IN MAXIMUM ANNUAL CONTRIBUTION FOR COVERDELL EDUCATION SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Section 530(b)(1)(A)(iii) of the Internal Revenue Code of 1986 (defining Coverdell education savings account) is amended by striking ''$2,000'' and inserting ''$5,000''.

(b) CONFORMING AMENDMENT.—Section 4973(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking ''$2,000'' and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

S. 76

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''The College Savings Act of 2005''.

**SEC. 2. INCREASE IN MAXIMUM ANNUAL CONTRIBUTION FOR COVERDELL EDUCATION SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Section 530(b)(1)(A)(iii) of the Internal Revenue Code of 1986 (defining Coverdell education savings account) is amended by striking ''$2,000'' and inserting ''$5,000''.

(b) CONFORMING AMENDMENT.—Section 4973(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking ''$2,000'' and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

**SEC. 3. EDUCATION SAVINGS ACCOUNTS.**

(a) DEDUCTION FOR CONTRIBUTIONS.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 224 as section 225 and inserting after section 223 the following new section:

**''SEC. 224. EDUCATION SAVINGS.**

''(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction an amount equal to the amount of contributions made by such individual to an education savings account during the taxable year.

''(b) DEFINITIONS.—

''(1) EDUCATION SAVINGS ACCOUNT.—The term 'education savings account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust (and designated as an education savings account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

''(A) No contribution will be accepted—

''(i) unless it is in cash,

''(ii) after the date on which such beneficiary attains age 18, or

''(iii) except in the case of rollover contributions described in subsection (e)(4), if such contribution would result in aggregate contributions for the taxable year exceeding $5,000.

''(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan or any Coverdell education savings account.

''(C) No part of the trust assets will be invested in life insurance contracts.

''(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

''(E) Except as provided in subsection (e)(6), any balance to the credit of the designated beneficiary on the date on which the beneficiary attains age 30 shall be distributed within 30 days after such date to the beneficiary or, if the beneficiary dies before attaining age 30, shall be distributed within 30 days after the date of death of such beneficiary.

''(F) The age limitations in subparagraphs (A)(ii) and (E), and paragraphs (4) and (5) of subsection (e), shall not apply to any designated beneficiary with special needs (as determined under regulations prescribed by the Secretary).

''(2) QUALIFIED EDUCATION EXPENSES.—The term 'qualified education expenses' has the meaning given such term in section 530(b)(2).

''(3) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

''(A) Section 219(d)(2) (relating to no deduction for rollovers),

''(B) Section 530(b)(5) (relating to time when contributions deemed made),

''(C) Section 530(f) (relating to community property laws),

''(D) Section 530(g) (relating to custodial accounts), and

''(E) Section 530(h) (relating to reports).

''(c) REDUCTION IN PERMITTED CONTRIBUTION BASED ON ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—The maximum amount which a contributor could otherwise make to an account under this section shall be reduced by an amount which bears the same ratio to such maximum amount as—

''(A) the excess of—

''(i) the contributor's modified adjusted gross income for such taxable year, over

''(ii) $95,000 ($190,000 in the case of a joint return), bears to

''(B) $15,000 ($30,000 in the case of a joint return).

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of paragraph (1), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

''(d) TAX TREATMENT OF ACCOUNTS.—

''(1) IN GENERAL.—An education savings account is exempt from taxation under this subtitle unless such account has ceased to be an education savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

''(2) ACCOUNT TERMINATIONS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to education savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified education expenses.

''(e) TREATMENT OF DISTRIBUTIONS.—

''(1) IN GENERAL.—Any distribution shall be includible in the gross income of the distributee in the manner as provided in section 72.

''(2) SPECIAL RULES FOR APPLYING ESTATE AND GIFT TAXES WITH RESPECT TO ACCOUNT.—Rules similar to the rules of paragraphs (2), (4), and (5) of section 529(c) shall apply for purposes of this section.

''(3) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR EDUCATIONAL EXPENSES.—

''(A) IN GENERAL.—The tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from an education savings account which is in excess of the qualified education expenses of the designated beneficiary during the taxable year shall be increased by 10 percent of the amount of such excess.

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the payment or distribution is—

''(i) made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary,

''(ii) attributable to the designated beneficiary's being disabled (within the meaning of section 72(m)(7)),

''(iii) made on account of a scholarship, allowance, or payment described in section 25A(g)(2) received by the account holder to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment, or

''(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance.

''(C) CONTRIBUTIONS RETURNED BEFORE CERTAIN DATE.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

''(i) such distribution is made before the first day of the sixth month of the taxable year following the taxable year, and

''(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

''(4) ROLLOVER CONTRIBUTIONS.—Paragraph (1) shall not apply to any amount paid or distributed from an education savings account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another education savings account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary who has not attained age 30 as of such date. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

''(5) CHANGE IN BENEFICIARY.—Any change in the beneficiary of an education savings account shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a member of the family (as so defined) of the old beneficiary and has not attained age 30 as of the date of such change.

''(6) SPECIAL RULES FOR DEATH AND DIVORCE.—Rules similar to the rules of paragraphs (7) and (8) of section 220(f) shall apply. In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).

''(7) DEEMED DISTRIBUTION ON REQUIRED DISTRIBUTION DATE.—In any case in which a distribution is required under subsection (b)(1)(E), any balance to the credit of a designated beneficiary as of the close of the 30-day period referred to in such subsection for making such distribution shall be deemed distributed at the close of such period.''.

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 of the Internal Revenue Code of 1986 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking ''or'' at the end of paragraph (4), by inserting ''or'' at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

''(6) an education savings account (as defined in section 224),''.

(2) EXCESS CONTRIBUTION.—Section 4973 of such Code is amended by adding at the end the following new subsection:

''(h) EXCESS CONTRIBUTIONS TO EDUCATION SAVINGS ACCOUNTS.—For purposes of this section—

''(1) IN GENERAL.—In the case of education savings accounts maintained for the benefit of any one beneficiary, the term 'excess contributions' means the sum of—

''(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $5,000 (or, if less, the sum of the maximum amounts permitted to be contributed under section 224(c) by the contributors to such accounts for such year); and

''(B) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

''(i) the distributions out of the accounts for the taxable year (other than distributions described in section 224(e)(4)); and

''(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.

''(2) SPECIAL RULES.—For purposes of paragraph (1), the following contributions shall not be taken into account:

''(A) Any contribution which is distributed out of the education savings account in a distribution to which section 224(e)(3)(C) applies.

''(B) Any rollover contribution.''.

(c) FAILURE TO PROVIDE REPORTS ON EDUCATION SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a) of the Internal Revenue Code of 1986 (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking ''and'' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting '', and'', and by adding at the end the following new subparagraph:

''(F) section 224(b)(3)(E) (relating to education savings accounts).''.

(d) CLERICAL AMENDMENT.—The table of section for part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 224 and inserting the following new items:

''Sec. 224. Education savings.

''Sec. 225. Cross reference.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2004.

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By Mr. SESSIONS (for himself and Mr. LIEBERMAN):

S. 77. A bill to amend titles 10 and 38, United States Code, to improve death benefits for the families of deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. SESSIONS. Mr. President, I want to take a few minutes to discuss legislation that I offer today along with Senator LIEBERMAN and I believe 15 other cosponsors called the HEROES Act of 2005, the Honoring Every Requirement of Exemplary Service Act, that will increase substantially the death benefits provided to the families of our service personnel who lose their lives in service to their country. I see Senator ALLEN. I know he deeply cares about this issue. We are working together on this same idea.

Fundamentally, this bill would raise the basic death benefit from $12,420 to $100,000. It will raise the servicemen's group life insurance payment from $250,000 to $400,000. Senator LIEBERMAN and I, all of us in this body believe we need to make sure that our servicemen's families are well taken care of if something were to happen to them.

I am very pleased that Senator FRIST on Friday made this part of his leadership package and that Senator JOHN WARNER, chairman of the Armed Services Committee, promised quick action in the committee on the subject. And I am very pleased that the Defense Department has worked with us in helping to craft this legislation, actually supports it and the funding it will require.

I asked last year about it when our defense bill moved. When no consensus was reached as that bill was moving, we put in the legislation a requirement that the DOD work with the Congress to develop a plan to improve death benefits, and they have done so. It is the right thing to do.

Just last Monday, I was in Iraq. I had the ability to travel throughout that country, and we flew back from Baghdad to Kuwait about 9 or 10 that night. On the C–130 in which we flew back, in the bay of that great aircraft were two flag-draped coffins of American service personnel who had given their life to their country. There should be no doubt in any soldier's mind that if something happens to them while in service to their country, their family will be well taken care of. The American people want that. I believe the people in this Congress will support that.

This legislation needs to be passed promptly. I am proud that Senator WARNER and Senator FRIST have indicated they would accelerate it and do what they can to see that it does become law. I look forward to working with Senator LIEBERMAN and my fellow Senators to move this bill to final passage.

I see the chairman of Armed Services, Senator WARNER. I express my appreciation to him for his commitment to do what he can to move this bill forward promptly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my colleague for his thoughtful remarks. I so commit to do that.

Ms. SNOWE. Mr. President, America's finest citizens and the world's greatest military men and women continue to put themselves in harm's way in support of the establishment of freedom and democracy in Iraq and Afghanistan. They also are helping millions throughout South and Southeast Asia to recover from the devastating tsunami that destroyed so many lives.

These great Americans have made a commitment to serve this country come what may. They are prepared to make the ultimate sacrifice with the knowledge that in doing so, they are defending the security of our Nation and advancing the very ideals upon which this great country was founded.

Just as these men and women have agreed to make this commitment, so too must we commit to supporting the families of these soldiers who give the ''last full measure of devotion'' for us. It is the very least we can do to provide a greater degree of peace of mind to our service men and women, who should always know and trust that a grateful America will stand with and support their family members should tragedy strike.

It is in recognition of their extraordinary selflessness that I join my colleagues, Mr. SESSIONS, Mr. LIEBERMAN and others in cosponsoring the HEROES Act of 2005. Although Congress last year raised the amount offered to families following the death of a service man or woman for the first time in over a decade, I continue to believe that even that amount is an inadequate level of support in this day and age.

For decades, we offered a nominal amount of between $800 and $3,000, depending upon rank, for immediate expenses to surviving family members upon the death of a member of our armed forces. In the wake of the 1991 Gulf War, Congress raised this to a flat $6,000, of which half was subject to income tax. Finally, we raised that to $12,000, made the entire amount tax-free, and tied future increases to the annual increase in base pay.

Of course, no amount of money can replace the loved ones that are lost in combat. It's an unimaginable loss which can never be ameliorated by financial comfort. However, despite the increase in the level of support last year, the amount that we currently offer the families of our soldiers remains woefully inadequate to try to begin to address the immediate costs of funeral arrangements, the loss of what may in most cases be the primary wage earner in the family and the additional costs associated with the loss of a mother, father, or spouse.

When one considers how long it may take for a family to regain its footing, how surviving family members may need to move out of military-provided housing and to secure private housing elsewhere, how a surviving spouse may need to search for employment to support his or her family, and how long it may take for insurance benefits to be paid out, this improvement in benefits is the very least we can do to alleviate the burdens and financial worry that come with such a loss.

I strongly support raising the amount to $100,000, in addition to increasing the maximum benefit of the Servicemen's Group Life Insurance policy from $250,000 to $400,000, as this bill does.

In acknowledgment of and appreciation for the sacrifices of our brave men and women in uniform, I hope that we can all agree on the need to help ensure that the futures of their children are secured should they sacrifice their lives in combat.

It is for the sake of our brave servicemen and women and the families who depend on them that we introduce this legislation and for them that I urge full support.

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By Mrs. HUTCHISON (for herself, Mr. BROWNBACK, Mr. CORNYN, Mr. BUNNING, Mr. BURNS, Mr. HAGEL, and Mr. ENSIGN):

S. 78. A bill to make permanent marriage penalty relief; to the Committee on Finance.

Ms. HUTCHISON. Mr. President I am pleased to introduce a bill to provide

permanent tax relief from the marriage penalty—the most egregious, anti-family provision that has been in the tax code. One of my highest priorities in the U.S. Senate has been to relieve American taxpayers of this punitive burden.

Over the past four years we have made important strides to eliminate this unfair tax and provide marriage penalty relief by raising the standard deduction and enlarging the 15 percent tax bracket for married joint filers to twice that of single filers. Before these provisions were changed, 44 million married couples, including 2.4 million Texas families, paid an average penalty of $1,480.

Enacting marriage penalty relief has been a giant step for tax fairness, but it may be fleeting. Even as married couples use the money they now save to put food on the table and clothes on their children, a tax increase looms in the future. Since the 2001 tax relief bill was restricted, the marriage penalty provisions will only be in effect through 2010. In 2011, marriage will again be a taxable event and 43 percent of married couples will again pay more in taxes unless we act decisively.

Given the challenges many families face in making ends meet, we must make sure we do not backtrack on this important reform.

The benefits of marriage are well established, yet, without marriage penalty relief, the tax code provides a significant disincentive for people to walk down the aisle. Marriage is a fundamental institution in our society and should not be discouraged by the IRS. Children living in a married household are far less likely to live in poverty or to suffer from child abuse. Research indicates they are less likely to be depressed or have developmental problems. Scourges such as adolescent drug use are less common in married families, and married mothers are less likely to be victims of domestic violence.

We should celebrate marriage, not penalize it. The bill I am offering would make marriage penalty relief permanent, because we cannot be satisfied until couples never again must decide between love and money. Marriage should not be a taxable event.

I call on the Senate to finish the job we started to make marriage penalty relief permanent today.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 78

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Permanent Marriage Penalty Relief Act of 2005''.

**SEC. 2. REPEAL OF SUNSET ON MARRIAGE PENALTY RELIEF.**

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to sections 301, 302, and 303 of such Act (relating to marriage penalty relief).

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By Mr. INOUYE:

S. 79. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Veterans' Affairs.

Mr. INOUYE. Mr. President, I am reintroducing legislation today that would direct the Secretary of the Army to determine whether certain nationals of the Philippine Islands performed military service on behalf of the United States during World War II.

Mr. President, our Filipino veterans fought side by side with Americans and sacrificed their lives on behalf of the United States. This legislation would confirm the validity of their claims and further allow qualified individuals the opportunity to apply for military and veterans benefits that, I believe, they are entitled to. As this population becomes older, it is important for our nation to extend its firm commitment to the Filipino veterans and their families who participated in making us the great nation that we are today.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 79

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DETERMINATIONS BY THE SECRETARY OF THE ARMY.**

(a) IN GENERAL.—Upon the written application of any person who is a national of the Philippine Islands, the Secretary of the Army shall determine whether such person performed any military service in the Philippine Islands in aid of the Armed Forces of the United States during World War II which qualifies such person to receive any military, veterans', or other benefits under the laws of the United States.

(b) INFORMATION TO BE CONSIDERED.—In making a determination for the purpose of subsection (a), the Secretary shall consider all information and evidence (relating to service referred to in subsection (a)) that is available to the Secretary, including information and evidence submitted by the applicant, if any.

**SEC. 2. CERTIFICATE OF SERVICE.**

(a) ISSUANCE OF CERTIFICATE OF SERVICE.—The Secretary of the Army shall issue a certificate of service to each person determined by the Secretary to have performed military service described in section 1(a).

(b) EFFECT OF CERTIFICATE OF SERVICE.—A certificate of service issued to any person under subsection (a) shall, for the purpose of any law of the United States, conclusively establish the period, nature, and character of the military service described in the certificate.

**SEC. 3. APPLICATIONS BY SURVIVORS.**

An application submitted by a surviving spouse, child, or parent of a deceased person described in section 1(a) shall be treated as an application submitted by such person.

**SEC. 4. LIMITATION PERIOD.**

The Secretary of the Army may not consider for the purpose of this Act any application received by the Secretary more than two years after the date of the enactment of this Act.

**SEC. 5. PROSPECTIVE APPLICATION OF DETERMINATIONS BY THE SECRETARY OF THE ARMY.**

No benefits shall accrue to any person for any period before the date of the enactment of this Act as a result of the enactment of this Act.

**SEC. 6. REGULATIONS.**

The Secretary of the Army shall prescribe regulations to carry out sections 1, 3, and 4.

**SEC. 7. RESPONSIBILITIES OF THE SECRETARY OF VETERANS AFFAIRS.**

Any entitlement of a person to receive veterans' benefits by reason of this Act shall be administered by the Department of Veterans Affairs pursuant to regulations prescribed by the Secretary of Veterans Affairs.

**SEC. 8. DEFINITION.**

In this Act, the term ''World War II'' means the period beginning on December 7, 1941, and ending on December 31, 1946.

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By Mr. INOUYE:

S. 80. A bill to restore the traditional day of observance of Memorial Day, and for other purposes; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President, in our effort to accommodate many Americans by making Memorial Day the last Monday in May, we have lost sight of the significance of this day to our nation. My bill would restore Memorial Day to May 30 and authorize our flag to fly at half mast on that day. In addition, this legislation would authorize the President to issue a proclamation designating Memorial Day and Veterans Day as days for prayer and ceremonies. This legislation would help restore the recognition our veterans deserve for the sacrifices they have made on behalf of our Nation.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 80

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. RESTORATION OF TRADITIONAL DAY OF OBSERVANCE OF MEMORIAL DAY.**

(a) DESIGNATION OF LEGAL PUBLIC HOLIDAY.—Section 6103(a) of title 5, United States Code, is amended by striking ''Memorial Day, the last Monday in May.'' and inserting the following:

''Memorial Day, May 30.''.

(b) OBSERVANCES AND CEREMONIES.—Section 116 of title 36, United States Code, is amended—

(1) in subsection (a), by striking ''The last Monday in May'' and inserting ''May 30''; and

(2) in subsection (b)—

(A) by striking ''and'' at the end of paragraph (3);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following new paragraph (4):

''(4) calling on the people of the United States to observe Memorial Day as a day of ceremonies for showing respect for American veterans of wars and other military conflicts; and''.

(c) DISPLAY OF FLAG.—Section 6(d) of title 4, United States Code, is amended by striking ''the last Monday in May;'' and inserting ''May 30;''.

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By Mr. INOUYE:

S. 83. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for the conversion of cooperative housing corporations into condominiums; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I rise to introduce legislation which would amend the Internal Revenue Code of 1986 to allow Cooperative Housing Corporations (co-ops), to convert to condominium forms of ownership.

Under current law, a conversion from cooperative shareholding to condominium ownership is taxable at a corporate level as well as an individual level. The conversion is treated as a corporate liquidation, and therefore taxed accordingly. In addition, a capital gains tax is levied on any increase between the owner's basis in the co-op share pre-conversion and the market value of the condominium interest post-conversion. This double taxation dissuades condominium conversion because the owner is being taxed on the transaction which is nothing more than a change in the form of ownership. While the Internal Revenue Service concedes that there are no discernable advantages to society of the cooperative form of ownership, they do not view federal tax statutes as providing sufficient flexibility with which to address the obstacles of conversion.

Cooperative housing organizes the ownership structure into a corporation, with shares of stock for each apartment unit, which are sold to buyers. The corporation then issues a proprietary lease entitling the owner of the stock to the use of the unit in perpetuity. Because the investment is in the form of a share of stock, investors sometimes lose their entire investment as a result of debt incurred by the corporation in construction and development. In addition, due to the structure of a cooperative housing corporation, a prospective purchaser of shares in the corporation from an existing tenant-stockholders has difficulty obtaining mortgage financing for the purchase. Furthermore, tenant-stockholders of cooperative housing also encounter difficulties in securing bank loans for the full value of their investment.

As a result, owners of cooperative housing are increasingly looking toward conversion to the condominium structure of ownership. Condominium ownership permits the owner of a unit to own the unit itself, eliminating the cooperative housing dilemma of corporate debt that supercedes the investment of cooperative housing share owners, and other financial concerns.

The legislation I introduce today will remove the penalty of double taxation from the conversion of cooperative housing to condominium ownership, and will greatly benefit co-op owners across the nation. The bill does not apply to cooperatives which have been or are now being financed by any federal, state, or local programs for the purpose of assisting in the construction of affordable housing cooperatives or the conversion of rental units to affordable housing cooperatives. I urge my colleagues' consideration and support for this measure.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 83

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. NONRECOGNITION OF GAIN OR LOSS ON DISTRIBUTIONS BY COOPERATIVE HOUSING CORPORATIONS.**

(a) IN GENERAL.—Section 216(e) of the Internal Revenue Code of 1986 (relating to distributions by cooperative housing corporations) is amended to read as follows:

''(e) DISTRIBUTIONS BY COOPERATIVE HOUSING CORPORATIONS.—

''(1) IN GENERAL.—Except as provided in regulations—

''(A) no gain or loss shall be recognized to a cooperative housing corporation on the distribution by such corporation of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder's stock in such corporation, and

''(B) no gain or loss shall be recognized to a stockholder of such corporation on the transfer of such stockholder's stock in an exchange described in subparagraph (A).

''(2) BASIS.—The basis of a dwelling unit acquired in a distribution to which paragraph (1) applies shall be the same as the basis of the stock in the cooperative housing corporation for which it is exchanged, decreased in the amount of any money received by the taxpayer in such exchange.

''(3) APPLICABILITY.—This subsection shall not apply with respect to any dwelling unit the basis of which includes financing under any Federal, State, or local program for the purpose of assisting the construction of affordable housing cooperatives or the conversion of rental units to affordable housing cooperatives.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

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By Mr. INOUYE:

S. 84. A bill to amend the Internal Revenue Code of 1986 to exempt certain sightseeing flights from taxes on air transportation; to the Committee on Finance.

Mr. INOUYE. Mr. President, I rise to introduce a bill that would amend the Internal Revenue Code of 1986 to exempt certain sightseeing flights from the air transportation excise tax. A clarifying amendment to the Tax Code is needed due to a problem that exists in the application of the excise tax.

In 1986, the Internal Revenue Service (IRS), issued a Private Letter Ruling in which it exempted one Hawaii-based air tour operator from paying the air passenger transportation excise tax, but has not applied equal treatment to other similarly situated aerial sightseeing tour operators. It is my belief that the IRS should be consistent in its application of this excise tax.

Under current law, a variety of excise taxes on air transportation are imposed to finance the Airport and Airway Trust funds program that is administered by the Federal Aviation Administration. For example, an air passenger transportation excise tax is imposed on users of our nation's airports and airways. The Congress intended that the tax be levied on passengers traveling on scheduled commercial airlines. In addition, for the most part, the tax is imposed on each flight segment.

The Congress did not intend to have the tax applied to air tour operators, who utilize our system of airways differently. Our national transportation system receives little or no benefit from aerial sightseeing operations. Air tour operations are not scheduled commercial airlines. They are for entertainment purposes and are circular, in that they begin and end at the same destination point.

Hawaii is among a small handful of states where our citizens can enjoy aerial tours of sights that are remote or difficult to reach by land. Aerial sightseeing tours are also enjoyed in Alaska, California, Washington, Arizona, and even New York City. The imposition of the air transportation excise tax on aerial sightseeing flights will significantly raise the consumer price on air tours. Doing so will cause many small aerial sightseeing tour operators, especially in my home state, to lose customers. Many of these small companies have struggled to stay in business after incurring significant losses in the months following September 11, 2001, when our government imposed flight restrictions across the nation. Those flight restrictions prevented many flight operations in all segments of the general aviation industry for many months into early 2002.

Accordingly, I urge my colleagues to support my bill, which would amend the Internal Revenue Code of 1986 to exempt certain sightseeing trips from the air transportation excise tax. Under my bill, air tour operations would still be subject to the aviation fuel excise tax.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 84

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.**

(a) IN GENERAL.—Section 4281 of the Internal Revenue Code of 1986 (relating to small aircraft on nonestablished lines) is amended by adding at the end the following new sentence: ''For purposes of this section, an aircraft shall not be considered as operated on an established line if such aircraft is operated on a flight the sole purpose of which is sightseeing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect

to transportation beginning on or after the date of the enactment of this Act, but shall not apply to any amount paid before such date.

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By Mr. INOUYE:

S. 87. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President today I am introducing legislation that would provide a federal charter for the National Academies of Practice. This organization represents outstanding health care professionals who have made significant contributions to the practice of applied psychology, medicine, dentistry, nursing, optometry, osteopathic medicine, pharmacy, podiatry, social work, and veterinary medicine. When fully established, each of the ten academies will possess 150 distinguished practitioners selected by their peers. This umbrella organization will be able to provide the Congress of the United States and the executive branch with considerable health policy expertise, especially from the perspective of those individuals who are in the forefront of actually providing health care.

As we continue to grapple with the many complex issues surrounding the delivery of health care services, it is clearly in our best interest to ensure that the Congress has direct and immediate access to the recommendations of an interdisciplinary body of health care practitioners.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 87

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''National Academies of Practice Recognition Act of 2005''.

**SEC. 2. CHARTER.**

The National Academies of Practice organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a Federal charter.

**SEC. 3. CORPORATE POWERS.**

The National Academies of Practice (referred to in this Act as the ''corporation'') shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State in which it is incorporated and subject to the laws of such State.

**SEC. 4. OBJECTIVES AND PURPOSES OF THE CORPORATION.**

The objectives and purposes for which the corporation is organized shall be provided for in the articles of incorporation and shall include the following:

(1) Honoring persons who have made significant contributions to the practice of applied dentistry, medicine, nursing, optometry, osteopathy, pharmacy, podiatry, psychology, social work, veterinary medicine, and other health care professions.

(2) Improving the effectiveness of such professions by disseminating information about new techniques and procedures, promoting interdisciplinary practices, and stimulating multidisciplinary exchange of scientific and professional information.

(3) Upon request, advising the President, the members of the President's Cabinet, Congress, Federal agencies, and other relevant groups about practitioner issues in health care and health care policy, from a multidisciplinary perspective.

**SEC. 5. SERVICE OF PROCESS.**

With respect to service of process, the corporation shall comply with the laws of the State in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

**SEC. 6. MEMBERSHIP.**

Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

**SEC. 7. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES.**

The composition and the responsibilities of the board of directors of the corporation shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

**SEC. 8. OFFICERS OF THE CORPORATION.**

The officers of the corporation and the election of such officers shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

**SEC. 9. RESTRICTIONS.**

(a) USE OF INCOME AND ASSETS.—No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of the charter under this Act. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) LOANS.—The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) POLITICAL ACTIVITY.—The corporation, any officer, or any director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) ISSUANCE OF STOCK AND PAYMENT OF DIVIDENDS.—The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) CLAIMS OF FEDERAL APPROVAL.—The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) FEDERAL ADVISORY ACTIVITIES.—While providing advice to Federal agencies, the corporation shall be subject to the Federal Advisory Committee Act (5 U.S.C. Appendix; 86 stat. 700).

**SEC. 10. LIABILITY.**

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

**SEC. 11. MAINTENANCE AND INSPECTION OF BOOKS AND RECORDS.**

(a) BOOKS AND RECORDS OF ACCOUNT.—The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors.

(b) NAMES AND ADDRESSES OF MEMBERS.—The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote in any proceeding of the corporation.

(c) RIGHT TO INSPECT BOOKS AND RECORDS.—All books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time.

(d) APPLICATION OF STATE LAW.—Nothing in this section shall be construed to contravene any applicable State law.

**SEC. 12. ANNUAL REPORT.**

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. The report shall not be printed as a public document.

**SEC. 13. RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER.**

The right to alter, amend, or repeal this Act is expressly reserved to Congress.

**SEC. 14. DEFINITION.**

In this Act, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

**SEC. 15. TAX-EXEMPT STATUS.**

The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986 or any corresponding similar provision.

**SEC. 16. TERMINATION.**

If the corporation fails to comply with any of the restrictions or provisions of this Act the charter granted by this Act shall terminate.

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By Mr. INOUYE:

S. 88. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect, to be conducted by a clinical social worker; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President, today I introduce legislation to amend Title 18 of the United States Code to allow our Nation's clinical social workers to use their mental health expertise on behalf of the federal judiciary by conducting psychological and psychiatric exams.

I feel that the time has come to allow our Nation's judicial system to have access to a wide range of behavioral science and mental health expertise. I am confident that the enactment of this legislation would be very much in our Nation's best interest.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 88

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Psychiatric and Psychological Examinations Act of 2005''.

**SEC. 2. EXAMINATIONS BY CLINICAL SOCIAL WORKERS.**

Section 4247(b) of title 18, United States Code, is amended, in the first sentence, by striking ''psychiatrist or psychologist'' and inserting ''psychiatrist, psychologist, or clinical social worker''.

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By Mr. INOUYE:

S. 89. A bill to amend title VII of the Public Health Service Act to make certain graduate programs in professional

psychology eligible to participate in various health professions loan programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, I rise to introduce legislation today to modify Title VII of the Public Health Service Act in order to provide students enrolled in graduate psychology programs with the opportunity to participate in various health professions loan programs.

Providing students enrolled in graduate psychology programs with eligibility for financial assistance in the form of loans, loan guarantees, and scholarships will facilitate a much-needed infusion of behavioral science expertise into our community of public health providers. There is a growing recognition of the valuable contribution being made by psychologists toward solving some of our Nation's most distressing problems.

The participation of students from all backgrounds and clinical disciplines is vital to the success of health care training. The Title VII programs play a significant role in providing financial support for the recruitment of minorities, women, and individuals from economically disadvantaged backgrounds. Minority therapists have an advantage in the provision of critical services to minority populations because often they can communicate with clients in their own language and cultural framework. Minority therapists are more likely to work in community settings where ethnic minority and economically disadvantaged individuals are most likely to seek care. It is critical that continued support be provided for the training of individuals who provide health care services to underserved communities.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 89

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Strengthen the Public Health Service Act''.

**SEC. 2. PARTICIPATION IN VARIOUS HEALTH PROFESSIONS LOAN PROGRAMS.**

(a) LOAN AGREEMENTS.—Section 721 of the Public Health Service Act (42 U.S.C. 292q) is amended—

(1) in subsection (a), by inserting '', or any public or nonprofit school that offers a graduate program in professional psychology'' after ''veterinary medicine'';

(2) in subsection (b)(4), by inserting '', or to a graduate degree in professional psychology'' after ''or doctor of veterinary medicine or an equivalent degree''; and

(3) in subsection (c)(1), by inserting '', or schools that offer graduate programs in professional psychology'' after ''veterinary medicine''.

(b) LOAN PROVISIONS.—Section 722 of the Public Health Service Act (42 U.S.C. 292r) is amended—

(1) in subsection (b)(1), by inserting '', or to a graduate degree in professional psychology'' after ''or doctor of veterinary medicine or an equivalent degree'';

(2) in subsection (c), in the matter preceding paragraph (1), by inserting '', or at a school that offers a graduate program in professional psychology'' after ''veterinary medicine''; and

(3) in subsection (k)—

(A) in the matter preceding paragraph (1), by striking ''or podiatry'' and inserting ''podiatry, or professional psychology''; and

(B) in paragraph (4), by striking ''or podiatric medicine'' and inserting ''podiatric medicine, or professional psychology''.

**SEC. 3. GENERAL PROVISIONS.**

(a) HEALTH PROFESSIONS DATA.—Section 792(a) of the Public Health Service Act (42 U.S.C. 295k(a)) is amended by striking ''clinical'' and inserting ''professional''.

(b) PROHIBITION AGAINST DISCRIMINATION ON BASIS OF SEX.—Section 794 of the Public Health Service Act (42 U.S.C. 295m) is amended in the matter preceding paragraph (1) by striking ''clinical'' and inserting ''professional''.

(c) DEFINITIONS.—Section 799B(1)(B) of the Public Health Service Act (42 U.S.C. 295p(1)(B)) is amended by striking ''clinical'' each place the term appears and inserting ''professional''.

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By Mr. INOUYE:

S. 90. A bill to amend the Public Health Service Act to provide for the establishment of a National Center for Social Work Research; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, I rise today to introduce legislation to amend the Public Health Service Act for the establishment of a National Center for Social Work Research. Social workers provide a multitude of health care delivery services throughout America to our children, families, the elderly, and persons suffering from various forms of abuse and neglect. The purpose of this center is to support and disseminate information about basic and clinical social work research, and training, with emphasis on service to underserved and rural populations.

While the Federal Government provides funding for various social work research activities through the National Institutes of Health and other Federal agencies, there presently is no coordination or direction of these critical activities and no overall assessment of needs and opportunities for empirical knowledge development. The establishment of a Center for Social Work Research would result in improved behavioral and mental health care outcomes for our Nation's children, families, the elderly, and others.

In order to meet the increasing challenges of bringing cost-effective, research-based, quality health care to all Americans, we must recognize the important contributions of social work researchers to health care delivery and the central role that the Center for Social Work can provide in facilitating their work.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 90

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

This Act may be cited as the ''National Center for Social Work Research Act''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) social workers focus on the improvement of individual and family functioning and the creation of effective health and mental health prevention and treatment interventions in order for individuals to become more productive members of society;

(2) social workers provide front line prevention and treatment services in the areas of school violence, aging, teen pregnancy, child abuse, domestic violence, juvenile crime, and substance abuse, particularly in rural and underserved communities; and

(3) social workers are in a unique position to provide valuable research information on these complex social concerns, taking into account a wide range of social, medical, economic and community influences from an interdisciplinary, family-centered and community-based approach.

**SEC. 3. ESTABLISHMENT OF NATIONAL CENTER FOR SOCIAL WORK RESEARCH.**

(a) IN GENERAL.—Section 401(b)(2) of the Public Health Service Act (42 U.S.C. 281(b)(2)) is amended by adding at the end the following:

''(H) The National Center for Social Work Research.''.

(b) ESTABLISHMENT.—Part E of title IV of the Public Health Service Act (42 U.S.C. 287 et seq.) is amended by adding at the end the following:

**''Subpart 7—National Center for Social Work Research**

**''SEC. 485J. PURPOSE OF CENTER.**

''The general purpose of the National Center for Social Work Research (referred to in this subpart as the 'Center') is the conduct and support of, and dissemination of targeted research concerning social work methods and outcomes related to problems of significant social concern. The Center shall—

''(1) promote research and training that is designed to inform social work practices, thus increasing the knowledge base which promotes a healthier America; and

''(2) provide policymakers with empirically-based research information to enable such policymakers to better understand complex social issues and make informed funding decisions about service effectiveness and cost efficiency.

**''SEC. 485K. SPECIFIC AUTHORITIES.**

''(a) IN GENERAL.—To carry out the purpose described in section 485J, the Director of the Center may provide research training and instruction and establish, in the Center and in other nonprofit institutions, research traineeships and fellowships in the study and investigation of the prevention of disease, health promotion, the association of socioeconomic status, gender, ethnicity, age and geographical location and health, the social work care of individuals with, and families of individuals with, acute and chronic illnesses, child abuse, neglect, and youth violence, and child and family care to address problems of significant social concern especially in underserved populations and underserved geographical areas.

''(b) STIPENDS AND ALLOWANCES.—The Director of the Center may provide individuals receiving training and instruction or traineeships or fellowships under subsection (a) with such stipends and allowances (including amounts for travel and subsistence and dependency allowances) as the Director determines necessary.

''(c) GRANTS.—The Director of the Center may make grants to nonprofit institutions to provide training and instruction and traineeships and fellowships under subsection (a).

**''SEC. 485L. ADVISORY COUNCIL.**

''(a) DUTIES.—

''(1) IN GENERAL.—The Secretary shall establish an advisory council for the Center that shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Center on matters related to the activities carried out by and through the Center and the policies with respect to such activities.

''(2) GIFTS.—The advisory council for the Center may recommend to the Secretary the acceptance, in accordance with section 231, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipment, or maintenance of facilities for the Center.

''(3) OTHER DUTIES AND FUNCTIONS.—The advisory council for the Center—

''(A)(i) may make recommendations to the Director of the Center with respect to research to be conducted by the Center;

''(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects that demonstrate the probability of making valuable contributions to human knowledge; and

''(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Center;

''(B) may collect, by correspondence or by personal investigation, information relating to studies that are being carried out in the United States or any other country and, with the approval of the Director of the Center, make such information available through appropriate publications; and

''(C) may appoint subcommittees and convene workshops and conferences.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The advisory council shall be composed of the ex officio members described in paragraph (2) and not more than 18 individuals to be appointed by the Secretary under paragraph (3).

''(2) EX OFFICIO MEMBERS.—The ex officio members of the advisory council shall include—

''(A) the Secretary of Health and Human Services, the Director of NIH, the Director of the Center, the Chief Social Work Officer of the Veterans' Administration, the Assistant Secretary of Defense for Health Affairs, the Associate Director of Prevention Research at the National Institute of Mental Health, the Director of the Division of Epidemiology and Services Research, the Assistant Secretary of Health and Human Services for the Administration for Children and Families, the Assistant Secretary of Education for the Office of Educational Research and Improvement, the Assistant Secretary of Housing and Urban Development for Community Planning and Development, and the Assistant Attorney General for Office of Justice Programs (or the designees of such officers); and

''(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

''(3) APPOINTED MEMBERS.—The Secretary shall appoint not to exceed 18 individuals to the advisory council, of which—

''(A) not more than two-thirds of such individual shall be appointed from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Center, and at least 7 such individuals shall be professional social workers who are recognized experts in the area of clinical practice, education, or research; and

''(B) not more than one-third of such individuals shall be appointed from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

The Secretary shall make appointments to the advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year.

''(4) COMPENSATION.—Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The remaining members shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for an individual at grade GS–18 of the General Schedule.

''(c) TERMS.—

''(1) IN GENERAL.—The term of office of an individual appointed to the advisory council under subsection (b)(3) shall be 4 years, except that any individual appointed to fill a vacancy on the advisory council shall serve for the remainder of the unexpired term. A member may serve after the expiration of the member's term until a successor has been appointed.

''(2) REAPPOINTMENTS.—A member of the advisory council who has been appointed under subsection (b)(3) for a term of 4 years may not be reappointed to the advisory council prior to the expiration of the 2-year period beginning on the date on which the prior term expired.

''(3) VACANCY.—If a vacancy occurs on the advisory council among the members under subsection (b)(3), the Secretary shall make an appointment to fill that vacancy not later than 90 days after the date on which the vacancy occurs.

''(d) CHAIRPERSON.—The chairperson of the advisory council shall be selected by the Secretary from among the members appointed under subsection (b)(3), except that the Secretary may select the Director of the Center to be the chairperson of the advisory council. The term of office of the chairperson shall be 2 years.

''(e) MEETINGS.—The advisory council shall meet at the call of the chairperson or upon the request of the Director of the Center, but not less than 3 times each fiscal year. The location of the meetings of the advisory council shall be subject to the approval of the Director of the Center.

''(f) ADMINISTRATIVE PROVISIONS.—The Director of the Center shall designate a member of the staff of the Center to serve as the executive secretary of the advisory council. The Director of the Center shall make available to the advisory council such staff, information, and other assistance as the council may require to carry out its functions. The Director of the Center shall provide orientation and training for new members of the advisory council to provide such members with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

''(g) COMMENTS AND RECOMMENDATIONS.—The advisory council may prepare, for inclusion in the biennial report under section 485M—

''(1) comments with respect to the activities of the advisory council in the fiscal years for which the report is prepared;

''(2) comments on the progress of the Center in meeting its objectives; and

''(3) recommendations with respect to the future direction and program and policy emphasis of the center.

The advisory council may prepare such additional reports as it may determine appropriate.

**''SEC. 485M. BIENNIAL REPORT.**

''The Director of the Center, after consultation with the advisory council for the Center, shall prepare for inclusion in the biennial report under section 403, a biennial report that shall consist of a description of the activities of the Center and program policies of the Director of the Center in the fiscal years for which the report is prepared. The Director of the Center may prepare such additional reports as the Director determines appropriate. The Director of the Center shall provide the advisory council of the Center an opportunity for the submission of the written comments described in section 485L(g).

**''SEC. 485N. QUARTERLY REPORT.**

''The Director of the Center shall prepare and submit to Congress a quarterly report that contains a summary of findings and policy implications derived from research conducted or supported through the Center.''.

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By Mr. INOUYE:

S. 91. A bill to amend title VII of the Public Health Service Act to ensure that social work students or social work schools are eligible for support under certain programs to assist individuals in pursuing health careers and programs of grants for training projects in geriatrics, and to establish a social work training program; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, on behalf of our Nation's clinical social workers, I am introducing legislation to amend the Public Health Service Act. This legislation would (1) establish a new social work training program, (2) ensure that social work students are eligible for support under the Health Careers Opportunity Program, (3) provide social work schools with eligibility for support under the Minority Centers of Excellence programs, (4) permit schools offering degrees in social work to obtain grants for training projects in geriatrics, and (5) ensure that social work is recognized as a profession under the Public Health Maintenance Organization Act.

Despite the impressive range of services social workers provide to people of this Nation, few Federal programs exist to provide opportunities for social work training in health and mental health care.

Social workers have long provided quality mental health services to our citizens and continue to be at the forefront of establishing innovative programs to serve our disadvantaged populations. I believe it is important to ensure that the special expertise social workers possess continues to be available to the citizens of this Nation. This bill, by providing financial assistance to schools of social work and social work students, acknowledges the long history and critical importance of the services provided by social work professionals. I believe it is time to provide them with the recognition they deserve.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 91

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Strengthen Social Work Training Act of 2005''.

**SEC. 2. SOCIAL WORK STUDENTS.**

(a) HEALTH PROFESSIONS SCHOOLS.—Section 736(g)(1)(A) of the Public Health Service Act (42 U.S.C. 293(g)(1)(A)) is amended by striking ''graduate program in behavioral or mental health'' and inserting ''graduate program in behavioral or mental health, including a school offering graduate programs in clinical social work, or programs in social work''.

(b) SCHOLARSHIPS.—Section 737(d)(1)(A) of the Public Health Service Act (42 U.S.C. 293a(d)(1)(A)) is amended by striking ''mental health practice'' and inserting ''mental health practice (including graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work)''.

(c) FACULTY POSITIONS.—Section 738(a)(3) of the Public Health Service Act (42 U.S.C. 293b(a)(3)) is amended by striking ''offering graduate programs in behavioral and mental health'' and inserting ''offering graduate programs in behavioral and mental health, including graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work''.

**SEC. 3. GERIATRICS TRAINING PROJECTS.**

Section 753(b)(1) of the Public Health Service Act (42 U.S.C. 294c(b)(1)) is amended by inserting ''schools offering degrees in social work,'' after ''teaching hospitals,''.

**SEC. 4. SOCIAL WORK TRAINING PROGRAM.**

Subpart 2 of part E of title VII of the Public Health Service Act (42 U.S.C. 295 et seq.) is amended—

(1) by redesignating section 770 as section 770A;

(2) by inserting after section 769, the following:

**''SEC. 770. SOCIAL WORK TRAINING PROGRAM.**

''(a) TRAINING GENERALLY.—The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, any school offering programs in social work, or to or with a public or private nonprofit entity that the Secretary has determined is capable of carrying out such grant or contract—

''(1) to plan, develop, and operate, or participate in, an approved social work training program (including an approved residency or internship program) for students, interns, residents, or practicing physicians;

''(2) to provide financial assistance (in the form of traineeships and fellowships) to students, interns, residents, practicing physicians, or other individuals, who—

''(A) are in need of such assistance;

''(B) are participants in any such program; and

''(C) plan to specialize or work in the practice of social work;

''(3) to plan, develop, and operate a program for the training of individuals who plan to teach in social work training programs; and

''(4) to provide financial assistance (in the form of traineeships and fellowships) to individuals who are participants in any such program and who plan to teach in a social work training program.

''(b) ACADEMIC ADMINISTRATIVE UNITS.—

''(1) IN GENERAL.—The Secretary may make grants to or enter into contracts with schools offering programs in social work to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in social work.

''(2) PREFERENCE IN MAKING AWARDS.—In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for such an award that agrees to expend the award for the purpose of—

''(A) establishing an academic administrative unit for programs in social work; or

''(B) substantially expanding the programs of such a unit.

''(c) DURATION OF AWARD.—The period during which payments are made to an entity from an award of a grant or contract under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary and subject to the availability of appropriations for the fiscal year involved to make the payments.

''(d) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for each of the fiscal years 2006 through 2008.

''(2) ALLOCATION.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 20 percent for awards of grants and contracts under subsection (b).''; and

(3) in section 770A (as redesignated by paragraph (1)) by inserting ''other than section 770,'' after ''carrying out this subpart,''.

**SEC. 5. CLINICAL SOCIAL WORKER SERVICES.**

Section 1302 of the Public Health Service Act (42 U.S.C. 300e–1) is amended—

(1) in paragraphs (1) and (2), by inserting ''clinical social worker,'' after ''psychologist,'' each place the term appears;

(2) in paragraph (4)(A), by striking ''and psychologists'' and inserting ''psychologists, and clinical social workers''; and

(3) in paragraph (5), by inserting ''clinical social work,'' after ''psychology,''.

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By Mr. INOUYE:

S. 92. A bill to amend title VII of the Public Health Service Act to establish a psychology post-doctoral fellowship program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, I am introducing legislation today to amend Title VII of the Public Health Service Act to establish a psychology post-doctoral program. Psychologists have made a unique contribution in reaching out to the nation's medically underserved populations. Expertise in behavioral science is useful in addressing grave concerns such as violence, addiction, mental illness, adolescent and child behavioral disorders, and family disruption. Establishment of a psychology post-doctoral program could be an effective way to find solutions to these issues.

Similar programs supporting additional, specialized training in traditionally underserved settings have been successful in retaining participants to serve the same populations. For example, mental health professionals who have participated in these specialized federally funded programs have tended not only to meet their repayment obligations, but have continued to work in the public sector or with the underserved.

While a doctorate in psychology provides broad-based knowledge and mastery in a wide variety of clinical skills, specialized post-doctoral fellowship programs help to develop particular diagnostic and treatment skills required to respond effectively to underserved populations. For example, what appears to be poor academic motivation in a child recently relocated from Southeast Asia might actually reflect a cultural value of reserve rather than a disinterest in academic learning. Specialized assessment skills enable the clinician to initiate effective treatment.

Domestic violence poses a significant public health problem and is not just a problem for the criminal justice system. Violence against women results in thousands of hospitalizations a year. Rates of child and spouse abuse in rural areas are particularly high, as are the rates of alcohol abuse and depression in adolescents. A post-doctoral fellowship program in the psychology of the rural populations could be of special benefit in addressing these problems.

Given the demonstrated success and effectiveness of specialized training programs, it is incumbent upon us to encourage participation in post-doctoral fellowships that respond to the needs of the nation's underserved.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 92

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Psychologists in the Service of the Public Act of 2005''.

**SEC. 2. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY.**

Part C of title VII of the Public Health Service Act (42 U.S.C. 293k et seq.) is amended by adding at the end the following:

**''SEC. 749. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY.**

''(a) IN GENERAL.—The Secretary shall establish a psychology post-doctoral fellowship program to make grants to and enter into contracts with eligible entities to encourage the provision of psychological training and services in underserved treatment areas.

''(b) ELIGIBLE ENTITIES.—

''(1) INDIVIDUALS.—In order to receive a grant under this section an individual shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such individual—

''(A) has received a doctoral degree through a graduate program in psychology provided by an accredited institution at the time such grant is awarded;

''(B) will provide services to a medically underserved population during the period of such grant;

''(C) will comply with the provisions of subsection (c); and

''(D) will provide any other information or assurances as the Secretary determines appropriate.

''(2) INSTITUTIONS.—In order to receive a grant or contract under this section, an institution shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such institution—

''(A) is an entity, approved by the State, that provides psychological services in medically underserved areas or to medically underserved populations (including entities that care for the mentally retarded, mental health institutions, and prisons);

''(B) will use amounts provided to such institution under this section to provide financial assistance in the form of fellowships to qualified individuals who meet the requirements of subparagraphs (A) through (C) of paragraph (1);

''(C) will not use more than 10 percent of amounts provided under this section to pay for the administrative costs of any fellowship programs established with such funds; and

''(D) will provide any other information or assurances as the Secretary determines appropriate.

''(c) CONTINUED PROVISION OF SERVICES.—Any individual who receives a grant or fellowship under this section shall certify to the Secretary that such individual will continue to provide the type of services for which such grant or fellowship is awarded for not less than 1 year after the term of the grant or fellowship has expired.

''(d) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations necessary to carry out this section, including regulations that define the terms 'medically underserved areas' and 'medically underserved populations'.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 2006 through 2008.''.

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By Mr. INOUYE:

S. 93. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. LUGAR. Mr. President, on behalf of myself and Senators LEAHY, LINCOLN, DOLE, and SMITH, I rise today to introduce the Good Samaritan Hunger Relief Tax Incentive Act of 2005. This important legislation allows for expanded charitable tax deductions for contributions of food inventory to our nation's food banks and would permit farmers and businesses of all sizes to take advantage of this tax deduction. Demand on food banks has been rising, and these tax deductions would be an important step in increasing private donations to the non-profit hunger relief charities playing a critical role in meeting America's nutritional needs.

To a certain degree, donations have not diminished or have even modestly increased, but most areas surveyed report that donations cannot keep up with the growing demand. According to the U.S. Conference of Mayors and Sodexho USA ''Hunger and Homelessness Survey'' released in December 2004, requests for emergency food assistance has increased fourteen percent. Fifty-six percent of the people requesting emergency food assistance are either children or their parents. The number of elderly persons requesting food assistance has increased by twelve percent. The success of welfare reform legislation has moved many recipients off welfare and into jobs. Over the last decade, in many states, welfare roles have been reduced by more than one half. But we need to recognize that these individuals and their families are living on modest wages. As the states' unemployment rates have risen, so have the demands placed on the food banks and soup kitchens. The problem of hunger goes well beyond the unemployed. The Mayors' survey points out that thirty-four percent of people requesting food assistance were working. Due to increases in rent, underemployment, multigenerational residences, families have to make the tough financial decisions. As a result, food needs of families have been pushed further and further down the priority list. This is coupled with the nutritional value becoming less important to some families because fast food and ''junk'' food is more economical to those on a tight budget.

Private food banks provide a key safety net against hunger. According to the 2002 report by U.S. Department of Agriculture, over 13 million children were hungry or at the risk of being hungry.

America's Second Harvest, a nationwide umbrella group of over 200 food banks and food rescue organization, released a 2001 report entitled ''Hunger in America'' stating that 23.3 million people sought and received emergency hunger relief from just their network of charitable organizations. That would be the equivalent of the populations of New York, Los Angeles, Chicago, Houston, Philadelphia, San Diego, Phoenix, San Antonio, Dallas, and Detroit combined. In 1997, the USDA estimated that up to 96 billion pounds of food goes to waste each year in the United States at a cost of an estimated $1 billion in increased disposal fees paid by municipalities. This is food and fresh produce that is left unharvested or in storage bins, discarded by wholesales, restaurants, and grocery stores, or reduced by the manufacturing or transportation process. If a small percentage of this wasted food could be redirected to food banks, we could make important strides in our fight against hunger. I believe the enactment of this legislation would be a great incentive in redirecting this food from being discarded to being distributed to hungry families.

The Good Samaritan Hunger Relief Tax Incentive Act would allow farmers and small business owners to take a deduction when they donate food to their community food bank. Currently this reduction is available to large corporations but not for small businesses. This approach would stimulate private charitable giving to food banks at the community level. Each citizen can make an important contribution to the fight against hunger at a local level. Over the years, I have had the opportunity to visit numerous Hoosier food banks, and have been especially impressed by the remarkable work of these organizations. In many cases, they are partnered with churches and faith-based organizations and are making a tremendous difference in our communities. We should support this private sector activity, which not only feeds people, but also strengthens community bonds and demonstrates the power of faith, charity, and civic involvement.

Thank you, Mr. President. I yield the floor.

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By Mr. LAUTENBERG (for himself and Mr. DEWINE):

S. 95. A bill to amend titles 23 and 49, United States Code, concerning length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes; to the Committee on Environment and Public Works.

Mr. LAUTENBERG. Today, I am proud to introduce, along with my colleague Senator DEWINE, legislation which will make our roads safer and last longer. Our bill, the ''Safe Highways and Infrastructure Preservation Act,'' will extend the current limited freeze of current truck size and weight limits set by states, which only applies to our 44,000-mile Interstate Highway System, to the entire 156,000-mile National Highway System (NHS). This extension will make more roads safer and will further reduce the wear and tear of our highways and bridges.

Fifteen years ago, I got a provision into the ISTEA highway reauthorization bill to ban triple-trailer trucks and other so-called ''longer combination vehicles'' (LCVs) from New Jersey and most other States. At that time and ever since, the trucking industry has fought to defeat and repeal this ban, under the guise of arguments for ''states' rights'' and ''unfair re-distribution of business to railroads.'' But these are not rational arguments for allowing larger and heavier trucks as well as triple-trailer trucks on our roads. Additionally, the trucking industry's proclaimed hardships have not materialized. In fact, the trucking companies have survived the current laws quite well, and trucks have refined their role in our national freight transportation system.

Anyone who has ever shared the road with a large tractor-trailer truck has probably wondered whether the truck driver is aware of the smaller vehicles around the truck. Anyone who has seen the third trailer on a triple-trailer truck swinging around in a 'crack the whip' fashion probably knows that these trucks are to be avoided.

Moving to the use of even larger trucks is not safe. The U.S. Department of Transportation has determined that multi-trailer trucks are likely to be involved in more fatal crashes—11 percent more than today's single-trailer trucks. By expanding the limits on triples and other longer combination

vehicles to the entire NHS including more than 2,000 miles of highway in New Jersey the Safe Highways and Infrastructure Protection Act will save lives and prevent further deterioration of our roads and bridges.

The State of New Jersey sees its share of the nation's truck traffic. And we are concerned about recent projections that show the amount of traffic increasing considerably over the next 10 to 20 years. We are concerned about these 53-foot, 80,000-pound vehicles on our highways and the pressure from other states to increase weight and length limitations to allow larger trucks to come through our State. This makes truck safety even more important to New Jersey drivers.

Triple-trailers and other LCVs do more damage to our roads and bridges but don't come close to paying associated maintenance and repair costs. Currently, some 37 percent of bridges in New Jersey are considered structurally deficient or functionally obsolete. Their average age is 42 years old. But the fees, tolls, and gasoline taxes paid by the operator of a 100,000-pound truck only covers 40 percent of the cost of the damage that truck does to our roads and bridges; taxpayers make up the difference. I believe that motorists should not have to share the road with these dangerous behemoths and pay for the extra damage they cause.

In the 108th Congress, the Senate passed portions of this legislation in the highway reauthorization legislation package. I believe that if we act to pass this legislation, we can make a big difference in the lives of people who share our highways with large truck traffic.

I thank my colleague Senator DEWINE for once again joining me in sponsoring this important legislation, and I look forward to working with my colleagues in the Congress to improve highway safety and increase the remaining life of our country's roads and bridges.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD.

(The bill will be printed in a future edition of the RECORD.)

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By Mr. INHOFE:

S. 96. A bill to target Federal funding for research and development, to amend section 1928 of the Social Security Act to encourage the production of influenza vaccines by eliminating the price cap applicable to the purchase of such vaccines under contracts entered into by the Secretary of Health and Human Services, to amend the Internal Revenue Code of 1986 to establish a tax credit to encourage vaccine production capacity, and for other purposes; to the Committee on Finance.

Mr. INHOFE. Mr. President, I have long been dedicated to quality healthcare for my constituents in Oklahoma and across America. I supported the Medicare bill of 2003 to give a voluntary prescription drug benefit to seniors. I have championed the rural health care providers, who received some of the greatest benefits of the Medicare bill. In 1997, I was one of few Republican to vote against the Balanced Budget Act because of its lack of support for rural hospitals. Back then, I made a commitment to not allow our rural hospitals to be closed, and I am pleased we finally addressed that important issue in the Medicare legislation. I also co-sponsored S. 816, the Health Care Access and Rural Equity Act, to protect and preserve access of Medicare beneficiaries to health care in rural regions.

I am a strong advocate of medical liability reform and am an original cosponsor of S. 11, the Patients First Act, to protect patients' access to quality and affordable health care by reducing the effects of excessive liability costs. There are solutions to alleviate the burden placed on physicians and patients by excessive medical malpractice lawsuits, and I am committed to this vital reform.

I have also worked with officials from the Center for Medicare and Medicaid Services to expand access to lifesaving Implantable Cardiac Defibrillators. I supported legislation to increase the supply of pancreatic islet cells for research and co-sponsored a bill to take the abortion pill RU–486 off the market in the United States.

The Federal Government invests in improving hospitals and healthcare initiatives, and I have fought hard to ensure that Oklahoma gets its fair share. Specifically, over the past three years, I have helped to secure $5.2 million in funding for the Oklahoma Medical Research Foundation, the Oklahoma State Department of Health planning initiative for a rural telemedicine system, the INTEGRIS Healthcare System, the University of Oklahoma Health Sciences Center, the Oklahoma Center for the Advancement of Science and Technology, St. Anthony's Heart Hospital, the Hillcrest Healthcare System, and the Morton Health Center.

Mr. President, the unexpected influenza (flu) vaccine shortage beginning last month highlights the need to encourage the production of flu vaccine in America. As you know, on October 5, 2004, Chiron, a California-based biotechnology company, notified U.S. health officials that its plant in Liverpool, England had been shut down due to vaccine contamination. Almost 50,000 doses of flu vaccine were thrown away, which created a severe shortage for Americans just as the flu season began.

In light of the current shortage, I have examined why America found itself unable to accommodate the public demand for the flu vaccine. As we have seen, once a vaccine shortage strikes, a rapid response is difficult and often impossible. Thirty years ago, more than a dozen American companies were in the flu vaccine business. Today, only two companies make the vaccine for America, and only one is an America-based company. This is no coincidence. High liability costs, tedious production, price caps, and the complicated United States tax code have kept the market bare.

In October, President Bush signed the JOBS bill, which curbed the billion-dollar lawsuits that have crippled the flu vaccination industry. By adding flu vaccine to the list of vaccines protected by the National Vaccine Injury Compensation Program (VICP), a no-fault alternative must be used for resolving vaccine injury claims. I am encouraged with this progress, but more can be done to prevent a shortage in the future.

The FY2005 Omnibus bill provides $100 million to the Department of Health and Human Services (HHS) to ensure a year-round flu vaccine production capacity and for the development of rapidly expandable flu vaccine production technologies. The Omnibus language also permits HHS to purchase flu vaccine with these funds, if deemed necessary. Such costly purchasing is a waste of federal dollars that could otherwise be used for research through the National Institutes of Health to develop faster and safer vaccine production technology. My bill strikes the language that allows government purchasing of the flu vaccine with these funds.

Optimizing the flu vaccine production process is imperative. The ever-changing nature of the flu virus results in a complicated production process. The dominant strain of the flu virus mutates each year, requiring a different vaccine for every flu season. Because harvesting the flu vaccine currently takes at least six months and requires tens of thousands of fertilized eggs susceptible to contamination, this process must begin nearly a year before the flu season begins.

Research should be focused on developing new technologies to allow us to produce more vaccine—in the same season—when we encounter a shortage. For example, a company in Connecticut is developing a flu vaccine relying on cell lines from silk moths. Reverse genetics technology also holds potential that researchers should explore. These types of innovative research promise to shave at least one month off of production time and significantly reduce cost.

Rather than temporarily masking problems through wasted spending on vaccine surpluses, my bill would ensure that the federal government invests in lasting solutions to the challenges of flu vaccine production. The encouragement of safer and faster flu vaccine production technology is a prudent use of federal research dollars through the National Institutes of Health.

To invest in these new technologies, flu vaccine manufacturers will have to renovate existing facilities or construct new ones. My bill gives a tax

credit to companies, new and old, to assist them in this important venture.

Currently, ten American companies produce the forty-seven FDA-approved vaccines. An investment tax credit will encourage these existing companies to expand their production to cover the flu vaccine and will invite start-up companies to join the industry. This will better equip the United States market to prevent and deal with a shortage in the future.

Furthermore, my bill removes the suffocating price controls that have discouraged companies from producing the flu vaccine. The Vaccines For Children program (VFC), enacted under the Clinton Administration, imposed a price cap on all vaccines purchased through federal contracts. From a shortsighted perspective, these regulated prices may expand access to vaccines. However, in the long run this policy devastates the vaccine production industry and decreases the availability of vaccines. This occurred in 1998 when manufacturers of Tetanus Diphtheria vaccine refused to bid on government contracts. Consequently, this vaccine is no longer available to children through the VFC program.

Similarly, the CDC purchased nearly 12 percent of the flu vaccine this season, and significant quantities were purchased through the Department of Defense, the Veteran's Administration, and Medicare. The price controls imposed from federal government purchasing create a high-risk, low-reward business market. Price controls destroy any profit incentive. Manufacturers avoid this artificial environment and will continue to as long as the government over steps its bounds.

The harmful effect of government price controls is especially pronounced in the flu vaccine market because the vaccine has a single-season shelf life. The difficulty of predicting the demand for vaccines each year exposes companies great risk. A slight drop in demand can force them out of the market. Financial losses—from seven million extra doses in 2002 and 4.5 million extra in 2003—compelled Wyeth Pharmaceutical Company to end its flu vaccine manufacturing.

Scientific experts consider vaccination to be the most effective medical intervention, and we live in an age of unprecedented vaccine development and implementation. We cannot continue to over-regulate the flu vaccine industry and hope companies will hang on and produce vaccines regardless of profit. The current national flu vaccine shortage reveals the need to act.

My bill would steer NIH research dollars towards cutting-edge technology, remove suffocating price controls, and free American companies to enter the flu vaccine industry with an investment tax credit. I urge my colleagues to stand with me in supporting this vital legislation.

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By Mr. TALENT:

S. 102. A bill to provide grants to States to combat methamphetamine abuse; to the Committee on the Judiciary.

Mr. TALENT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 102

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Exile Meth Act''.

**SEC. 2. ESTABLISHMENT OF GRANT PROGRAM FOR COMBATING METHAMPHETAMINE REPEAT OFFENDERS.**

The Attorney General shall establish a program that provides grants to qualified States for combating the problem of methamphetamine abuse, with a specific focus on the prosecution of repeat offenders.

**SEC. 3. DEFINITION.**

As used in this Act, the term ''qualified State'' means a State that—

(1) had more than 200 methamphetamine lab seizures in 2004, as reported by the National Clandestine Laboratory Database; and

(2) has a law that provides that a person who possesses or distributes 5 grams or more of methamphetamine, its salts, isomers, or salts of its isomers, or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, qualifies for a mandatory minimum sentence, without the possibility of probation or parole, of 5 to 40 years for a first offense, 10 years to life for a second offense, and life for a third offense.

**SEC. 4. DISTRIBUTION OF GRANT AMOUNTS.**

The Attorney General shall distribute grants authorized under this Act to 2 States.

**SEC. 5. ADMINISTRATION.**

The Attorney General shall prescribe requirements, including application requirements, for grants under the program established under this Act.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated $10,000,000 for each of the fiscal years 2006 and 2007 to carry out this Act.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

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By Mr. TALENT (for himself, Mrs. FEINSTEIN, Mr. BAYH, Mr. NELSON of Nebraska, Mr. DAYTON, Mr. WYDEN, Mr. SALAZAR, Mr. HAGEL, Mr. HARKIN, Mr. SMITH, Mr. COLEMAN, and Mr. GRASSLEY):

S. 103. A bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes; to the Committee on the Judiciary.

Mr. TALENT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill were ordered to be printed in the RECORD, as follows:

S. 103

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Combat Meth Act of 2005''.

**TITLE I—ENFORCEMENT**

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS RELATING TO COPS GRANTS.**

(a) IN GENERAL.—In addition to any other funds authorized to be appropriated for fiscal year 2006 for grants under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.), commonly known as the COPS program, there are authorized to be appropriated $15,000,000 for such purpose to provide training to State and local prosecutors and law enforcement agents for the investigation and prosecution of methamphetamine offenses.

(b) RURAL SET-ASIDE.—Of amounts made available under subsection (a), $3,000,000 shall be available only for prosecutors and law enforcement agents for rural communities.

**SEC. 102. EXPANSION OF METHAMPHETAMINE HOT SPOTS PROGRAM TO INCLUDE PERSONNEL AND EQUIPMENT FOR ENFORCEMENT, PROSECUTION, AND CLEANUP.**

Section 1701(d) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(d)) is amended—

(1) in paragraph (11) by striking ''and'' at the end;

(2) in paragraph (12) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(13) hire personnel and purchase equipment to assist in the enforcement and prosecution of methamphetamine offenses and the cleanup of methamphetamine-affected areas.''.

**SEC. 103. SPECIAL UNITED STATES ATTORNEYS' PROGRAM.**

(a) IN GENERAL.—The Attorney General shall allocate any amounts appropriated pursuant to the authorization under subsection (c) for the hiring and training of special assistant United States attorneys.

(b) USE OF FUNDS.—The funds allocated under subsection (a) shall be used to—

(1) train local prosecutors in techniques used to prosecute methamphetamine cases, including the presentation of evidence related to the manufacture of methamphetamine;

(2) train local prosecutors in Federal and State laws involving methamphetamine manufacture or distribution;

(3) cross-designate local prosecutors as special assistant United States attorneys; and

(4) hire additional local prosecutors who—

(A) with the approval of the United States attorney, shall be cross-designated to prosecute both Federal and State methamphetamine cases;

(B) shall be assigned a caseload, whether in State court or Federal court, that gives the highest priority to cases in which—

(i) charges related to methamphetamine manufacture or distribution are submitted by law enforcement for consideration; and

(ii) the defendant has been previously convicted of a crime related to methamphetamine manufacture or distribution.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of the fiscal years 2006 and 2007 to carry out the provisions of this section.

**SEC. 104. PSEUDOEPHEDRINE AMENDMENTS TO CONTROLLED SUBSTANCES ACT.**

(a) ADDITION OF PSEUDOEPHEDRINE TO SCHEDULE V.—Section 202 of the Controlled Substances Act (21 U.S.C. 812) is amended by adding at the end the following:

''(6) Any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.''.

(b) PRESCRIPTIONS.—Section 309(c) of the Controlled Substances Act (21 U.S.C. 829(c)) is amended—

(1) by inserting ''(1)'' before ''No controlled substance''; and

(2) by adding at the end the following:

''(2) If the substance described in paragraph (6) of Schedule V of section 202 is dispensed, sold, or distributed in a pharmacy—

''(A) the substance shall be dispensed, sold, or distributed only by a licensed pharmacist or a licensed pharmacy technician; and

''(B) any person purchasing, receiving, or otherwise acquiring any such substance shall—

''(i) produce a photo identification showing the date of birth of such person; and

''(ii) sign a written log or receipt showing—

''(I) the date of the transaction;

''(II) the name of the person; and

''(III) the name and the amount of the substance purchased, received, or otherwise acquired.

''(3)(A) No person shall purchase, receive, or otherwise acquire more than 9 grams of the substance described in paragraph (6) of Schedule V of section 202 within any 30-day period.

''(B) The limit described in subparagraph (A) shall not apply to any quantity of such substance dispensed under a valid prescription.

''(4)(A) The Director of the Federal Drug Administration, by rule, may exempt a product from Schedule V of section 202 if the Director determines that the produce is not used in the illegal manufacture of methamphetamine or other controlled dangerous substance.

''(B) The Director of the Federal Drug Administration, upon the application of a manufacturer of a drug product, may exempt the product from Schedule V of section 202 if the Director determines that the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

''(C) The Director of the Federal Drug Administration, by rule, may authorize the sale of the substance described in paragraph (6) of Schedule V of section 202 by persons other than licensed pharmacists or licensed pharmacy technicians if—

''(i) the Director finds evidence that the absence of a pharmacy creates a hardship for a community; and

''(ii) the authorized personnel follow the procedure set forth in this Act''.

**TITLE II—EDUCATION, PREVENTION, AND TREATMENT**

**SEC. 201. GRANTS FOR SERVICES FOR CHILDREN OF SUBSTANCE ABUSERS.**

Section 519 of the Public Health Service Act (42 U.S.C. 290bb–25) is amended—

(1) in subsection (b), by inserting after paragraph (8) the following:

''(9) Development of drug endangered children rapid response teams that will intervene on behalf of children exposed to methamphetamine as a result of residing or being present in a home-based clandestine drug laboratory.''; and

(2) in subsection (o)—

(A) by striking ''For the purpose'' and inserting the following:

''(1) IN GENERAL.—For the purpose''; and

(B) by adding at the end the following:

''(2) DRUG ENDANGERED CHILDREN RAPID RESPONSE TEAMS.—There are authorized to be appropriated $2,500,000 for each of the fiscal years 2006 and 2007 to carry out the provisions of subsection (b)(9).''.

**SEC. 202. LOCAL GRANTS FOR TREATMENT OF METHAMPHETAMINE ABUSE AND RELATED CONDITIONS.**

Subpart 1 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb et seq.) is amended—

(1) by redesignating the section 514 that relates to methamphetamine and appears after section 514A as section 514B;

(2) in section 514B, as redesignated—

(A) by amending subsection (a)(1) to read as follows:

''(1) GRANTS AUTHORIZED.—The Secretary may award grants to States, political subdivisions of States, American Indian Tribes, and private, nonprofit entities to provide treatment for methamphetamine abuse.'';

(B) by amending subsection (b) to read as follows:

''(b) PRIORITY FOR RURAL AREAS.—In awarding grants under subsection (a), the Secretary shall give priority to entities that will serve rural areas experiencing an increase in methamphetamine abuse.''; and

(C) in subsection (d)(1), by striking ''2000'' and all that follows and inserting ''2005 and such sums as may be necessary for each of fiscal years 2006 through 2009''; and

(3) by inserting after section 514B, as redesignated, the following:

**''SEC. 514C. METHAMPHETAMINE RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE CENTER.**

''(a) PROGRAM AUTHORIZED.—The Secretary, acting through the Administrator, and in consultation with the Director of the National Institutes of Health, shall award grants to, or enter into contracts with, public or private, nonprofit entities to establish a research, training, and technical assistance center to carry out the activities described in subsection (d).

''(b) APPLICATION.—A public or private, nonprofit entity seeking a grant or contract under subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(c) CONDITION.—In awarding grants or entering into contracts under subsection (a), the Secretary shall ensure that not less than 1 of the centers will focus on methamphetamine abuse in rural areas.

''(d) AUTHORIZED ACTIVITIES.—Each center established under this section shall—

''(1) engage in research and evaluation of the effectiveness of treatment modalities for the treatment of methamphetamine abuse;

''(2) disseminate information to public and private entities on effective treatments for methamphetamine abuse;

''(3) provide direct technical assistance to States, political subdivisions of States, and private entities on how to improve the treatment of methamphetamine abuse; and

''(4) provide training on the effects of methamphetamine use and on effective ways of treating methamphetamine abuse to substance abuse treatment professionals and community leaders.

''(e) REPORTS.—Each grantee or contractor under this section shall annually submit a report to the Administrator that contains—

''(1) a description of the previous year's activities of the center established under this section;

''(2) effective treatment modalities undertaken by the center; and

''(3) evidence to demonstrate that such treatment modalities were successful.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for fiscal year 2006 and such sums as may be necessary for each of fiscal years 2007 and 2008.''.

**SEC. 203. METHAMPHETAMINE PRECURSOR MONITORING GRANTS.**

(a) GRANTS AUTHORIZED.—The Attorney General, acting through the Bureau of Justice Assistance, may award grants to States to establish methamphetamine precursor monitoring programs.

(b) PURPOSE.—The purpose of the grant program established under this section is to—

(1) prevent the sale of methamphetamine precursors, such as pseudoephedrine, to individuals in quantities so large that the only reasonable purpose of the purchase would be to manufacture methamphetamine;

(2) educate businesses that legally sell methamphetamine precursors of the need to balance the legitimate need for lawful access to medication with the risk that those substances may be used to manufacture methamphetamine; and

(3) recalibrate existing prescription drug monitoring programs designed to track the sale of controlled substances to also track the sale of pseudoephedrine in any amount greater than 6 grams.

(c) USE OF GRANT FUNDS.—Grant funds awarded to States under this section may be used to—

(1) implement a methamphetamine precursor monitoring program, including hiring personnel and purchasing computer hardware and software designed to monitor methamphetamine precursor purchases;

(2) expand existing methamphetamine precursor or prescription drug monitoring programs to accomplish the purposes described in subsection (b);

(3) pay for training and technical assistance for law enforcement personnel and employees of businesses that lawfully sell substances, which may be used as methamphetamine precursors;

(4) improve information sharing between adjacent States through enhanced connectivity; or

(5) make grants to subdivisions of the State to implement methamphetamine precursor monitoring programs.

(d) APPLICATION.—Any State seeking a grant under this section shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may require.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of the fiscal years 2006 and 2007 to carry out the provisions of this section.

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By Mr. TALENT (for himself, Mr. WYDEN, Mr. COLEMAN, and Mr. CORZINE):

S. 104. A bill to amend the Internal Revenue Code of 1986 to provide tax-exempt financing of highway projects and rail-truck transfer facilities; to the Committee on Finance.

Mr. TALENT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 104

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TAX-EXEMPT FINANCING OF HIGHWAY PROJECTS AND RAIL-TRUCK TRANSFER FACILITIES.**

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 of the Internal Revenue Code of 1986 (relating to exempt facility bond) is amended by striking ''or'' at the end of paragraph (13), by striking the period at the end of paragraph (14), and by adding at the end the following:

''(15) qualified highway facilities, or

''(16) qualified surface freight transfer facilities.''.

(b) QUALIFIED HIGHWAY FACILITIES AND QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—Section 142 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(m) QUALIFIED HIGHWAY AND SURFACE FREIGHT TRANSFER FACILITIES.—

''(1) QUALIFIED HIGHWAY FACILITIES.—For purposes of subsection (a)(15), the term 'qualified highway facilities' means—

''(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection), or

''(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under such title 23.

''(2) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—For purposes of subsection (a)(16), the term 'qualified surface freight transfer facilities' means facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as in effect on the date of the enactment of this subsection).

''(3) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.—

''(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(15) or (a)(16) if the aggregate face amount of bonds issued by any State pursuant thereto (when added to the aggregate face amount of bonds previously so issued) exceeds $15,000,000,000.

''(B) ALLOCATION BY SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall allocate the amount described in subparagraph (A) among eligible projects described in subsections (a)(15) and (a)(16) in such manner as the Secretary determines appropriate.''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) of the Internal Revenue Code of 1986 (relating to exception for certain bonds) is amended by striking ''or (14)'' and all that follows through the end of the paragraph and inserting ''(14), (15), or (16) of section 142(a), and''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

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By Mr. TALENT (for himself, Mr. SESSIONS, and Mr. DEMINT):

S. 105. A bill to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes; to the Committee on Finance.

Mr. TALENT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 105

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Personal Responsibility, Work, and Family Promotion Act of 2005''.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.
Sec. 4. Findings.

TITLE I—TANF

Sec. 101. Purposes.
Sec. 102. Family assistance grants.
Sec. 103. Promotion of family formation and healthy marriage.
Sec. 104. Supplemental grant for population increases in certain States.
Sec. 105. Bonus to reward employment achievement.
Sec. 106. Contingency fund.
Sec. 107. Use of funds.
Sec. 108. Repeal of Federal loan for State welfare programs.
Sec. 109. Universal engagement and family self-sufficiency plan requirements.
Sec. 110. Work participation requirements.
Sec. 111. Maintenance of effort.
Sec. 112. Performance improvement.
Sec. 113. Data collection and reporting.
Sec. 114. Direct funding and administration by Indian tribes.
Sec. 115. Research, evaluations, and national studies.
Sec. 116. Studies by the Census Bureau and the Government Accountability Office.
Sec. 117. Definition of assistance.
Sec. 118. Technical corrections.
Sec. 119. Fatherhood program.
Sec. 120. State option to make TANF programs mandatory partners with one-stop employment training centers.
Sec. 121. Sense of the Congress.
Sec. 122. Extension through fiscal year 2005.

TITLE II—CHILD CARE

Sec. 201. Short title.
Sec. 202. Goals.
Sec. 203. Authorization of appropriations.
Sec. 204. Application and plan.
Sec. 205. Activities to improve the quality of child care.
Sec. 206. Report by Secretary.
Sec. 207. Definitions.
Sec. 208. Entitlement funding.

TITLE III—CHILD SUPPORT

Sec. 301. Federal matching funds for limited pass through of child support payments to families receiving TANF.
Sec. 302. State option to pass through all child support payments to families that formerly received TANF.
Sec. 303. Mandatory review and adjustment of child support orders for families receiving TANF.
Sec. 304. Mandatory fee for successful child support collection for family that has never received TANF.
Sec. 305. Report on undistributed child support payments.
Sec. 306. Decrease in amount of child support arrearage triggering passport denial.
Sec. 307. Use of tax refund intercept program to collect past-due child support on behalf of children who are not minors.
Sec. 308. Garnishment of compensation paid to veterans for service-connected disabilities in order to enforce child support obligations.
Sec. 309. Improving Federal debt collection practices.
Sec. 310. Maintenance of technical assistance funding.
Sec. 311. Maintenance of Federal Parent Locator Service funding.

TITLE IV—CHILD WELFARE

Sec. 401. Extension of authority to approve demonstration projects.
Sec. 402. Elimination of limitation on number of waivers.
Sec. 403. Elimination of limitation on number of States that may be granted waivers to conduct demonstration projects on same topic.
Sec. 404. Elimination of limitation on number of waivers that may be granted to a single State for demonstration projects.
Sec. 405. Streamlined process for consideration of amendments to and extensions of demonstration projects requiring waivers.
Sec. 406. Availability of reports.
Sec. 407. Technical correction.

TITLE V—SUPPLEMENTAL SECURITY INCOME

Sec. 501. Review of State agency blindness and disability determinations.

TITLE VI—STATE AND LOCAL FLEXIBILITY

Sec. 601. Program coordination demonstration projects.
Sec. 602. State food assistance block grant demonstration project.

TITLE VII—ABSTINENCE EDUCATION

Sec. 701. Extension of abstinence education program.

TITLE VIII—TRANSITIONAL MEDICAL ASSISTANCE

Sec. 801. Extension of medicaid transitional medical assistance program through fiscal year 2006.
Sec. 802. Adjustment to payments for medicaid administrative costs to prevent duplicative payments and to fund extension of transitional medical assistance.

TITLE IX—EFFECTIVE DATE

Sec. 901. Effective date.

**SEC. 3. REFERENCES.**

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Social Security Act.

**SEC. 4. FINDINGS.**

The Congress makes the following findings:

(1) The Temporary Assistance for Needy Families (TANF) Program established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) has succeeded in moving families from welfare to work and reducing child poverty.

(A) There has been a dramatic increase in the employment of current and former welfare recipients. The percentage of working recipients reached an all-time high in fiscal year 1999 and continued steady in fiscal years 2000 and 2001. In fiscal year 2003, 31.3 percent of adult recipients were counted as meeting the work participation requirements. All States but one met the overall participation rate standard in fiscal year 2003, as did the District of Columbia and Puerto Rico.

(B) Earnings for welfare recipients remaining on the rolls have also increased significantly, as have earnings for female-headed households. The increases have been particularly large for the bottom 2 income quintiles, that is, those women who are most likely to be former or present welfare recipients.

(C) Welfare dependency has plummeted. As of June 2004, 1,969,909 families and 4,727,291 individuals were receiving assistance. Accordingly, the number of families in the welfare caseload and the number of individuals receiving cash assistance declined 55 percent and 61 percent, respectively, since the enactment of TANF.

(D) The child poverty rate continued to decline between 1996 and 2003, falling 14 percent from 20.5 to 17.6 percent. Child poverty rates for African-American and Hispanic children have also fallen dramatically during the past 7 years.

(2) As a Nation, we have made substantial progress in reducing teen pregnancies and births, slowing increases in nonmarital childbearing, and improving child support collections and paternity establishment.

(A) The birth rate to teenagers declined 30 percent from its high in 1991 to 2002. The 2002 teenage birth rate of 43.0 per 1,000 women aged 15–19 is the lowest recorded birth rate for teenagers.

(B) During the period from 1991 through 2001, teenage birth rates fell in all States and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. Declines also have spanned age, racial, and ethnic groups. There has been success in lowering the birth rate for both younger and older teens. The birth rate for those 15–17 years of age has declined 40 percent since 1991, and the rate for those 18 and 19 has declined 23 percent. The rate for African American teens—until recently the highest—has declined the most—42 percent from 1991 through 2002.

(C) Since the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, child support collections within the child support enforcement system have grown every year, increasing from $12,000,000,000 in fiscal year 1996 to over $21,000,000,000 in fiscal year 2003. The number of paternities established or acknowledged in fiscal year 2003 (over 1,500,000) includes a more than 100 percent increase through in-hospital acknowledgement programs—862,043 in 2003 compared to 324,652 in 1996. Child support collections were made in nearly 8,000,000 cases in fiscal year 2003, significantly more than the almost 4,000,000 cases having a collection in 1996.

(3) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 gave States great flexibility in the use of Federal funds to develop innovative programs to help families leave welfare and begin employment and to encourage the formation of 2-parent families.

(A) Total Federal and State TANF expenditures in fiscal year 2003 were $26,300,000,000, up from $25,400,000,000 in fiscal year 2002 and $22,600,000,000 in fiscal year 1999. This increased spending is attributable to significant new investments in supportive services in the TANF program, such as child care and activities to support work.

(B) Since the welfare reform effort began there has been a dramatic increase in work participation (including employment, community service, and work experience) among welfare recipients, as well as an unprecedented reduction in the caseload because recipients have left welfare for work.

(C) States are making policy choices and investment decisions best suited to the needs of their citizens.

(i) To expand aid to working families, almost all States disregard a portion of a family's earned income when determining benefit levels.

(ii) Most States increased the limits on countable assets above the former Aid to Families with Dependent Children (AFDC) program. Every State has increased the vehicle asset level above the prior AFDC limit for a family's primary automobile.

(iii) States are experimenting with programs to promote marriage and paternal involvement. Over half of the States have eliminated restrictions on 2-parent families. Many States use TANF, child support, or State funds to support community-based activities to help fathers become more involved in their children's lives or strengthen relationships between mothers and fathers.

(4) However, despite this success, there is still progress to be made. Policies that support and promote more work, strengthen families, and enhance State flexibility are necessary to continue to build on the success of welfare reform.

(A) Significant numbers of welfare recipients still are not engaged in employment-related activities. While all States have met the overall work participation rates required by law, in an average month, only 41 percent of all families with an adult participated in work activities that were countable toward the State's participation rate. In fiscal year 2003, four jurisdictions failed to meet the more rigorous 2-parent work requirements, and 25 jurisdictions (States and territories) are not subject to the 2-parent requirements, most because they moved their 2-parent cases to separate State programs where they are not subject to a penalty for failing the 2-parent rates.

(B) In 2002, 34 percent of all births in the U.S. were to unmarried women. And, with fewer teens entering marriage, the proportion of births to unmarried teens has increased dramatically (80 percent in 2002 versus 30 percent in 1970). The negative consequences of out-of-wedlock birth on the mother, the child, the family, and society are well documented. These include increased likelihood of welfare dependency, increased risks of low birth weight, poor cognitive development, child abuse and neglect, and teen parenthood, and decreased likelihood of having an intact marriage during adulthood.

(C) There has been a dramatic rise in cohabitation as marriages have declined. It is estimated that 40 percent of children are expected to live in a cohabiting-parent family at some point during their childhood. Children in single-parent households and cohabiting-parent households are at much higher risk of child abuse than children in intact married families.

(D) Children who live apart from their biological fathers, on average, are more likely to be poor, experience educational, health, emotional, and psychological problems, be victims of child abuse, engage in criminal behavior, and become involved with the juvenile justice system than their peers who live with their married, biological mother and father. A child living with a single mother is nearly 5 times as likely to be poor as a child living in a married-couple family. In 2003, in married-couple families, the child poverty rate was 8.6 percent, and in households headed by a single mother the poverty rate was 41.7 percent.

(5) Therefore, it is the sense of the Congress that increasing success in moving families from welfare to work, as well as in promoting healthy marriage and other means of improving child well-being, are very important Government interests and the policy contained in part A of title IV of the Social Security Act (as amended by this Act) is intended to serve those ends.

## TITLE I—TANF

**SEC. 101. PURPOSES.**

Section 401(a) (42 U.S.C. 601(a)) is amended—

(1) in the matter preceding paragraph (1), by striking ''increase'' and inserting ''improve child well-being by increasing'';

(2) in paragraph (1), by inserting ''and services'' after ''assistance'';

(3) in paragraph (2), by striking ''parents on government benefits'' and inserting ''families on government benefits and reduce poverty''; and

(4) in paragraph (4), by striking ''two-parent families'' and inserting ''healthy, 2-parent married families, and encourage responsible fatherhood''.

**SEC. 102. FAMILY ASSISTANCE GRANTS.**

(a) EXTENSION OF AUTHORITY.—Section 403(a)(1)(A) (42 U.S.C. 603(a)(1)(A)) is amended—

(1) by striking ''1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003'' and inserting ''2006 through 2010''; and

(2) by inserting ''payable to the State for the fiscal year'' before the period.

(b) STATE FAMILY ASSISTANCE GRANT.—Section 403(a)(1)(C) (42 U.S.C. 603(a)(1)(C)) is amended by striking ''fiscal year 2003'' and inserting ''each of fiscal years 2006 through 2010''.

(c) MATCHING GRANTS FOR THE TERRITORIES.—Section 1108(b)(2) (42 U.S.C. 1308(b)(2)) is amended by striking ''1997 through 2003'' and inserting ''2006 through 2010''.

**SEC. 103. PROMOTION OF FAMILY FORMATION AND HEALTHY MARRIAGE.**

(a) STATE PLANS.—Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended by adding at the end the following:

''(vii) Encourage equitable treatment of married, 2-parent families under the program referred to in clause (i).''.

(b) HEALTHY MARRIAGE PROMOTION GRANTS; REPEAL OF BONUS FOR REDUCTION OF ILLEGITIMACY RATIO.—

(1) IN GENERAL.—Section 403(a)(2) (42 U.S.C. 603(a)(2)) is amended to read as follows:

''(2) HEALTHY MARRIAGE PROMOTION GRANTS.—

''(A) AUTHORITY.—The Secretary shall award competitive grants to States, territories, and tribal organizations for not more than 50 percent of the cost of developing and implementing innovative programs to promote and support healthy, married, 2-parent families.

''(B) HEALTHY MARRIAGE PROMOTION ACTIVITIES.—Funds provided under subparagraph (A) shall be used to support any of the following programs or activities:

''(i) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.

''(ii) Education in high schools on the value of marriage, relationship skills, and budgeting.

''(iii) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.

''(iv) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.

''(v) Marriage enhancement and marriage skills training programs for married couples.

''(vi) Divorce reduction programs that teach relationship skills.

''(vii) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.

''(viii) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

''(C) APPROPRIATION.—

''(i) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2005 through 2010 $100,000,000 for grants under this paragraph.

''(ii) EXTENDED AVAILABILITY OF FY2005 FUNDS.—Funds appropriated under clause (i) for fiscal year 2005 shall remain available to the Secretary through fiscal year 2006, for grants under this paragraph for fiscal year 2005.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(c) COUNTING OF SPENDING ON NON-ELIGIBLE FAMILIES TO PREVENT AND REDUCE INCIDENCE OF OUT-OF-WEDLOCK BIRTHS, ENCOURAGE FORMATION AND MAINTENANCE OF HEALTHY, 2-PARENT MARRIED FAMILIES, OR ENCOURAGE

RESPONSIBLE FATHERHOOD.—Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)) is amended by adding at the end the following:

''(V) COUNTING OF SPENDING ON NON-ELIGIBLE FAMILIES TO PREVENT AND REDUCE INCIDENCE OF OUT-OF-WEDLOCK BIRTHS, ENCOURAGE FORMATION AND MAINTENANCE OF HEALTHY, 2-PARENT MARRIED FAMILIES, OR ENCOURAGE RESPONSIBLE FATHERHOOD.—The term 'qualified State expenditures' includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 401(a).''.

**SEC. 104. SUPPLEMENTAL GRANT FOR POPULATION INCREASES IN CERTAIN STATES.**

Section 403(a)(3) (42 U.S.C. 603(a)(3)) is amended—

(1) in subparagraph (E)—

(A) by striking ''1998, 1999, 2000, and 2001'' and inserting ''2006 through 2009''; and

(B) by striking '', in a total amount not to exceed $800,000,000'';

(2) in subparagraph (G), by striking ''2001'' and inserting ''2009''; and

(3) by striking subparagraph (H) and inserting the following:

''(H) FURTHER PRESERVATION OF GRANT AMOUNTS.—A State that was a qualifying State under this paragraph for fiscal year 2004 or any prior fiscal year shall be entitled to receive from the Secretary for each of fiscal years 2006 through 2009 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.''.

**SEC. 105. BONUS TO REWARD EMPLOYMENT ACHIEVEMENT.**

(a) IN GENERAL.—Section 403(a)(4) (42 U.S.C. 603(a)(4)) is amended—

(1) in the paragraph heading, by striking ''HIGH PERFORMANCE STATES'' and inserting ''EMPLOYMENT ACHIEVEMENT''; and

(2) by striking subparagraphs (A) through (F) and inserting the following:

''(A) IN GENERAL.—The Secretary shall make a grant pursuant to this paragraph to each State for each bonus year for which the State is an employment achievement State.

''(B) AMOUNT OF GRANT.—

''(i) IN GENERAL.—Subject to clause (ii) of this subparagraph, the Secretary shall determine the amount of the grant payable under this paragraph to an employment achievement State for a bonus year, which shall be based on the performance of the State as determined under subparagraph (D)(i) for the fiscal year that immediately precedes the bonus year.

''(ii) LIMITATION.—The amount payable to a State under this paragraph for a bonus year shall not exceed 5 percent of the State family assistance grant.

''(C) FORMULA FOR MEASURING STATE PERFORMANCE.—

''(i) IN GENERAL.—Subject to clause (ii), not later than October 1, 2006, the Secretary, in consultation with the States, shall develop a formula for measuring State performance in operating the State program funded under this part so as to achieve the goals of employment entry, job retention, and increased earnings from employment for families receiving assistance under the program, as measured on an absolute basis and on the basis of improvement in State performance.

''(ii) SPECIAL RULE FOR BONUS YEAR 2006.—For the purposes of awarding a bonus under this paragraph for bonus year 2006, the Secretary may measure the performance of a State in fiscal year 2005 using the job entry rate, job retention rate, and earnings gain rate components of the formula developed under section 403(a)(4)(C) as in effect immediately before the effective date of this paragraph.

''(D) DETERMINATION OF STATE PERFORMANCE.—For each bonus year, the Secretary shall—

''(i) use the formula developed under subparagraph (C) to determine the performance of each eligible State for the fiscal year that precedes the bonus year; and

''(ii) prescribe performance standards in such a manner so as to ensure that—

''(I) the average annual total amount of grants to be made under this paragraph for each bonus year equals $100,000,000; and

''(II) the total amount of grants to be made under this paragraph for all bonus years equals $600,000,000.

''(E) DEFINITIONS.—In this paragraph:

''(i) BONUS YEAR.—The term 'bonus year' means each of fiscal years 2006 through 2011.

''(ii) EMPLOYMENT ACHIEVEMENT STATE.—The term 'employment achievement State' means, with respect to a bonus year, an eligible State whose performance determined pursuant to subparagraph (D)(i) for the fiscal year preceding the bonus year equals or exceeds the performance standards prescribed under subparagraph (D)(ii) for such preceding fiscal year.

''(F) APPROPRIATION.—

''(i) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 2006 through 2011 $600,000,000 for grants under this paragraph.

''(ii) EXTENDED AVAILABILITY OF PRIOR APPROPRIATION.—Amounts appropriated under section 403(a)(4)(F) of the Social Security Act (as in effect before the date of the enactment of this clause) that have not been expended as of such date of enactment shall remain available through fiscal year 2006 for grants under section 403(a)(4) of such Act (as in effect before such date of enactment) for bonus year 2005.[needed?]

''(G) GRANTS FOR TRIBAL ORGANIZATIONS.—This paragraph shall apply with respect to tribal organizations in the same manner in which this paragraph applies with respect to States. In determining the criteria under which to make grants to tribal organizations under this paragraph, the Secretary shall consult with tribal organizations.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

**SEC. 106. CONTINGENCY FUND.**

(a) DEPOSITS INTO FUND.—Section 403(b)(2) (42 U.S.C. 603(b)(2)) is amended—

(1) by striking ''1997, 1998, 1999, 2000, 2001, 2002, and 2003'' and inserting ''2006 through 2010''; and

(2) by striking all that follows ''$2,000,000,000'' and inserting a period.

(b) GRANTS.—Section 403(b)(3)(C)(ii) (42 U.S.C. 603(b)(3)(C)(ii)) is amended by striking ''fiscal years 1997 through 2005'' and inserting ''fiscal years 2006 through 2010''.

(c) DEFINITION OF NEEDY STATE.—Clauses (i) and (ii) of section 403(b)(5)(B) (42 U.S.C. 603(b)(5)(B)) are amended by inserting after ''1996'' the following: '', and the Food Stamp Act of 1977 as in effect during the corresponding 3-month period in the fiscal year preceding such most recently concluded 3-month period,''.

(d) ANNUAL RECONCILIATION: FEDERAL MATCHING OF STATE EXPENDITURES ABOVE ''MAINTENANCE OF EFFORT'' LEVEL.—Section 403(b)(6) (42 U.S.C. 603(b)(6)) is amended—

(1) in subparagraph (A)(ii)—

(A) by adding ''and'' at the end of subclause (I);

(B) by striking ''; and'' at the end of subclause (II) and inserting a period; and

(C) by striking subclause (III);

(2) in subparagraph (B)(i)(II), by striking all that follows ''section 409(a)(7)(B)(iii))'' and inserting a period;

(3) by amending subparagraph (B)(ii)(I) to read as follows:

''(I) the qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for the fiscal year; plus''; and

(4) by striking subparagraph (C).

(e) CONSIDERATION OF CERTAIN CHILD CARE EXPENDITURES IN DETERMINING STATE COMPLIANCE WITH CONTINGENCY FUND MAINTENANCE OF EFFORT REQUIREMENT.—Section 409(a)(10) (42 U.S.C. 609(a)(10)) is amended—

(1) by striking ''(other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part'' and inserting a close parenthesis; and

(2) by striking ''excluding any amount expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994,''.

**SEC. 107. USE OF FUNDS.**

(a) GENERAL RULES.—Section 404(a)(2) (42 U.S.C. 604(a)(2)) is amended by striking ''in any manner that'' and inserting ''for any purposes or activities for which''.

(b) TREATMENT OF INTERSTATE IMMIGRANTS.—

(1) STATE PLAN PROVISION.—Section 402(a)(1)(B) (42 U.S.C. 602(a)(1)(B)) is amended by striking clause (i) and redesignating clauses (ii) through (iv) as clauses (i) through (iii), respectively.

(2) USE OF FUNDS.—Section 404 (42 U.S.C. 604) is amended by striking subsection (c).

(c) INCREASE IN AMOUNT TRANSFERABLE TO CHILD CARE.—Section 404(d)(1) (42 U.S.C. 604(d)(1)) is amended by striking ''30'' and inserting ''50''.

(d) INCREASE IN AMOUNT TRANSFERABLE TO TITLE XX PROGRAMS.—Section 404(d)(2)(B) (42 U.S.C. 604(d)(2)(B)) is amended to read as follows:

''(B) APPLICABLE PERCENT.—For purposes of subparagraph (A), the applicable percent is 10 percent for fiscal year 2006 and each succeeding fiscal year.''.

(e) CLARIFICATION OF AUTHORITY OF STATES TO USE TANF FUNDS CARRIED OVER FROM PRIOR YEARS TO PROVIDE TANF BENEFITS AND SERVICES.—Section 404(e) (42 U.S.C. 604(e)) is amended to read as follows:

''(e) AUTHORITY TO CARRYOVER OR RESERVE CERTAIN AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE CONTINGENCIES.—

''(1) CARRYOVER.—A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.

''(2) CONTINGENCY RESERVE.—A State or tribe may designate any portion of a grant made to the State or tribe under this part as a contingency reserve for future needs, and may use any amount so designated to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part. If a State or tribe so designates a portion of such a grant, the State shall, on an annual basis, include in its report under section 411(a) the amount so designated.''.

**SEC. 108. REPEAL OF FEDERAL LOAN FOR STATE WELFARE PROGRAMS.**

(a) REPEAL.—Section 406 (42 U.S.C. 606) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 409(a) (42 U.S.C. 609(a)) is amended by striking paragraph (6).

(2) Section 412 (42 U.S.C. 612) is amended by striking subsection (f) and redesignating subsections (g) through (i) as subsections (f) through (h), respectively.

(3) Section 1108(a)(2) (42 U.S.C. 1308(a)(2)) is amended by striking ''406,''.

**SEC. 109. UNIVERSAL ENGAGEMENT AND FAMILY SELF-SUFFICIENCY PLAN REQUIREMENTS.**

(a) MODIFICATION OF STATE PLAN REQUIREMENTS.—Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended by striking clauses (ii) and (iii) and inserting the following:

''(ii) Require a parent or caretaker receiving assistance under the program to engage in work or alternative self-sufficiency activities (as defined by the State), consistent with section 407(e)(2).

''(iii) Require families receiving assistance under the program to engage in activities in accordance with family self-sufficiency plans developed pursuant to section 408(b).''.

(b) ESTABLISHMENT OF FAMILY SELF-SUFFICIENCY PLANS.—

(1) IN GENERAL.—Section 408(b) (42 U.S.C. 608(b)) is amended to read as follows:

''(b) FAMILY SELF-SUFFICIENCY PLANS.—

''(1) IN GENERAL.—A State to which a grant is made under section 403 shall—

''(A) assess, in the manner deemed appropriate by the State, the skills, prior work experience, and employability of each work-eligible individual (as defined in section 407(b)(2)(C)) receiving assistance under the State program funded under this part;

''(B) establish for each family that includes such an individual, in consultation as the State deems appropriate with the individual, a self-sufficiency plan that specifies appropriate activities described in the State plan submitted pursuant to section 402, including direct work activities as appropriate designed to assist the family in achieving their maximum degree of self-sufficiency, and that provides for the ongoing participation of the individual in the activities;

''(C) require, at a minimum, each such individual to participate in activities in accordance with the self-sufficiency plan;

''(D) monitor the participation of each such individual in the activities specified in the self sufficiency plan, and regularly review the progress of the family toward self-sufficiency;

''(E) upon such a review, revise the self-sufficiency plan and activities as the State deems appropriate.

''(2) TIMING.—The State shall comply with paragraph (1) with respect to a family—

''(A) in the case of a family that, as of October 1, 2005, is not receiving assistance from the State program funded under this part, not later than 60 days after the family first receives assistance on the basis of the most recent application for the assistance; or

''(B) in the case of a family that, as of such date, is receiving the assistance, not later than 12 months after the date of enactment of this subsection.

''(3) STATE DISCRETION.—A State shall have sole discretion, consistent with section 407, to define and design activities for families for purposes of this subsection, to develop methods for monitoring and reviewing progress pursuant to this subsection, and to make modifications to the plan as the State deems appropriate to assist the individual in increasing their degree of self-sufficiency.

''(4) RULE OF INTERPRETATION.—Nothing in this part shall preclude a State from requiring participation in work and any other activities the State deems appropriate for helping families achieve self-sufficiency and improving child well-being.''.

(2) PENALTY FOR FAILURE TO ESTABLISH FAMILY SELF-SUFFICIENCY PLAN.—Section 409(a)(3) (42 U.S.C. 609(a)(3)) is amended—

(A) in the paragraph heading, by inserting ''or establish family self-sufficiency plan'' after ''rates''; and

(B) in subparagraph (A), by inserting ''or 408(b)'' after ''407(a)''.

**SEC. 110. WORK PARTICIPATION REQUIREMENTS.**

(a) ELIMINATION OF SEPARATE PARTICIPATION RATE REQUIREMENTS FOR 2-PARENT FAMILIES.—

(1) Section 407 (42 U.S.C. 607) is amended in each of subsections (a) and (b) by striking paragraph (2).

(2) Section 407(b)(4) (42 U.S.C. 607(b)(4)) is amended by striking ''paragraphs (1)(B) and (2)(B)'' and inserting ''paragraph (1)(B)''.

(3) Section 407(c)(1) (42 U.S.C. 607(c)(1)) is amended by striking subparagraph (B).

(4) Section 407(c)(2)(D) (42 U.S.C. 607(c)(2)(D)) is amended by striking ''paragraphs (1)(B)(i) and (2)(B) of subsection (b)'' and inserting ''subsection (b)(1)(B)(i)''.

(b) WORK PARTICIPATION REQUIREMENTS.—Section 407 (42 U.S.C. 607) is amended by striking all that precedes subsection (b)(3) and inserting the following:

**''SEC. 407. WORK PARTICIPATION REQUIREMENTS.**

''(a) PARTICIPATION RATE REQUIREMENTS.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this section, a State to which a grant is made under section 403 for a fiscal year shall achieve a minimum participation rate equal to not less than—

''(A) 50 percent for fiscal year 2006;

''(B) 55 percent for fiscal year 2007;

''(C) 60 percent for fiscal year 2008;

''(D) 65 percent for fiscal year 2009; and

''(E) 70 percent for fiscal year 2010 and each succeeding fiscal year.

''(2) MINIMUM PARTICIPATION RATE FLOOR.—

''(A) IN GENERAL.—A State to which a grant is made under section 403 for a fiscal year shall achieve a minimum participation rate floor, calculated in accordance with subparagraph (B), that is not less than—

''(i) 10 percent for fiscal year 2006;

''(ii) 20 percent for fiscal year 2007;

''(iii) 30 percent for fiscal year 2008;

''(iv) 40 percent for fiscal year 2009; and

''(v) 55 percent for fiscal year 2010 and each succeeding fiscal year.

''(B) CALCULATION OF PARTICIPATION RATES FOR DETERMINING COMPLIANCE WITH MINIMUM PARTICIPATION RATE FLOOR.—

''(i) IN GENERAL.—For purposes of determining compliance with subparagraph (A), the provisions of subsection (b) shall apply with respect to the calculation of the participation rate of a State for a fiscal year except as provided in clauses (ii) and (iii).

''(ii) SPECIAL RULES.—For purposes of this paragraph—

''(I) a reduction under subsection (b)(3) shall not be applied with respect to a State for a fiscal year to the extent it would reduce the minimum participation rate the State is otherwise required to meet below the level specified in subparagraph (A) for such fiscal year;

''(II) the participation rate determined under paragraphs (1) and (2) of subsection (b) for a State for a fiscal year may not be increased as provided in subsection (b)(4) if the State's participation rate (as so determined) is below the level specified for such fiscal year in subparagraph (A); and

''(III) the options to exclude certain families for purposes of determining monthly participation rates provided in subsection (b)(2)(B)(ii) shall not apply.

''(iii) DEFINITION OF ASSISTANCE.—For purposes of this paragraph, the term 'assistance' in subsection (b) shall be deemed to mean assistance to a family that—

''(I) meets the definition of that term in section 419; and

''(II) is provided—

''(aa) under the State program funded under this part; or

''(bb) under a program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)).

''(C) NO WORK REQUIREMENT IMPOSED FOR FAMILIES WITH AN INFANT.—Nothing in this paragraph shall be construed as requiring a State to require a family in which the youngest child has not attained 12 months of age to engage in work or other activities.

''(b) CALCULATION OF PARTICIPATION RATES.—

''(1) AVERAGE MONTHLY RATE.—For purposes of subsection (a), the participation rate of a State for a fiscal year is the average of the participation rates of the State for each month in the fiscal year.

''(2) MONTHLY PARTICIPATION RATES; INCORPORATION OF 40-HOUR WORK WEEK STANDARD.—

''(A) IN GENERAL.—For purposes of paragraph (1), the participation rate of a State for a month is—

''(i) the total number of countable hours (as defined in subsection (c)) with respect to the counted families for the State for the month; divided by

''(ii) 160 multiplied by the number of counted families for the State for the month.

''(B) COUNTED FAMILIES DEFINED.—

''(i) IN GENERAL.—In subparagraph (A), the term 'counted family' means, with respect to a State and a month, a family that includes a work-eligible individual and that receives assistance in the month under the State program funded under this part, subject to clause (ii).

''(ii) STATE OPTION TO EXCLUDE CERTAIN FAMILIES.—At the option of a State, the term 'counted family' shall not include—

''(I) a family in the first month for which the family receives assistance from a State program funded under this part on the basis of the most recent application for such assistance; or

''(II) on a case-by-case basis, a family in which the youngest child has not attained 12 months of age.

''(iii) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN OR TRIBAL WORK PROGRAM.—At the option of a State, the term 'counted family' may include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

''(C) WORK-ELIGIBLE INDIVIDUAL DEFINED.—In this section, the term 'work-eligible individual' means an individual—

''(i) who is married or a single head of household; and

''(ii) whose needs are (or, but for sanctions under this part that have been in effect for more than 3 months (whether or not consecutive) in the preceding 12 months or under part D, would be) included in determining the amount of cash assistance to be provided to the family under the State program funded under this part.''.

(c) RECALIBRATION OF CASELOAD REDUCTION CREDIT.—

(1) IN GENERAL.—Section 407(b)(3)(A)(ii) (42 U.S.C. 607(b)(3)(A)(ii)) is amended to read as follows:

''(ii) the average monthly number of families that received assistance under the State program funded under this part during the base year.''.

(2) CONFORMING AMENDMENT.—Section 407(b)(3)(B) (42 U.S.C. 607(b)(3)(B)) is amended by striking ''and eligibility criteria'' and all that follows through the close parenthesis and inserting ''and the eligibility criteria in effect during the then applicable base year''.

(3) BASE YEAR DEFINED.—Section 407(b)(3) (42 U.S.C. 607(b)(3)) is amended by adding at the end the following:

''(C) BASE YEAR DEFINED.—In this paragraph, the term 'base year' means, with respect to a fiscal year—

''(i) if the fiscal year is fiscal year 2006, fiscal year 1996;

''(ii) if the fiscal year is fiscal year 2007, fiscal year 1998;

''(iii) if the fiscal year is fiscal year 2008, fiscal year 2001; or

''(iv) if the fiscal year is fiscal year 2009 or any succeeding fiscal year, the then 4th preceding fiscal year.''.

(d) SUPERACHIEVER CREDIT.—Section 407(b) (42 U.S.C. 607(b)) is amended by striking paragraphs (4) and (5) and inserting the following:

''(4) SUPERACHIEVER CREDIT.—

''(A) IN GENERAL.—The participation rate, determined under paragraphs (1) and (2) of this subsection, of a superachiever State for a fiscal year shall be increased by the lesser of—

''(i) the amount (if any) of the superachiever credit applicable to the State; or

''(ii) the number of percentage points (if any) by which the minimum participation rate required by subsection (a) for the fiscal year exceeds 50 percent.

''(B) SUPERACHIEVER STATE.—For purposes of subparagraph (A), a State is a superachiever State if the State caseload for fiscal year 2001 has declined by at least 60 percent from the State caseload for fiscal year 1995.

''(C) AMOUNT OF CREDIT.—The superachiever credit applicable to a State is the number of percentage points (if any) by which the decline referred to in subparagraph (B) exceeds 60 percent.

''(D) DEFINITIONS.—In this paragraph:

''(i) STATE CASELOAD FOR FISCAL YEAR 2001.—The term 'State caseload for fiscal year 2001' means the average monthly number of families that received assistance during fiscal year 2001 under the State program funded under this part.

''(ii) STATE CASELOAD FOR FISCAL YEAR 1995.—The term 'State caseload for fiscal year 1995' means the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.''.

(e) COUNTABLE HOURS.—Section 407 of such Act (42 U.S.C. 607) is amended by striking subsections (c) and (d) and inserting the following:

''(c) COUNTABLE HOURS.—

''(1) DEFINITION.—In subsection (b)(2), the term 'countable hours' means, with respect to a family for a month, the total number of hours in the month in which any member of the family who is a work-eligible individual is engaged in a direct work activity or other activities specified by the State (excluding an activity that does not address a purpose specified in section 401(a)), subject to the other provisions of this subsection.

''(2) LIMITATIONS.—Subject to such regulations as the Secretary may prescribe:

''(A) MINIMUM WEEKLY AVERAGE OF 24 HOURS OF DIRECT WORK ACTIVITIES REQUIRED.—If the work-eligible individuals in a family are engaged in a direct work activity for an average total of fewer than 24 hours per week in a month, then the number of countable hours with respect to the family for the month shall be zero.

''(B) MAXIMUM WEEKLY AVERAGE OF 16 HOURS OF OTHER ACTIVITIES.—An average of not more than 16 hours per week of activities specified by the State (subject to the exclusion described in paragraph (1)) may be considered countable hours in a month with respect to a family.

''(3) SPECIAL RULES.—For purposes of paragraph (1):

''(A) PARTICIPATION IN QUALIFIED ACTIVITIES.—

''(i) IN GENERAL.—If, with the approval of the State, the work-eligible individuals in a family are engaged in 1 or more qualified activities for an average total of at least 24 hours per week in a month, then all such engagement in the month shall be considered engagement in a direct work activity, subject to clause (iii).

''(ii) QUALIFIED ACTIVITY DEFINED.—The term 'qualified activity' means an activity specified by the State (subject to the exclusion described in paragraph (1)) that meets such standards and criteria as the State may specify, including—

''(I) substance abuse counseling or treatment;

''(II) rehabilitation treatment and services;

''(III) work-related education or training directed at enabling the family member to work;

''(IV) job search or job readiness assistance; and

''(V) any other activity that addresses a purpose specified in section 401(a).

''(iii) LIMITATION.—

''(I) IN GENERAL.—Except as provided in subclause (II), clause (i) shall not apply to a family for more than 3 months in any period of 24 consecutive months.

''(II) SPECIAL RULE APPLICABLE TO EDUCATION AND TRAINING.—A State may, on a case-by-case basis, apply clause (i) to a work-eligible individual so that participation by the individual in education or training, if needed to permit the individual to complete a certificate program or other work-related education or training directed at enabling the individual to fill a known job need in a local area, may be considered countable hours with respect to the family of the individual for not more than 4 months in any period of 24 consecutive months.

''(B) SCHOOL ATTENDANCE BY TEEN HEAD OF HOUSEHOLD.—The work-eligible members of a family shall be considered to be engaged in a direct work activity for an average of 40 hours per week in a month if the family includes an individual who is married, or is a single head of household, who has not attained 20 years of age, and the individual—

''(i) maintains satisfactory attendance at secondary school or the equivalent in the month; or

''(ii) participates in education directly related to employment for an average of at least 20 hours per week in the month.

''(d) DIRECT WORK ACTIVITY.—In this section, the term 'direct work activity' means—

''(1) unsubsidized employment;

''(2) subsidized private sector employment;

''(3) subsidized public sector employment;

''(4) on-the-job training;

''(5) supervised work experience; or

''(6) supervised community service.''.

(f) PENALTIES AGAINST INDIVIDUALS.—Section 407(e)(1) (42 U.S.C. 607(e)(1)) is amended to read as follows:

''(1) REDUCTION OR TERMINATION OF ASSISTANCE.—

''(A) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under a State program funded under this part fails to engage in activities required in accordance with this section, or other activities required by the State under the program, and the family does not otherwise engage in activities in accordance with the self-sufficiency plan established for the family pursuant to section 408(b), the State shall—

''(i) if the failure is partial or persists for not more than 1 month—

''(I) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the failure occurs; or

''(II) terminate all assistance to the family, subject to such good cause exceptions as the State may establish; or

''(ii) if the failure is total and persists for at least 2 consecutive months, terminate all cash payments to the family including qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for at least 1 month and thereafter until the State determines that the individual has resumed full participation in the activities, subject to such good cause exceptions as the State may establish.

''(B) SPECIAL RULE.—

''(i) IN GENERAL.—In the event of a conflict between a requirement of clause (i)(II) or (ii) of subparagraph (A) and a requirement of a State constitution, or of a State statute that, before 1966, obligated local government to provide assistance to needy parents and children, the State constitutional or statutory requirement shall control.

''(ii) LIMITATION.—Clause (i) of this subparagraph shall not apply after the 1-year period that begins with the date of the enactment of this subparagraph.''.

(g) CONFORMING AMENDMENTS.—

(1) Section 407(f) (42 U.S.C. 607(f)) is amended in each of paragraphs (1) and (2) by striking ''work activity described in subsection (d)'' and inserting ''direct work activity''.

(2) The heading of section 409(a)(14) (42 U.S.C. 609(a)(14)) is amended by inserting ''or refusing to engage in activities under a family self-sufficiency plan'' after ''work''.

**SEC. 111. MAINTENANCE OF EFFORT.**

(a) IN GENERAL.—Section 409(a)(7) (42 U.S.C. 609(a)(7)) is amended—

(1) in subparagraph (A), by striking ''fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, or 2006'' and inserting ''fiscal year 2006, 2007, 2008, 2009, 2010, or 2011''; and

(2) in subparagraph (B)(ii)—

(A) by inserting ''preceding'' before ''fiscal year''; and

(B) by striking ''for fiscal years 1997 through 2005,''.

(b) STATE SPENDING ON PROMOTING HEALTHY MARRIAGE.—

(1) IN GENERAL.—Section 404 (42 U.S.C. 604) is amended by adding at the end the following:

''(1) MARRIAGE PROMOTION.—A State, territory, or tribal organization to which a grant is made under section 403(a)(2) may use a grant made to the State, territory, or tribal organization under any other provision of section 403 for marriage promotion activities, and the amount of any such grant so used shall be considered State funds for purposes of section 403(a)(2).''.

(2) FEDERAL TANF FUNDS USED FOR MARRIAGE PROMOTION DISREGARDED FOR PURPOSES OF MAINTENANCE OF EFFORT REQUIREMENT.—Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)), as amended by section 103(c) of this Act, is amended by adding at the end the following:

''(VI) EXCLUSION OF FEDERAL TANF FUNDS USED FOR MARRIAGE PROMOTION ACTIVITIES.—Such term does not include the amount of any grant made to the State under section 403 that is expended for a marriage promotion activity.''.

**SEC. 112. PERFORMANCE IMPROVEMENT.**

(a) STATE PLANS.—Section 402(a) (42 U.S.C. 602(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by redesignating clause (vi) and clause (vii) (as added by section 103(a) of this Act) as clauses (vii) and (viii), respectively; and

(ii) by striking clause (v) and inserting the following:

''(v) The document shall—

''(I) describe how the State will pursue ending dependence of needy families on government benefits and reducing poverty by promoting job preparation and work;

''(II) describe how the State will encourage the formation and maintenance of healthy 2-parent married families, encourage responsible fatherhood, and prevent and reduce the incidence of out-of-wedlock pregnancies;

''(III) include specific, numerical, and measurable performance objectives for accomplishing subclauses (I) and (II), and with respect to subclause (I), include objectives consistent with the criteria used by the Secretary in establishing performance targets under section 403(a)(4)(B) if available; and

''(IV) describe the methodology that the State will use to measure State performance in relation to each such objective.

''(vi) Describe any strategies and programs the State may be undertaking to address—

''(I) employment retention and advancement for recipients of assistance under the program, including placement into high-demand jobs, and whether the jobs are identified using labor market information;

''(II) efforts to reduce teen pregnancy;

''(III) services for struggling and noncompliant families, and for clients with special problems; and

''(IV) program integration, including the extent to which employment and training services under the program are provided through the One-Stop delivery system created under the Workforce Investment Act of 1998, and the extent to which former recipients of such assistance have access to additional core, intensive, or training services funded through such Act.''; and

(B) in subparagraph (B), by striking clause (iii) (as so redesignated by section 107(b)(1) of this Act) and inserting the following:

''(iii) The document shall describe strategies and programs the State is undertaking to engage religious organizations in the provision of services funded under this part and efforts related to section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

''(iv) The document shall describe strategies to improve program management and performance.''; and

(2) in paragraph (4), by inserting ''and tribal'' after ''that local''.

(b) CONSULTATION WITH STATE REGARDING PLAN AND DESIGN OF TRIBAL PROGRAMS.—Section 412(b)(1) (42 U.S.C. 612(b)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting ''; and''; and

(3) by adding at the end the following:

''(G) provides an assurance that the State in which the tribe is located has been consulted regarding the plan and its design.''.

(c) PERFORMANCE MEASURES.—Section 413 (42 U.S.C. 613) is amended by adding at the end the following:

''(k) PERFORMANCE IMPROVEMENT.—The Secretary, in consultation with the States, shall develop uniform performance measures designed to assess the degree of effectiveness, and the degree of improvement, of State programs funded under this part in accomplishing the purposes of this part.''.

(d) ANNUAL RANKING OF STATES.—Section 413(d)(1) (42 U.S.C. 613(d)(1)) is amended by striking ''long-term private sector jobs'' and inserting ''private sector jobs, the success of the recipients in retaining employment, the ability of the recipients to increase their wages''.

**SEC. 113. DATA COLLECTION AND REPORTING.**

(a) CONTENTS OF REPORT.—Section 411(a)(1)(A) (42 U.S.C. 611(a)(1)(A)) is amended—

(1) in the matter preceding clause (i), by inserting ''and on families receiving assistance under State programs funded with other qualified State expenditures (as defined in section 409(a)(7)(B))'' before the colon;

(2) in clause (vii), by inserting ''and minor parent'' after ''of each adult'';

(3) in clause (viii), by striking ''and educational level'';

(4) in clause (ix), by striking '', and if the latter 2, the amount received'';

(5) in clause (x)—

(A) by striking ''each type of''; and

(B) by inserting before the period ''and, if applicable, the reason for receipt of the assistance for a total of more than 60 months'';

(6) in clause (xi), by striking the subclauses and inserting the following:

''(I) Subsidized private sector employment.

''(II) Unsubsidized employment.

''(III) Public sector employment, supervised work experience, or supervised community service.

''(IV) On-the-job training.

''(V) Job search and placement.

''(VI) Training.

''(VII) Education.

''(VIII) Other activities directed at the purposes of this part, as specified in the State plan submitted pursuant to section 402.'';

(7) in clause (xii), by inserting ''and progress toward universal engagement'' after ''participation rates'';

(8) in clause (xiii), by striking ''type and'' before ''amount of assistance'';

(9) in clause (xvi), by striking subclause (II) and redesignating subclauses (III) through (V) as subclauses (II) through (IV), respectively; and

(10) by adding at the end the following:

''(xviii) The date the family first received assistance from the State program on the basis of the most recent application for such assistance.

''(xix) Whether a self-sufficiency plan is established for the family in accordance with section 408(b).

''(xx) With respect to any child in the family, the marital status of the parents at the birth of the child, and if the parents were not then married, whether the paternity of the child has been established.''.

(b) USE OF SAMPLES.—Section 411(a)(1)(B) (42 U.S.C. 611(a)(1)(B)) is amended—

(1) in clause (i)—

(A) by striking ''a sample'' and inserting ''samples''; and

(B) by inserting before the period '', except that the Secretary may designate core data elements that must be reported on all families''; and

(2) in clause (ii), by striking ''funded under this part'' and inserting ''described in subparagraph (A)''.

(c) REPORT ON FAMILIES THAT BECOME INELIGIBLE TO RECEIVE ASSISTANCE.—Section 411(a) (42 U.S.C. 611(a)) is amended—

(1) by striking paragraph (5);

(2) by redesignating paragraph (6) as paragraph (5); and

(3) by inserting after paragraph (5) (as so redesignated) the following:

''(6) REPORT ON FAMILIES THAT BECOME INELIGIBLE TO RECEIVE ASSISTANCE.—The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter the number of families and total number of individuals that, during the month, became ineligible to receive assistance under the State program funded under this part (broken down by the number of families that become so ineligible due to earnings, changes in family composition that result in increased earnings, sanctions, time limits, or other specified reasons).''.

(d) REGULATIONS.—Section 411(a)(7) (42 U.S.C. 611(a)(7)) is amended—

(1) by inserting ''and to collect the necessary data'' before ''with respect to which reports'';

(2) by striking ''subsection'' and inserting ''section''; and

(3) by striking ''in defining the data elements'' and all that follows and inserting '', the National Governors' Association, the American Public Human Services Association, the National Conference of State Legislatures, and others in defining the data elements.''.

(e) ADDITIONAL REPORTS BY STATES.—Section 411 (42 U.S.C. 611) is amended—

(1) by redesignating subsection (b) as subsection (e); and

(2) by inserting after subsection (a) the following:

''(b) ANNUAL REPORTS ON PROGRAM CHARACTERISTICS.—Not later than 90 days after the end of fiscal year 2006 and each succeeding fiscal year, each eligible State shall submit to the Secretary a report on the characteristics of the State program funded under this part and other State programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)). The report shall include, with respect to each such program, the program name, a description of program activities, the program purpose, the program eligibility criteria, the sources of program funding, the number of program beneficiaries, sanction policies, and any program work requirements.

''(c) MONTHLY REPORTS ON CASELOAD.—Not later than 3 months after the end of a calendar month that begins 1 year or more after the enactment of this subsection, each eligible State shall submit to the Secretary a report on the number of families and total number of individuals receiving assistance in the calendar month under the State program funded under this part.

''(d) ANNUAL REPORT ON PERFORMANCE IMPROVEMENT.—Beginning with fiscal year 2007, not later than January 1 of each fiscal year, each eligible State shall submit to the Secretary a report on achievement and improvement during the preceding fiscal year under the numerical performance goals and measures under the State program funded under this part with respect to each of the matters described in section 402(a)(1)(A)(v).''.

(f) ANNUAL REPORTS TO CONGRESS BY THE SECRETARY.—Section 411(e), as so redesignated by subsection (e) of this section, is amended—

(1) in the matter preceding paragraph (1), by striking ''and each fiscal year thereafter'' and inserting ''and by July 1 of each fiscal year thereafter'';

(2) in paragraph (2), by striking ''families applying for assistance,'' and by striking the last comma; and

(3) in paragraph (3), by inserting ''and other programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))'' before the semicolon.

(g) INCREASED ANALYSIS OF STATE SINGLE AUDIT REPORTS.—Section 411 (42 U.S.C. 611) is amended by adding at the end the following:

''(f) INCREASED ANALYSIS OF STATE SINGLE AUDIT REPORTS.—

''(1) IN GENERAL.—Within 3 months after a State submits to the Secretary a report pursuant to section 7502(a)(1)(A) of title 31, United States Code, the Secretary shall analyze the report for the purpose of identifying the extent and nature of problems related to the oversight by the State of nongovernmental entities with respect to contracts entered into by such entities with the State program funded under this part, and determining what additional actions may be appropriate to help prevent and correct the problems.

''(2) INCLUSION OF PROGRAM OVERSIGHT SECTION IN ANNUAL REPORT TO THE CONGRESS.—The Secretary shall include in each report under subsection (e) a section on oversight of State programs funded under this part, including findings on the extent and nature of the problems referred to in paragraph (1), actions taken to resolve the problems, and to the extent the Secretary deems appropriate make recommendations on changes needed to resolve the problems.''.

**SEC. 114. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES.**

(a) TRIBAL FAMILY ASSISTANCE GRANT.—Section 412(a)(1)(A) (42 U.S.C. 612(a)(1)(A)) is amended by striking ''1997, 1998, 1999, 2000, 2001, 2002, and 2003'' and inserting ''2006 through 2010''.

(b) GRANTS FOR INDIAN TRIBES THAT RECEIVED JOBS FUNDS.—Section 412(a)(2)(A) (42 U.S.C. 612(a)(2)(A)) is amended by striking ''1997, 1998, 1999, 2000, 2001, 2002, and 2003'' and inserting ''2006 through 2010''.

**SEC. 115. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.**

(a) SECRETARY'S FUND FOR RESEARCH, DEMONSTRATIONS, AND TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—Section 413 (42 U.S.C. 613), as amended by section 112(c) of this Act, is further amended by adding at the end the following:

''(1) FUNDING FOR RESEARCH, DEMONSTRATIONS, AND TECHNICAL ASSISTANCE.—

''(1) APPROPRIATION.—

''(A) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $102,000,000 for each of fiscal years 2005 through 2010, which shall be available to the Secretary for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under this part, which shall be expended primarily on activities described in section 403(a)(2)(B), and which shall be in addition to any other funds made available under this part.

''(B) EXTENDED AVAILABILITY OF FY 2005 FUNDS.—Funds appropriated under this paragraph for fiscal year 2005 shall remain available to the Secretary through fiscal year 2006, for use in accordance with this paragraph for fiscal year 2005.

''(2) SET ASIDE FOR DEMONSTRATION PROJECTS FOR COORDINATION OF PROVISION OF CHILD WELFARE AND TANF SERVICES TO TRIBAL FAMILIES AT RISK OF CHILD ABUSE OR NEGLECT.—

''(A) IN GENERAL.—Of the amounts made available under paragraph (1) for a fiscal year, $2,000,000 shall be awarded on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

''(B) USE OF FUNDS.—A grant made to such a project shall be used—

''(i) to improve case management for families eligible for assistance from such a tribal program;

''(ii) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

''(iii) for prevention services and assistance to tribal families at risk of child abuse and neglect.

''(C) REPORTS.—The Secretary may require a recipient of funds awarded under this paragraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this paragraph.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(b) FUNDING OF STUDIES AND DEMONSTRATIONS.—Section 413(h)(1) (42 U.S.C. 613(h)(1)) is amended in the matter preceding subparagraph (A) by striking ''1997 through 2002'' and inserting ''2006 through 2010''.

(c) REPORT ON ENFORCEMENT OF CERTAIN AFFIDAVITS OF SUPPORT AND SPONSOR DEEMING.—Not later than March 31, 2006, the Secretary of Health and Human Services, in consultation with the Attorney General, shall submit to the Congress a report on the enforcement of affidavits of support and sponsor deeming as required by section 421, 422, and 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(d) REPORT ON COORDINATION.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit a report to the Congress describing common or conflicting data elements, definitions, performance measures, and reporting requirements in the Workforce Investment Act of 1998 and part A of title IV of the Social Security Act, and, to the degree each Secretary deems appropriate, at the discretion of either Secretary, any other program administered by the respective Secretary, to allow greater coordination between the welfare and workforce development systems.

**SEC. 116. STUDIES BY THE CENSUS BUREAU AND THE GOVERNMENT ACCOUNTABILITY OFFICE.**

(a) CENSUS BUREAU STUDY.—

(1) IN GENERAL.—Section 414(a) (42 U.S.C. 614(a)) is amended to read as follows:

''(a) IN GENERAL.—The Bureau of the Census shall implement or enhance a longitudinal survey of program participation, developed in consultation with the Secretary and made available to interested parties, to allow for the assessment of the outcomes of continued welfare reform on the economic and child well-being of low-income families with children, including those who received assistance or services from a State program funded under this part, and, to the extent possible, shall provide State representative samples. The content of the survey should include such information as may be necessary to examine the issues of out-of-wedlock childbearing, marriage, welfare dependency and compliance with work requirements, the beginning and ending of spells of assistance, work, earnings and employment stability, and the well-being of children.''.

(2) APPROPRIATION.—Section 414(b) (42 U.S.C. 614(b)) is amended—

(A) by striking ''1996,'' and all that follows through ''2003'' and inserting ''2006 through 2010''; and

(B) by adding at the end the following: ''Funds appropriated under this subsection shall remain available through fiscal year 2010 to carry out subsection (a).''.

(b) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine the combined effect of the phase-out rates for Federal programs and policies which provide support to low-income families and individuals as they move from welfare to work, at all earning levels up to $35,000 per year, for at least 5 States including Wisconsin and California, and any potential disincentives the combined phase-out rates create for families to achieve independence or to marry.

(2) REPORT.—Not later than 1 year after the date of the enactment of this subsection, the Comptroller General shall submit a report to Congress containing the results of the study conducted under this section and, as appropriate, any recommendations consistent with the results.

**SEC. 117. DEFINITION OF ASSISTANCE.**

(a) IN GENERAL.—Section 419 (42 U.S.C. 619) is amended by adding at the end the following:

''(6) ASSISTANCE.—

''(A) IN GENERAL.—The term 'assistance' means payment, by cash, voucher, or other means, to or for an individual or family for the purpose of meeting a subsistence need of the individual or family (including food, clothing, shelter, and related items, but not including costs of transportation or child care).

''(B) EXCEPTION.—The term 'assistance' does not include a payment described in subparagraph (A) to or for an individual or family on a short-term, nonrecurring basis (as defined by the State in accordance with regulations prescribed by the Secretary).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 404(a)(1) (42 U.S.C. 604(a)(1)) is amended by striking ''assistance'' and inserting ''aid''.

(2) Section 404(f) (42 U.S.C. 604(f)) is amended by striking ''assistance'' and inserting ''benefits or services''.

(3) Section 408(a)(5)(B)(i) (42 U.S.C. 608(a)(5)(B)(i)) is amended in the heading by striking ''ASSISTANCE'' and inserting ''AID''.

(4) Section 413(d)(2) (42 U.S.C. 613(d)(2)) is amended by striking ''assistance'' and inserting ''aid''.

**SEC. 118. TECHNICAL CORRECTIONS.**

(a) Section 409(c)(2) (42 U.S.C. 609(c)(2)) is amended by inserting a comma after ''appropriate''.

(b) Section 411(a)(1)(A)(ii)(III) (42 U.S.C. 611(a)(1)(A)(ii)(III)) is amended by striking the last close parenthesis.

(c) Section 413(j)(2)(A) (42 U.S.C. 613(j)(2)(A)) is amended by striking ''section'' and inserting ''sections''.

(d)(1) Section 413 (42 U.S.C. 613) is amended by striking subsection (g) and redesignating subsections (h) through (j) and subsections (k) and (l) (as added by sections 112(c) and 115(a) of this Act, respectively) as subsections (g) through (k), respectively.

(2) Each of the following provisions is amended by striking ''413(j)'' and inserting ''413(i)'':

(A) Section 403(a)(5)(A)(ii)(III) (42 U.S.C. 603(a)(5)(A)(ii)(III)).

(B) Section 403(a)(5)(F) (42 U.S.C. 603(a)(5)(F)).

(C) Section 403(a)(5)(G)(ii) (42 U.S.C. 603(a)(5)(G)(ii)).

(D) Section 412(a)(3)(B)(iv) (42 U.S.C. 612(a)(3)(B)(iv)).

**SEC. 119. FATHERHOOD PROGRAM.**

(a) SHORT TITLE.—This section may be cited as the ''Promotion and Support of Responsible Fatherhood and Healthy Marriage Act of 2005''.

(b) FATHERHOOD PROGRAM.—

(1) IN GENERAL.—Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) is amended by adding at the end the following:

**''SEC. 117. FATHERHOOD PROGRAM.**

''(a) IN GENERAL.—Title IV (42 U.S.C. 601–679b) is amended by inserting after part B the following:

**'PART C—FATHERHOOD PROGRAM**

**'SEC. 441. FINDINGS AND PURPOSES.**

'(a) FINDINGS.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

'(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

'(2) If current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18.

'(3) Where families (whether intact or with a parent absent) are living in poverty, a significant factor is the father's lack of job skills.

'(4) Committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills.

'(5) An estimated 19,400,000 children (27 percent) live apart from their biological father.

'(6) Forty percent of children under age 18 not living with their biological father had not seen their father even once in the last 12 months, according to national survey data.

'(b) PURPOSES.—The purposes of this part are:

'(1) To provide for projects and activities by public entities and by nonprofit community entities, including religious organizations, designed to test promising approaches to accomplishing the following objectives:

'(A) Promoting responsible, caring, and effective parenting through counseling, mentoring, and parenting education, dissemination of educational materials and information on parenting skills, encouragement of positive father involvement, including the positive involvement of nonresident fathers, and other methods.

'(B) Enhancing the abilities and commitment of unemployed or low-income fathers to provide material support for their families and to avoid or leave welfare programs by assisting them to take full advantage of education, job training, and job search programs, to improve work habits and work skills, to secure career advancement by activities such as outreach and information dissemination, coordination, as appropriate, with employment services and job training programs, including the One-Stop delivery system established under title I of the Workforce Investment Act of 1998, encouragement and support of timely payment of current child support and regular payment toward past due child support obligations in appropriate cases, and other methods.

'(C) Improving fathers' ability to effectively manage family business affairs by means such as education, counseling, and mentoring in matters including household management, budgeting, banking, and handling of financial transactions, time management, and home maintenance.

'(D) Encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education, including the use of premarital inventories, marriage preparation programs, skills-based marriage education programs, marital therapy, couples counseling, divorce education and reduction programs, divorce mediation and counseling, relationship skills enhancement programs, including those designed to reduce child abuse and domestic violence, and dissemination of information about the benefits of marriage for both parents and children.

'(2) Through the projects and activities described in paragraph (1), to improve outcomes for children with respect to measures such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

'(3) To evaluate the effectiveness of various approaches and to disseminate findings concerning outcomes and other information in order to encourage and facilitate the replication of effective approaches to accomplishing these objectives.

**'SEC. 442. DEFINITIONS.**

'In this part, the terms ''Indian tribe'' and ''tribal organization'' have the meanings given them in subsections (e) and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

**'SEC. 443. COMPETITIVE GRANTS FOR SERVICE PROJECTS.**

'(a) IN GENERAL.—The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives specified in section 441(b)(1).

'(b) ELIGIBILITY CRITERIA FOR FULL SERVICE GRANTS.—In order to be eligible for a grant under this section, except as specified in subsection (c), an entity shall submit an application to the Secretary containing the following:

'(1) PROJECT DESCRIPTION.—A statement including—

'(A) a description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and how it will address each of the 4 objectives specified in section 441(b)(1); and

'(B) a description of the methods to be used by the entity or its contractor to assess the extent to which the project was successful in accomplishing its specific objectives and the general objectives specified in section 441(b)(1).

'(2) EXPERIENCE AND QUALIFICATIONS.—A demonstration of ability to carry out the project, by means such as demonstration of experience in successfully carrying out projects of similar design and scope, and such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

'(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

'(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

'(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs under parts A, B, and D of this title, including programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

'(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(7) SELF-INITIATED EVALUATION.—If the entity elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report within 30 days after completion of the report and not more than 1 year after completion of the project.

'(8) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including random assignment of clients to service recipient and control groups, if determined by the Secretary to be appropriate, and affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(c) ELIGIBILITY CRITERIA FOR LIMITED PURPOSE GRANTS.—In order to be eligible for a grant under this section in an amount under $25,000 per fiscal year, an entity shall submit an application to the Secretary containing the following:

'(1) PROJECT DESCRIPTION.—A description of the project and how it will be carried out, including the number and characteristics of clients to be served, the proposed duration of the project, and how it will address at least 1 of the 4 objectives specified in section 441(b)(1).

'(2) QUALIFICATIONS.—Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

'(3) COORDINATION WITH RELATED PROGRAMS.—As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project including, as appropriate, jobs programs and programs serving children and families.

'(4) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(5) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(d) CONSIDERATIONS IN AWARDING GRANTS.—

'(1) DIVERSITY OF PROJECTS.—In awarding grants under this section, the Secretary shall seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the purposes of this section, including working with the State agency responsible for the administration of part D to help fathers satisfy child support arrearage obligations.

'(2) PREFERENCE FOR PROJECTS SERVING LOW-INCOME FATHERS.—In awarding grants under this section, the Secretary may give preference to applications for projects in which a majority of the clients to be served are low-income fathers.

'(e) FEDERAL SHARE.—

'(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for a share of the cost of such project in such fiscal year equal to—

'(A) up to 80 percent (or up to 90 percent, if the entity demonstrates to the Secretary's satisfaction circumstances limiting the entity's ability to secure non-Federal resources) in the case of a project under subsection (b); and

'(B) up to 100 percent, in the case of a project under subsection (c).

'(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

**'SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.**

'(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for 2 multicity, multistate projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

'(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

'(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

'(2) EXPERIENCE WITH MULTICITY, MULTISTATE PROGRAMS AND GOVERNMENT COORDINATION.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area in more than 1 State and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

'(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

'(1) QUALIFICATIONS.—

'(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

'(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

'(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

'(A) IN GENERAL.—A detailed description of the proposed project design and how it will be carried out, which shall—

'(i) provide for the project to be conducted in at least 3 major metropolitan areas;

'(ii) state how it will address each of the 4 objectives specified in section 441(b)(1);

'(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

'(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

'(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

'(i) in consultation with the evaluator selected pursuant to section 445, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

'(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

'(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

'(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

'(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

'(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(d) FEDERAL SHARE.—

'(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

'(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

**'SEC. 445. EVALUATION.**

'(a) IN GENERAL.—The Secretary, directly or by contract or cooperative agreement, shall evaluate the effectiveness of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 441(b)(1).

'(b) EVALUATION METHODOLOGY.—Evaluations under this section shall—

'(1) include, to the maximum extent feasible, random assignment of clients to service delivery and control groups and other appropriate comparisons of groups of individuals receiving and not receiving services;

'(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

'(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

'(c) EVALUATION REPORTS.—The Secretary shall publish the following reports on the results of the evaluation:

'(1) An implementation evaluation report covering the first 24 months of the activities under this part to be completed by 36 months after initiation of such activities.

'(2) A final report on the evaluation to be completed by September 30, 2013.

**'SEC. 446. PROJECTS OF NATIONAL SIGNIFICANCE.**

'The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

'(1) COLLECTION AND DISSEMINATION OF INFORMATION.—Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, developing, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

'(2) MEDIA CAMPAIGN.—Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

'(3) TECHNICAL ASSISTANCE.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

'(4) RESEARCH.—Conducting research related to the purposes of this part.

**'SEC. 447. NONDISCRIMINATION.**

'The projects and activities assisted under this part shall be available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

**'SEC. 448. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSE.**

'(a) AUTHORIZATION.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

'(b) RESERVATION.—Of the amount appropriated under this section for each fiscal year, not more than 15 percent shall be available for the costs of the multicity, multicounty, multistate demonstration projects under section 444, evaluations under section 445, and projects of national significance under section 446.'.

''(b) INAPPLICABILITY OF EFFECTIVE DATE PROVISIONS.—Section 116 shall not apply to the amendment made by subsection (a) of this section.''.

(2) CLERICAL AMENDMENT.—Section 2 of such Act is amended in the table of contents by inserting after the item relating to section 116 the following new item:

''117. Fatherhood program.''.

**SEC. 120. STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.**

Section 408 of the Social Security Act (42 U.S.C. 608) is amended by adding at the end the following:

''(h) STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.—For purposes of section 121(b) of the Workforce Investment Act of 1998, a State program funded under part A of title IV of the Social Security Act shall be considered a program referred to in paragraph (1)(B) of such section, unless, after the date of the enactment of

this subsection, the Governor of the State notifies the Secretaries of Health and Human Services and Labor in writing of the decision of the Governor not to make the State program a mandatory partner.''.

**SEC. 121. SENSE OF THE CONGRESS.**

It is the sense of the Congress that a State welfare-to-work program should include a mentoring program.

**SEC. 122. EXTENSION THROUGH FISCAL YEAR 2005.**

(a) IN GENERAL.—Except as otherwise provided in this Act and the amendments made by this Act, activities authorized by part A of title IV of the Social Security Act, and by sections 429A, 1108(b), and 1130(a) of such Act, shall continue through September 30, 2005, in the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the fourth quarter of fiscal year 2005 at the level provided for such activities through the fourth quarter of fiscal year 2004, except that in the case of section 403(a)(4) of such Act, the level shall be $100,000,000.

(b) EFFECTIVE DATE.—Subsection (a) shall take effect on the date of the enactment of this Act.

## TITLE II—CHILD CARE

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''Caring for Children Act of 2005''.

**SEC. 202. GOALS.**

(a) GOALS.—Section 658A(b) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9801 note) is amended—

(1) in paragraph (3) by striking ''encourage'' and inserting ''assist'',

(2) by amending paragraph (4) to read as follows:

''(4) to assist States to provide child care to low-income parents;'',

(3) by redesignating paragraph (5) as paragraph (7), and

(4) by inserting after paragraph (4) the following:

''(5) to encourage States to improve the quality of child care available to families;

''(6) to promote school readiness by encouraging the exposure of young children in child care to nurturing environments and developmentally-appropriate activities, including activities to foster early cognitive and literacy development; and''.

(b) CONFORMING AMENDMENT.—Section 658E(c)(3)(B) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(3)(B)) is amended by striking ''through (5)'' and inserting ''through (7)''.

**SEC. 203. AUTHORIZATION OF APPROPRIATIONS.**

Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''is'' and inserting ''are'', and

(2) by striking ''$1,000,000,000 for each of the fiscal years 1996 through 2002'' and inserting ''$2,100,000,000 for fiscal year 2005, $2,300,000,000 for fiscal year 2006, $2,500,000,000 for fiscal year 2007, $2,700,000,000 for fiscal year 2008, $2,900,000,000 for fiscal year 2009, and $3,100,000,000 for fiscal year 2010''.

**SEC. 204. APPLICATION AND PLAN.**

Section 658E(c)(2) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858C(c)(2)) is amended—

(1) by amending subparagraph (D) to read as follows:

''(D) CONSUMER AND CHILD CARE PROVIDER EDUCATION INFORMATION.—Certify that the State will collect and disseminate, through resource and referral services and other means as determined by the State, to parents of eligible children, child care providers, and the general public, information regarding—

''(i) the promotion of informed child care choices, including information about the quality and availability of child care services;

''(ii) research and best practices on children's development, including early cognitive development;

''(iii) the availability of assistance to obtain child care services; and

''(iv) other programs for which families that receive child care services for which financial assistance is provided under this subchapter may be eligible, including the food stamp program, the WIC program under section 17 of the Child Nutrition Act of 1966, the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act, and the medicaid and SCHIP programs under titles XIX and XXI of the Social Security Act.'', and

(2) by inserting after subparagraph (H) the following:

''(I) COORDINATION WITH OTHER EARLY CHILD CARE SERVICES AND EARLY CHILDHOOD EDUCATION PROGRAMS.—Demonstrate how the State is coordinating child care services provided under this subchapter with Head Start, Early Reading First, Even Start, Ready-To-Learn Television, State pre-kindergarten programs, and other early childhood education programs to expand accessibility to and continuity of care and early education without displacing services provided by the current early care and education delivery system.

''(J) PUBLIC-PRIVATE PARTNERSHIPS.—Demonstrate how the State encourages partnerships with private and other public entities to leverage existing service delivery systems of early childhood education and increase the supply and quality of child care services.

''(K) CHILD CARE SERVICE QUALITY.—

''(i) CERTIFICATION.—For each fiscal year after fiscal year 2006, certify that during the then preceding fiscal year the State was in compliance with section 658G and describe how funds were used to comply with such section during such preceding fiscal year.

''(ii) STRATEGY.—For each fiscal year after fiscal year 2006, contain an outline of the strategy the State will implement during such fiscal year for which the State plan is submitted, to address the quality of child care services in the State available to low-income parents from eligible child care providers, and include in such strategy—

''(I) a statement specifying how the State will address the activities described in paragraphs (1), (2), and (3) of section 658G;

''(II) a description of quantifiable, objective measures for evaluating the quality of child care services separately with respect to the activities listed in each of such paragraphs that the State will use to evaluate its progress in improving the quality of such child care services;

''(III) a list of State-developed child care service quality targets for such fiscal year quantified on the basis of such measures; and

''(IV) for each fiscal year after fiscal year 2006, a report on the progress made to achieve such targets during the then preceding fiscal year.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to require that the State apply measures for evaluating quality to specific types of child care providers.

''(L) ACCESS TO CARE FOR CERTAIN POPULATIONS.—Demonstrate how the State is addressing the child care needs of parents eligible for child care services for which financial assistance is provided under this subchapter who have children with special needs, work nontraditional hours, or require child care services for infants or toddlers.''.

**SEC. 205. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.**

Section 658G of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e) is amended to read as follows:

**''SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE SERVICES.**

''A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 6 percent of the amount of such funds for activities provided through resource and referral services or other means, that are designed to improve the quality of child care services in the State available to low-income parents from eligible child care providers. Such activities include—

''(1) programs that provide training, education, and other professional development activities to enhance the skills of the child care workforce, including training opportunities for caregivers in informal care settings;

''(2) activities within child care settings to enhance early learning for young children, to promote early literacy, and to foster school readiness;

''(3) initiatives to increase the retention and compensation of child care providers, including tiered reimbursement rates for providers that meet quality standards as defined by the State; or

''(4) other activities deemed by the State to improve the quality of child care services provided in such State.''.

**SEC. 206. REPORT BY SECRETARY.**

Section 658L of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858j) is amended to read as follows:

**''SEC. 658L. REPORT BY SECRETARY.**

''(a) REPORT REQUIRED.—Not later than October 1, 2007, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report that contains the following:

''(1) A summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K.

''(2) Aggregated statistics on the supply of, demand for, and quality of child care, early education, and non-school-hours programs.

''(3) An assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

''(b) COLLECTION OF INFORMATION.—The Secretary may utilize the national child care data system available through resource and referral organizations at the local, State, and national level to collect the information required by subsection (a)(2).''

**SEC. 207. DEFINITIONS.**

Section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858N(4)(B)) is amended by striking ''85 percent of the State median income'' and inserting ''income levels as established by the State, prioritized by need,''.

**SEC. 208. ENTITLEMENT FUNDING.**

Section 418(a)(3) (42 U.S.C. 618(a)(3)) is amended—

(1) by striking ''and'' at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting ''; and''; and

(3) by adding at the end the following:

''(G) $2,917,000,000 for each of fiscal years 2006 through 2010.''.

## TITLE III—CHILD SUPPORT

**SEC. 301. FEDERAL MATCHING FUNDS FOR LIMITED PASS THROUGH OF CHILD SUPPORT PAYMENTS TO FAMILIES RECEIVING TANF.**

(a) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)) is amended—

(1) in paragraph (1)(A), by inserting ''subject to paragraph (7)'' before the semicolon; and

(2) by adding at the end the following:

''(7) FEDERAL MATCHING FUNDS FOR LIMITED PASS THROUGH OF CHILD SUPPORT PAYMENTS TO FAMILIES RECEIVING TANF.—Notwithstanding paragraph (1), a State shall not be required to pay to the Federal Government the Federal share of an amount collected during a month on behalf of a family that is a recipient of assistance under the State program funded under part A, to the extent that—

''(A) the State distributes the amount to the family;

''(B) the total of the amounts so distributed to the family during the month—

''(i) exceeds the amount (if any) that, as of December 31, 2001, was required under State law to be distributed to a family under paragraph (1)(B); and

''(ii) does not exceed the greater of—

''(I) $100; or

''(II) $50 plus the amount described in clause (i); and

''(C) the amount is disregarded in determining the amount and type of assistance provided to the family under the State program funded under part A.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to amounts distributed on or after October 1, 2007.

**SEC. 302. STATE OPTION TO PASS THROUGH ALL CHILD SUPPORT PAYMENTS TO FAMILIES THAT FORMERLY RECEIVED TANF.**

(a) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)), as amended by section 301(a) of this Act, is amended—

(1) in paragraph (2)(B), in the matter preceding clause (i), by inserting '', except as provided in paragraph (8),'' after ''shall''; and

(2) by adding at the end the following:

''(8) STATE OPTION TO PASS THROUGH ALL CHILD SUPPORT PAYMENTS TO FAMILIES THAT FORMERLY RECEIVED TANF.—In lieu of applying paragraph (2) to any family described in paragraph (2), a State may distribute to the family any amount collected during a month on behalf of the family.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to amounts distributed on or after October 1, 2007.

**SEC. 303. MANDATORY REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS FOR FAMILIES RECEIVING TANF.**

(a) IN GENERAL.—Section 466(a)(10)(A)(i) (42 U.S.C. 666(a)(10)(A)(i)) is amended—

(1) by striking ''parent, or,'' and inserting ''parent or''; and

(2) by striking ''upon the request of the State agency under the State plan or of either parent,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2007.

**SEC. 304. MANDATORY FEE FOR SUCCESSFUL CHILD SUPPORT COLLECTION FOR FAMILY THAT HAS NEVER RECEIVED TANF.**

(a) IN GENERAL.—Section 454(6)(B) (42 U.S.C. 654(6)(B)) is amended—

(1) by inserting ''(i)'' after ''(B)'';

(2) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(3) by adding ''and'' after the semicolon; and

(4) by adding after and below the end the following new clause:

''(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the 1st $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and such fees shall be considered income to the program);''.

(b) CONFORMING AMENDMENT.—Section 457(a)(3) (42 U.S.C. 657(a)(3)) is amended to read as follows:

''(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

**SEC. 305. REPORT ON UNDISTRIBUTED CHILD SUPPORT PAYMENTS.**

Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the procedures that the States use generally to locate custodial parents for whom child support has been collected but not yet distributed. The report shall include an estimate of the total amount of undistributed child support and the average length of time it takes undistributed child support to be distributed. To the extent the Secretary deems appropriate, the Secretary shall include in the report recommendations as to whether additional procedures should be established at the State or Federal level to expedite the payment of undistributed child support.

**SEC. 306. DECREASE IN AMOUNT OF CHILD SUPPORT ARREARAGE TRIGGERING PASSPORT DENIAL.**

(a) IN GENERAL.—Section 452(k)(1) (42 U.S.C. 652(k)(1)) is amended by striking ''$5,000'' and inserting ''$2,500''.

(b) CONFORMING AMENDMENT.—Section 454(31) (42 U.S.C. 654(31)) is amended by striking ''$5,000'' and inserting ''$2,500''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

**SEC. 307. USE OF TAX REFUND INTERCEPT PROGRAM TO COLLECT PAST-DUE CHILD SUPPORT ON BEHALF OF CHILDREN WHO ARE NOT MINORS.**

(a) IN GENERAL.—Section 464 (42 U.S.C. 664) is amended—

(1) in subsection (a)(2)(A), by striking ''(as that term is defined for purposes of this paragraph under subsection (c))''; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking ''(1) Except as provided in paragraph (2), as used in'' and inserting ''In''; and

(ii) by inserting ''(whether or not a minor)'' after ''a child'' each place it appears; and

(B) by striking paragraphs (2) and (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2007.

**SEC. 308. GARNISHMENT OF COMPENSATION PAID TO VETERANS FOR SERVICE-CONNECTED DISABILITIES IN ORDER TO ENFORCE CHILD SUPPORT OBLIGATIONS.**

(a) IN GENERAL.—Section 459(h) (42 U.S.C. 659(h)) is amended—

(1) in paragraph (1)(A)(ii)(V), by striking all that follows ''Armed Forces'' and inserting a semicolon; and

(2) by adding at the end the following:

''(3) LIMITATIONS WITH RESPECT TO COMPENSATION PAID TO VETERANS FOR SERVICE-CONNECTED DISABILITIES.—Notwithstanding any other provision of this section:

''(A) Compensation described in paragraph (1)(A)(ii)(V) shall not be subject to withholding pursuant to this section—

''(i) for payment of alimony; or

''(ii) for payment of child support if the individual is fewer than 60 days in arrears in payment of the support.

''(B) Not more than 50 percent of any payment of compensation described in paragraph (1)(A)(ii)(V) may be withheld pursuant to this section.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2007.

**SEC. 309. IMPROVING FEDERAL DEBT COLLECTION PRACTICES.**

(a) IN GENERAL.—Section 3716(h)(3) of title 31, United States Code, is amended to read as follows:

''(3) In applying this subsection with respect to any debt owed to a State, other than past due support being enforced by the State, subsection (c)(3)(A) shall not apply. Subsection (c)(3)(A) shall apply with respect to past due support being enforced by the State notwithstanding any other provision of law, including sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407 and 1383(d)(1)), section 413(b) of Public law 91–173 (30 U.S.C. 923(b)), and section 14 of the Act of August 29, 1935 (45 U.S.C. 231m).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2006.

**SEC. 310. MAINTENANCE OF TECHNICAL ASSISTANCE FUNDING.**

Section 452(j) (42 U.S.C. 652(j)) is amended by inserting ''or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater,'' before ''which shall be available''.

**SEC. 311. MAINTENANCE OF FEDERAL PARENT LOCATOR SERVICE FUNDING.**

Section 453(o) (42 U.S.C. 653(o)) is amended—

(1) in the 1st sentence, by inserting ''or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater,'' before ''which shall be available''; and

(2) in the 2nd sentence, by striking ''for each of fiscal years 1997 through 2001''.

## TITLE IV—CHILD WELFARE

**SEC. 401. EXTENSION OF AUTHORITY TO APPROVE DEMONSTRATION PROJECTS.**

Section 1130(a)(2) (42 U.S.C. 1320a–9(a)(2)) is amended by striking ''2002'' and inserting ''2010''.

**SEC. 402. ELIMINATION OF LIMITATION ON NUMBER OF WAIVERS.**

Section 1130(a)(2) (42 U.S.C. 1320a–9(a)(2)) is amended by striking ''not more than 10''.

**SEC. 403. ELIMINATION OF LIMITATION ON NUMBER OF STATES THAT MAY BE GRANTED WAIVERS TO CONDUCT DEMONSTRATION PROJECTS ON SAME TOPIC.**

Section 1130 (42 U.S.C. 1320a–9) is amended by adding at the end the following:

''(h) NO LIMIT ON NUMBER OF STATES THAT MAY BE GRANTED WAIVERS TO CONDUCT SAME OR SIMILAR DEMONSTRATION PROJECTS.—The Secretary shall not refuse to grant a waiver to a State under this section on the grounds that a purpose of the waiver or of the demonstration project for which the waiver is necessary would be the same as or similar to a purpose of another waiver or project that is or may be conducted under this section.''.

**SEC. 404. ELIMINATION OF LIMITATION ON NUMBER OF WAIVERS THAT MAY BE GRANTED TO A SINGLE STATE FOR DEMONSTRATION PROJECTS.**

Section 1130 (42 U.S.C. 1320a–9) is further amended by adding at the end the following:

''(i) NO LIMIT ON NUMBER OF WAIVERS GRANTED TO, OR DEMONSTRATION PROJECTS THAT MAY BE CONDUCTED BY, A SINGLE STATE.—The Secretary shall not impose any limit on the number of waivers that may be granted to a State, or the number of demonstration projects that a State may be authorized to conduct, under this section.''.

**SEC. 405. STREAMLINED PROCESS FOR CONSIDERATION OF AMENDMENTS TO AND EXTENSIONS OF DEMONSTRATION PROJECTS REQUIRING WAIVERS.**

Section 1130 (42 U.S.C. 1320a–9) is further amended by adding at the end the following:

''(j) STREAMLINED PROCESS FOR CONSIDERATION OF AMENDMENTS AND EXTENSIONS.—The Secretary shall develop a streamlined process for consideration of amendments and extensions proposed by States to demonstration projects conducted under this section.''.

**SEC. 406. AVAILABILITY OF REPORTS.**

Section 1130 (42 U.S.C. 1320a–9) is further amended by adding at the end the following:

''(k) AVAILABILITY OF REPORTS.—The Secretary shall make available to any State or other interested party any report provided to the Secretary under subsection (f)(2), and any evaluation or report made by the Secretary with respect to a demonstration project conducted under this section, with a focus on information that may promote best practices and program improvements.''.

**SEC. 407. TECHNICAL CORRECTION.**

Section 1130(b)(1) (42 U.S.C. 1320a–9(b)(1)) is amended by striking ''422(b)(9)'' and inserting ''422(b)(10)''.

## TITLE V—SUPPLEMENTAL SECURITY INCOME

**SEC. 501. REVIEW OF STATE AGENCY BLINDNESS AND DISABILITY DETERMINATIONS.**

Section 1633 (42 U.S.C. 1383b) is amended by adding at the end the following:

''(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

''(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

''(i) at least 20 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2006;

''(ii) at least 40 percent of all such determinations that are made in fiscal year 2007; and

''(iii) at least 50 percent of all such determinations that are made in fiscal year 2008 or thereafter.

''(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.''.

## TITLE VI—STATE AND LOCAL FLEXIBILITY

**SEC. 601. PROGRAM COORDINATION DEMONSTRATION PROJECTS.**

(a) PURPOSE.—The purpose of this section is to establish a program of demonstration projects in a State or portion of a State to coordinate multiple public assistance, workforce development, and other programs, for the purpose of supporting working individuals and families, helping families escape welfare dependency, promoting child well-being, or helping build stronger families, using innovative approaches to strengthen service systems and provide more coordinated and effective service delivery.

(b) DEFINITIONS.—In this section:

(1) ADMINISTERING SECRETARY.—The term ''administering Secretary'' means, with respect to a qualified program, the head of the Federal agency responsible for administering the program.

(2) QUALIFIED PROGRAM.—The term ''qualified program'' means—

(A) a program under part A of title IV of the Social Security Act;

(B) the program under title XX of such Act;

(C) activities funded under title I of the Workforce Investment Act of 1998, except subtitle C of such title;

(D) a demonstration project authorized under section 505 of the Family Support Act of 1988;

(E) activities funded under the Wagner-Peyser Act;

(F) activities funded under the Adult Education and Family Literacy Act;

(G) activities funded under the Child Care and Development Block Grant Act of 1990;

(H) activities funded under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), except that such term shall not include—

(i) any program for rental assistance under section 8 of such Act (42 U.S.C. 1437f); and

(ii) the program under section 7 of such Act (42 U.S.C. 1437e) for designating public housing for occupancy by certain populations;

(I) activities funded under title I, II, III, or IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); or

(J) the food stamp program as defined in section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)).

(c) APPLICATION REQUIREMENTS.—The head of a State entity or of a sub-State entity administering 2 or more qualified programs proposed to be included in a demonstration project under this section shall (or, if the project is proposed to include qualified programs administered by 2 or more such entities, the heads of the administering entities (each of whom shall be considered an applicant for purposes of this section) shall jointly) submit to the administering Secretary of each such program an application that contains the following:

(1) PROGRAMS INCLUDED.—A statement identifying each qualified program to be included in the project, and describing how the purposes of each such program will be achieved by the project.

(2) POPULATION SERVED.—A statement identifying the population to be served by the project and specifying the eligibility criteria to be used.

(3) DESCRIPTION AND JUSTIFICATION.—A detailed description of the project, including—

(A) a description of how the project is expected to improve or enhance achievement of the purposes of the programs to be included in the project, from the standpoint of quality, of cost-effectiveness, or of both; and

(B) a description of the performance objectives for the project, including any proposed modifications to the performance measures and reporting requirements used in the programs.

(4) WAIVERS REQUESTED.—A description of the statutory and regulatory requirements with respect to which a waiver is requested in order to carry out the project, and a justification of the need for each such waiver.

(5) COST NEUTRALITY.—Such information and assurances as necessary to establish to the satisfaction of the administering Secretary, in consultation with the Director of the Office of Management and Budget, that the proposed project is reasonably expected to meet the applicable cost neutrality requirements of subsection (d)(4).

(6) EVALUATION AND REPORTS.—An assurance that the applicant will conduct ongoing and final evaluations of the project, and make interim and final reports to the administering Secretary, at such times and in such manner as the administering Secretary may require.

(7) PUBLIC HOUSING AGENCY PLAN.—In the case of an application proposing a demonstration project that includes activities referred to in subsection (b)(2)(H) of this section—

(A) a certification that the applicable annual public housing agency plan of any agency affected by the project that is approved under section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) by the Secretary includes the information specified in paragraphs (1) through (4) of this subsection; and

(B) any resident advisory board recommendations, and other information, relating to the project that, pursuant to section 5A(e)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437c–1(e)(2), is required to be included in the public housing agency plan of any public housing agency affected by the project.

(8) OTHER INFORMATION AND ASSURANCES.—Such other information and assurances as the administering Secretary may require.

(d) APPROVAL OF APPLICATIONS.—

(1) IN GENERAL.—The administering Secretary with respect to a qualified program that is identified in an application submitted pursuant to subsection (c) may approve the application and, except as provided in paragraph (2), waive any requirement applicable to the program, to the extent consistent with this section and necessary and appropriate for the conduct of the demonstration project proposed in the application, if the administering Secretary determines that the project—

(A) has a reasonable likelihood of achieving the objectives of the programs to be included in the project;

(B) may reasonably be expected to meet the applicable cost neutrality requirements of paragraph (4), as determined by the Director of the Office of Management and Budget; and

(C) includes the coordination of 2 or more qualified programs.

(2) PROVISIONS EXCLUDED FROM WAIVER AUTHORITY.—A waiver shall not be granted under paragraph (1)—

(A) with respect to any provision of law relating to—

(i) civil rights or prohibition of discrimination;

(ii) purposes or goals of any program;

(iii) maintenance of effort requirements;

(iv) health or safety;

(v) labor standards under the Fair Labor Standards Act of 1938; or

(vi) environmental protection;

(B) with respect to section 241(a) of the Adult Education and Family Literacy Act;

(C) in the case of a program under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), with respect to any requirement under section 5A of such Act (42 U.S.C. 1437c–1; relating to public housing agency plans and resident advisory boards);

(D) in the case of a program under the Workforce Investment Act, with respect to any requirement the waiver of which would violate section 189(i)(4)(A)(i) of such Act;

(E) in the case of the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)), with respect to any requirement under—

(i) section 6 (if waiving a requirement under such section would have the effect of expanding eligibility for the program), 7(b) or 16(c) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(ii) title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601 et seq.);

(F) with respect to any requirement that a State pass through to a sub-State entity part or all of an amount paid to the State;

(G) if the waiver would waive any funding restriction or limitation provided in an appropriations Act, or would have the effect of transferring appropriated funds from 1 appropriations account to another; or

(H) except as otherwise provided by statute, if the waiver would waive any funding restriction applicable to a program authorized under an Act which is not an appropriations Act (but not including program requirements such as application procedures, performance standards, reporting requirements, or eligibility standards), or would have the effect of transferring funds from a program for which there is direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to another program.

(3) AGREEMENT OF EACH ADMINISTERING SECRETARY REQUIRED.—

(A) IN GENERAL.—An applicant may not conduct a demonstration project under this section unless each administering Secretary with respect to any program proposed to be included in the project has approved the application to conduct the project.

(B) AGREEMENT WITH RESPECT TO FUNDING AND IMPLEMENTATION.—Before approving an application to conduct a demonstration project under this section, an administering Secretary shall have in place an agreement with the applicant with respect to the payment of funds and responsibilities required of the administering Secretary with respect to the project.

(4) COST-NEUTRALITY REQUIREMENT.—

(A) GENERAL RULE.—Notwithstanding any other provision of law (except subparagraph (B)), the total of the amounts that may be paid by the Federal Government for a fiscal year with respect to the programs in the State in which an entity conducting a demonstration project under this section is located that are affected by the project shall not exceed the estimated total amount that the Federal Government would have paid for the fiscal year with respect to the programs if the project had not been conducted, as determined by the Director of the Office of Management and Budget.

(B) SPECIAL RULE.—If an applicant submits to the Director of the Office of Management and Budget a request to apply the rules of this subparagraph to the programs in the State in which the applicant is located that are affected by a demonstration project proposed in an application submitted by the applicant pursuant to this section, during such period of not more than 5 consecutive fiscal years in which the project is in effect, and the Director determines, on the basis of supporting information provided by the applicant, to grant the request, then, notwithstanding any other provision of law, the total of the amounts that may be paid by the Federal Government for the period with respect to the programs shall not exceed the estimated total amount that the Federal Government would have paid for the period with respect to the programs if the project had not been conducted.

(5) 90-DAY APPROVAL DEADLINE.—

(A) IN GENERAL.—If an administering Secretary receives an application to conduct a demonstration project under this section and does not disapprove the application within 90 days after the receipt, then—

(i) the administering Secretary is deemed to have approved the application for such period as is requested in the application, except to the extent inconsistent with subsection (e); and

(ii) any waiver requested in the application which applies to a qualified program that is identified in the application and is administered by the administering Secretary is deemed to be granted, except to the extent inconsistent with paragraph (2) or (4) of this subsection.

(B) DEADLINE EXTENDED IF ADDITIONAL INFORMATION IS SOUGHT.—The 90-day period referred to in subparagraph (A) shall not include any period that begins with the date the Secretary requests the applicant to provide additional information with respect to the application and ends with the date the additional information is provided.

(e) DURATION OF PROJECTS.—A demonstration project under this section may be approved for a term of not more than 5 years.

(f) REPORTS TO CONGRESS.—

(1) REPORT ON DISPOSITION OF APPLICATIONS.—Within 90 days after an administering Secretary receives an application submitted pursuant to this section, the administering Secretary shall submit to each Committee of the Congress which has jurisdiction over a qualified program identified in the application notice of the receipt, a description of the decision of the administering Secretary with respect to the application, and the reasons for approving or disapproving the application.

(2) REPORTS ON PROJECTS.—Each administering Secretary shall provide annually to the Congress a report concerning demonstration projects approved under this section, including—

(A) the projects approved for each applicant;

(B) the number of waivers granted under this section, and the specific statutory provisions waived;

(C) how well each project for which a waiver is granted is improving or enhancing program achievement from the standpoint of quality, cost-effectiveness, or both;

(D) how well each project for which a waiver is granted is meeting the performance objectives specified in subsection (c)(3)(B);

(E) how each project for which a waiver is granted is conforming with the cost-neutrality requirements of subsection (d)(4); and

(F) to the extent the administering Secretary deems appropriate, recommendations for modification of programs based on outcomes of the projects.

(g) AMENDMENT TO UNITED STATES HOUSING ACT OF 1937.—Section 5A(d) of the United States Housing Act of 1937 (42 U.S.C. 1437c–1(d)) is amended—

(1) by redesignating paragraph (18) as paragraph (19); and

(2) by inserting after paragraph (17) the following new paragraph:

''(18) PROGRAM COORDINATION DEMONSTRATION PROJECTS.—In the case of an agency that administers an activity referred to in section 601(b)(2)(H) of the Personal Responsibility, Work, and Family Promotion Act of 2005 that, during such fiscal year, will be included in a demonstration project under section 601 of such Act, the information that is required to be included in the application for the project pursuant to paragraphs (1) through (4) of section 601(b) of such Act.''.

**SEC. 602. STATE FOOD ASSISTANCE BLOCK GRANT DEMONSTRATION PROJECT.**

The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) is amended by adding at the end the following:

**''SEC. 28. STATE FOOD ASSISTANCE BLOCK GRANT DEMONSTRATION PROJECT.**

''(a) ESTABLISHMENT.—The Secretary shall establish a program to make grants to States in accordance with this section to provide—

''(1) food assistance to needy individuals and families residing in the State;

''(2) funds to operate an employment and training program under subsection (g) for needy individuals under the program; and

''(3) funds for administrative costs incurred in providing the assistance.

''(b) ELECTION.—

''(1) IN GENERAL.—A State may elect to participate in the program established under subsection (a).

''(2) ELECTION REVOCABLE.—A State that elects to participate in the program established under subsection (a) may subsequently reverse the election of the State only once thereafter. Following the reversal, the State shall only be eligible to participate in the food stamp program in accordance with the other sections of this Act and shall not receive a block grant under this section.

''(3) PROGRAM EXCLUSIVE.—A State that is participating in the program established under subsection (a) shall not be subject to, or receive any benefit under, this Act except as provided in this section.

''(c) LEAD AGENCY.—

''(1) DESIGNATION.—A State desiring to participate in the program established under subsection (a) shall designate, in an application submitted to the Secretary under subsection (d)(1), an appropriate State agency that complies with paragraph (2) to act as the lead agency for the State.

''(2) DUTIES.—The lead agency shall—

''(A) administer, either directly, through other State agencies, or through local agencies, the assistance received under this section by the State;

''(B) develop the State plan to be submitted to the Secretary under subsection (d)(1); and

''(C) coordinate the provision of food assistance under this section with other Federal, State, and local programs.

''(d) APPLICATION AND PLAN.—

''(1) APPLICATION.—To be eligible to receive assistance under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by regulation require, including—

''(A) an assurance that the State will comply with the requirements of this section;

''(B) a State plan that meets the requirements of paragraph (2); and

''(C) an assurance that the State will comply with the requirements of the State plan under paragraph (2).

''(2) REQUIREMENTS OF PLAN.—

''(A) LEAD AGENCY.—The State plan shall identify the lead agency.

''(B) USE OF BLOCK GRANT FUNDS.—The State plan shall provide that the State shall use the amounts provided to the State for each fiscal year under this section—

''(i) to provide food assistance to needy individuals and families residing in the State, other than residents of institutions who are ineligible for food stamps under section 3(i);

''(ii) to administer an employment and training program under subsection (g) for needy individuals under the program and to provide reimbursements to needy individuals and families as would be allowed under section 16(h)(3); and

''(iii) to pay administrative costs incurred in providing the assistance.

''(C) ASSISTANCE FOR ENTIRE STATE.—The State plan shall provide that benefits under this section shall be available throughout the entire State.

''(D) NOTICE AND HEARINGS.—The State plan shall provide that an individual or family who applies for, or receives, assistance

under this section shall be provided with notice of, and an opportunity for a hearing on, any action under this section that adversely affects the individual or family.

''(E) OTHER ASSISTANCE.—

''(i) COORDINATION.—The State plan may coordinate assistance received under this section with assistance provided under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

''(ii) PENALTIES.—If an individual or family is penalized for violating part A of title IV of the Act, the State plan may reduce the amount of assistance provided under this section or otherwise penalize the individual or family.

''(F) ELIGIBILITY LIMITATIONS.—The State plan shall describe the income and resource eligibility limitations that are established for the receipt of assistance under this section.

''(G) RECEIVING BENEFITS IN MORE THAN 1 JURISDICTION.—The State plan shall establish a system to verify and otherwise ensure that no individual or family shall receive benefits under this section in more than 1 jurisdiction within the State.

''(H) PRIVACY.—The State plan shall provide for safeguarding and restricting the use and disclosure of information about any individual or family receiving assistance under this section.

''(I) OTHER INFORMATION.—The State plan shall contain such other information as may be required by the Secretary.

''(3) APPROVAL OF APPLICATION AND PLAN.—During fiscal years 2006 through 2010, the Secretary may approve the applications and State plans that satisfy the requirements of this section of not more than 5 States for a term of not more than 5 years.

''(e) CONSTRUCTION OF FACILITIES.—No funds made available under this section shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

''(f) BENEFITS FOR ALIENS.—No individual shall be eligible to receive benefits under a State plan approved under subsection (d)(3) if the individual is not eligible to participate in the food stamp program under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601 et seq.).

''(g) EMPLOYMENT AND TRAINING.—Each State shall implement an employment and training program for needy individuals under the program.

''(h) ENFORCEMENT.—

''(1) REVIEW OF COMPLIANCE WITH STATE PLAN.—The Secretary shall review and monitor State compliance with this section and the State plan approved under subsection (d)(3).

''(2) NONCOMPLIANCE.—

''(A) IN GENERAL.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

''(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the State plan approved under subsection (d)(3); or

''(ii) in the operation of any program or activity for which assistance is provided under this section, there is a failure by the State to comply substantially with any provision of this section, the Secretary shall notify the State of the finding and that no further payments will be made to the State under this section (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to the program or activity) until the Secretary is satisfied that there is no longer any failure to comply or that the noncompliance will be promptly corrected.

''(B) OTHER SANCTIONS.—In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to, or in lieu of, imposing the sanctions described in subparagraph (A), impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this section and disqualification from the receipt of financial assistance under this section.

''(C) NOTICE.—The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

''(3) ISSUANCE OF REGULATIONS.—The Secretary shall establish by regulation procedures for—

''(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this section; and

''(B) imposing sanctions under this section.

''(i) PAYMENTS.—

''(1) IN GENERAL.—For each fiscal year, the Secretary shall pay to a State that has an application approved by the Secretary under subsection (d)(3) an amount that is equal to the allotment of the State under subsection (l)(2) for the fiscal year.

''(2) METHOD OF PAYMENT.—The Secretary shall make payments to a State for a fiscal year under this section by issuing 1 or more letters of credit for the fiscal year, with necessary adjustments on account of overpayments or underpayments, as determined by the Secretary.

''(3) SPENDING OF FUNDS BY STATE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), payments to a State from an allotment under subsection (l)(2) for a fiscal year may be expended by the State only in the fiscal year.

''(B) CARRYOVER.—The State may reserve up to 10 percent of an allotment under subsection (l)(2) for a fiscal year to provide assistance under this section in subsequent fiscal years, except that the reserved funds may not exceed 30 percent of the total allotment received under this section for a fiscal year.

''(4) PROVISION OF FOOD ASSISTANCE.—A State may provide food assistance under this section in any manner determined appropriate by the State to provide food assistance to needy individuals and families in the State, such as electronic benefits transfer limited to food purchases, coupons limited to food purchases, or direct provision of commodities.

''(5) DEFINITION OF FOOD ASSISTANCE.—In this section, the term 'food assistance' means assistance that may be used only to obtain food, as defined in section 3(g).

''(j) AUDITS.—

''(1) REQUIREMENT.—After the close of each fiscal year, a State shall arrange for an audit of the expenditures of the State during the program period from amounts received under this section.

''(2) INDEPENDENT AUDITOR.—An audit under this section shall be conducted by an entity that is independent of any agency administering activities that receive assistance under this section and be in accordance with generally accepted auditing principles.

''(3) PAYMENT ACCURACY.—Each annual audit under this section shall include an audit of payment accuracy under this section that shall be based on a statistically valid sample of the caseload in the State.

''(4) SUBMISSION.—Not later than 30 days after the completion of an audit under this section, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

''(5) REPAYMENT OF AMOUNTS.—Each State shall repay to the United States any amounts determined through an audit under this section to have not been expended in accordance with this section or to have not been expended in accordance with the State plan, or the Secretary may offset the amounts against any other amount paid to the State under this section.

''(k) NONDISCRIMINATION.—

''(1) IN GENERAL.—The Secretary shall not provide financial assistance for any program, project, or activity under this section if any person with responsibilities for the operation of the program, project, or activity discriminates with respect to the program, project, or activity because of race, religion, color, national origin, sex, or disability.

''(2) ENFORCEMENT.—The powers, remedies, and procedures set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) may be used by the Secretary to enforce paragraph (1).

''(l) ALLOTMENTS.—

''(1) DEFINITION OF STATE.—In this section, the term 'State' means each of the 50 States, the District of Columbia, Guam, and the Virgin Islands of the United States.

''(2) STATE ALLOTMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), from the amounts made available under section 18 of this Act for each fiscal year, the Secretary shall allot to each State participating in the program established under subsection (a) an amount that is equal to the sum of—

''(i) the greater of, as determined by the Secretary—

''(I) the total dollar value of all benefits issued under the food stamp program established under this Act by the State during fiscal year 2005; or

''(II) the average per fiscal year of the total dollar value of all benefits issued under the food stamp program by the State during each of fiscal years 2003 through 2005; and

''(ii) the greater of, as determined by the Secretary—

''(I) the total amount received by the State for administrative costs and the employment and training program under subsections (a) and (h), respectively, of section 16 of this Act for fiscal year 2005; or

''(II) the average per fiscal year of the total amount received by the State for administrative costs and the employment and training program under subsections (a) and (h), respectively, of section 16 of this Act for each of fiscal years 2003 through 2005.

''(B) INSUFFICIENT FUNDS.—If the Secretary finds that the total amount of allotments to which States would otherwise be entitled for a fiscal year under subparagraph (A) will exceed the amount of funds that will be made available to provide the allotments for the fiscal year, the Secretary shall reduce the allotments made to States under this subsection, on a pro rata basis, to the extent necessary to allot under this subsection a total amount that is equal to the funds that will be made available.''.

## TITLE VII—ABSTINENCE EDUCATION

### SEC. 701. EXTENSION OF ABSTINENCE EDUCATION PROGRAM.

(a) EXTENSION OF APPROPRIATIONS.—

(1) IN GENERAL.—Section 510(d) (42 U.S.C. 710(d)) is amended in the first sentence by inserting before the period the following: ''and for each of the fiscal years 2006 through 2010''.

(2) ADDITIONAL FUNDS FOR FISCAL YEAR 2005.—

(A) ADDITIONAL FUNDS.—Activities authorized by section 510 of the Social Security Act shall continue through September 30, 2005, in

the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose, in addition to other amounts appropriated for such purpose for fiscal year 2005. Grants and payments may be made pursuant to this authority through the fourth quarter of fiscal year 2005 at the level provided for such activities through the fourth quarter of fiscal year 2004.

(B) EFFECTIVE DATE.—Subparagraph (A) takes effect upon the date of the enactment of this Act.

(b) ALLOTMENT OF FUNDS.—Section 510(a) (42 U.S.C. 710(a)) is amended—

(1) in the matter preceding paragraph (1), by striking ''an application for the fiscal year under section 505(a)'' and inserting '', for the fiscal year, an application under section 505(a), and an application under this section (in such form and meeting such terms and conditions as determined appropriate by the Secretary),''; and

(2) in paragraph (2), to read as follows:

''(2) the percentage that would be determined for the State under section 502(c)(1)(B)(ii) if the calculation under such section took into consideration only those States that transmitted both such applications for such fiscal year.''.

(c) REALLOTMENT OF FUNDS.—Section 510 (42 U.S.C. 710(a)) is amended by adding at the end the following new subsection:

''(e)(1) With respect to allotments under subsection (a) for fiscal year 2006 and subsequent fiscal years, the amount of any allotment to a State for a fiscal year that the Secretary determines will not be required to carry out a program under this section during such fiscal year or the succeeding fiscal year shall be available for reallotment from time to time during such fiscal years on such dates as the Secretary may fix, to other States that the Secretary determines—

''(A) require amounts in excess of amounts previously allotted under subsection (a) to carry out a program under this section; and

''(B) will use such excess amounts during such fiscal years.

''(2) Reallotments under paragraph (1) shall be made on the basis of such States' applications under this section, after taking into consideration the population of low-income children in each such State as compared with the population of low-income children in all such States with respect to which a determination under paragraph (1) has been made by the Secretary.

''(3) Any amount reallotted under paragraph (1) to a State is deemed to be part of its allotment under subsection (a).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to the program under section 510 of the Social Security Act for fiscal years 2006 and succeeding fiscal years.

## TITLE VIII—TRANSITIONAL MEDICAL ASSISTANCE

**SEC. 801. EXTENSION OF MEDICAID TRANSITIONAL MEDICAL ASSISTANCE PROGRAM THROUGH FISCAL YEAR 2006.**

(a) IN GENERAL.—Section 1925(f) (42 U.S.C. 1396r–6(f)) is amended by striking ''2003'' and inserting ''2006''.

(b) CONFORMING AMENDMENT.—Section 1902(e)(1)(B) (42 U.S.C. 1396a(e)(1)(B)) is amended by striking ''September 30, 2003'' and inserting ''the last date (if any) on which section 1925 applies under subsection (f) of that section''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 2005.

**SEC. 802. ADJUSTMENT TO PAYMENTS FOR MEDICAID ADMINISTRATIVE COSTS TO PREVENT DUPLICATIVE PAYMENTS AND TO FUND EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE.**

(a) IN GENERAL.—Section 1903 (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(7), by striking ''section 1919(g)(3)(B)'' and inserting ''subsection (x) and section 1919(g)(3)(C)''; and

(2) by adding at the end the following:

''(x) ADJUSTMENTS TO PAYMENTS FOR ADMINISTRATIVE COSTS TO FUND EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE.—

''(1) REDUCTIONS IN PAYMENTS FOR ADMINISTRATIVE COSTS.—Effective for each of the last 2 calendar quarters in fiscal year 2005 and for each calendar quarter in fiscal year 2006, the Secretary shall reduce the amount paid under subsection (a)(7) to each State by an amount equal to 45 percent for calendar quarters in fiscal year 2005, and 80 percent for calendar quarters in fiscal year 2006, of one-quarter of the annualized amount determined for the medicaid program under section 16(k)(2)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2025(k)(2)(B)).

''(2) ALLOCATION OF ADMINISTRATIVE COSTS.—None of the funds or expenditures described in section 16(k)(5)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2025(k)(5)(B)) may be used to pay for costs—

''(A) eligible for reimbursement under subsection (a)(7) (or costs that would have been eligible for reimbursement but for this subsection); and

''(B) allocated for reimbursement to the program under this title under a plan submitted by a State to the Secretary to allocate administrative costs for public assistance programs;

except that, for purposes of subparagraph (A), the reference in clause (iii) of that section to 'subsection (a)' is deemed a reference to subsection (a)(7) and clause (iv)(II) of that section shall be applied as if 'medicaid program' were substituted for 'food stamp program'.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on April 1, 2005.

## TITLE IX—EFFECTIVE DATE

**SEC. 901. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on October 1, 2005.

(b) EXCEPTION.—In the case of a State plan under part A or D of title IV of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the effective date of the amendments imposing the additional requirements shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

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By Mr. JOHNSON (for himself, Mr. ENZI, Mr. BINGAMAN, and Mr. DORGAN):

S. 108. A bill to prohibit the operation during a calendar year of the final rule issued by the Secretary of Agriculture to establish standards for the designation of minimal-risk regions for the introduction of bovine spongiform encephalopathy into the United States, including designation of Canada as a minimal-risk region, and the importation into the United States from Canada of certain bovine ruminant products during that calendar year, unless country of origin labeling is required for the retail sale of a covered commodity during that calendar year; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DORGAN. Mr. President, I am an original cosponsor of legislation which was introduced today by Senators JOHNSON and ENZI. This legislation requires that a mandatory system of country of-origin labeling be in place before the U.S. Department of Agriculture can open the border to imports of live Canadian cattle.

This legislation would not be necessary if USDA and this Administration were not furiously pushing to allow live Canadian cattle into this country. I am very concerned that they are doing this despite the most recent discovery, just a few weeks ago, of two more Canadian cows infected with BSE.

I believe that the decision to open the border to live Canadian cattle should be made based on sound science, not politics. The border should be opened when science indicates that it is safe to do so, and not before.

I also believe that it is necessary that this country have a system of country-of-origin labeling in place before the border is opened. That is the only way American consumers will be able to choose between beef raised in America and beef raised in Canada. Right now there is no way to tell the difference. We must have country-of-origin labeling in place before we allow Canadian cattle into this country, and that is why I am cosponsoring this legislation.

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By Mr. VITTER (for himself, Mr. SALAZAR, Mr. THUNE, and Mr. DEMINT):

S. 109. A bill entitled ''Pharmaceutical Market Access Act of 2005''; to the Committee on Health, Education, Labor, and Pensions.

Mr. VITTER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 109

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Pharmaceutical Market Access Act of 2005''.

**SEC. 2. FINDINGS.**

Congress finds as follows:

(1) Americans unjustly pay up to 1000 percent more to fill their prescriptions than consumers in other countries.

(2) The United States is the world's largest market for pharmaceuticals yet consumers still pay the world's highest prices.

(3) An unaffordable drug is neither safe nor effective. Allowing and structuring the importation of prescription drugs ensures access to affordable drugs, thus providing a

level of safety to American consumers they do not currently enjoy.

(4) According to the Congressional Budget Office, American seniors alone will spend $1,800,000,000,000 on pharmaceuticals over the next 10 years.

(5) Allowing open pharmaceutical markets could save American consumers at least $635,000,000,000 of their own money each year.

**SEC. 3. PURPOSES.**

The purposes of this Act are as follows:

(1) To give all Americans immediate relief from the outrageously high cost of pharmaceuticals.

(2) To reverse the perverse economics of the American pharmaceutical market.

(3) To allow the importation of prescription drugs only if the drugs and facilities where such drugs are manufactured are approved by the Food and Drug Administration, and to exclude pharmaceutical narcotics.

(4) To require that imported prescription drugs be packaged and shipped using counterfeit-resistant technologies.

**SEC. 4. AMENDMENTS TO SECTION 804 OF THE FEDERAL FOOD, DRUG, AND COSMETIC.**

(a) DEFINITIONS.—Section 804(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(a)) is amended to read as follows:

''(a) DEFINITIONS.—In this section:

''(1) IMPORTER.—The term 'importer' means a pharmacy, group of pharmacies, pharmacist, or wholesaler.

''(2) PERMITTED COUNTRY.—The term 'permitted country' means a country, union, or economic area that is listed in subparagraph (A) of section 802(b)(1), except that the Secretary—

''(A) may add a country, union, or economic area to such list for purposes of this section if the Secretary determines that the country, union, or economic area has a pharmaceutical infrastructure that is substantially equivalent or superior to the pharmaceutical infrastructure of the United States, taking into consideration pharmacist qualifications, pharmacy storage procedures, the drug distribution system, the drug dispensing system, and market regulation; and

''(B) may remove a country, union, or economic area from such list for purposes of this section if the Secretary determines that the country, union, or economic area does not have such a pharmaceutical infrastructure.

''(3) PHARMACIST.—The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(4) PHARMACY.—The term 'pharmacy' means a person that is licensed by a State to engage in the business of selling prescription drugs at retail that employs 1 or more pharmacists.

''(5) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug subject to section 503(b), other than—

''(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

''(C) an infused drug (including a peritoneal dialysis solution);

''(D) an intravenously injected drug;

''(E) a drug that is inhaled during surgery; or

''(F) a drug which is a parenteral drug, the importation of which pursuant to subsection (b) is determined by the Secretary to pose a threat to the public health, in which case section 801(d)(1) shall continue to apply.

''(6) QUALIFYING DRUG.—The term 'qualifying drug' means a prescription drug that—

''(A) is approved under section 505(b)(1); and

''(B) is not—

''(i) a drug manufactured through 1 or more biotechnology processes;

''(ii) a drug that is required to be refrigerated; or

''(iii) a photoreactive drug.

''(7) QUALIFYING INTERNET PHARMACY.—The term 'qualifying Internet pharmacy' means a registered exporter that dispenses qualifying drugs to individuals over an Internet website.

''(8) QUALIFYING LABORATORY.—The term 'qualifying laboratory' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

''(9) REGISTERED EXPORTER.—The term 'registered exporter' means a person that is in the business of exporting a drug to individuals in the United States (or that seeks to be in such business), for which a registration under this section has been approved and is in effect.

''(10) WHOLESALER.—

''(A) IN GENERAL.—The term 'wholesaler' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

''(B) EXCLUSION.—The term 'wholesaler' does not include a person authorized to import drugs under section 801(d)(1).''.

(b) REGULATIONS.—Section 804(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(b)) is amended to read as follows:

''(b) REGULATIONS.—Not later than 180 days after the date of enactment of the Pharmaceutical Market Access Act of 2005, the Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists, pharmacies, wholesalers, and individuals to import qualifying drugs from permitted countries into the United States.''.

(c) LIMITATION.—Section 804(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(c)) is amended by striking ''prescription drug'' each place it appears and inserting ''qualifying drug''.

(d) INFORMATION AND RECORDS.—Section 804(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(d)(1)) is amended—

(1) by striking subparagraph (G) and redesignating subparagraphs (H) through (N) as subparagraphs (G) through (M), respectively;

(2) in subparagraph (H) (as so redesignated), by striking ''telephone number, and professional license number (if any)'' and inserting ''and telephone number''; and

(3) in subparagraph (L) (as so redesignated), by striking ''(J) and (L)'' and inserting ''(I) and (K)''.

(e) TESTING.—Section 804(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(e)) is amended to read as follows:

''(e) TESTING.—The regulations under subsection (b) shall require that the testing described under subparagraphs (I) and (K) of subsection (d)(1) be conducted by the importer of the qualifying drug, unless the qualifying drug is drug subject to the requirements under subsection (l) for counterfeit-resistant technologies.''.

(f) REGISTRATION OF EXPORTERS; INSPECTIONS.—Section 804(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(f)) is amended to read as follows:

''(f) REGISTRATION OF EXPORTERS; INSPECTIONS.—

''(1) IN GENERAL.—Any person that seeks to be a registered exporter (referred to in this subsection as the 'registrant') shall submit to the Secretary a registration that includes the following:

''(A) The name of the registrant and identification of all places of business of the registrant that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the registrant;

''(B) An agreement by the registrant to—

''(i) make its places of business that relate to qualifying drugs (including warehouses and other facilities owned or controlled by, or operated for, the exporter) and records available to the Secretary for on-site inspections, without prior notice, for the purpose of determining whether the registrant is in compliance with this Act's requirements;

''(ii) export only qualifying drugs;

''(iii) export only to persons authorized to import the drugs;

''(iv) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country to or from which the registrant has exported or imported, or intends to export or import, to the United States;

''(v) monitor compliance with registration conditions and report any noncompliance promptly;

''(vi) submit a compliance plan showing how the registrant will correct violations, if any; and

''(vii) promptly notify Secretary of changes in the registration information of the registrant.

''(2) NOTICE OF APPROVAL OR DISAPPROVAL.—

''(A) IN GENERAL.—Not later than 90 days after receiving a completed registration from a registrant, the Secretary shall—

''(i) notify such registrant of receipt of the registration;

''(ii) assign such registrant a registration number; and

''(ii) approve or disapprove the application.

''(B) DISAPPROVAL OF APPLICATION.—

''(i) IN GENERAL.—The Secretary shall disapprove a registration, and notify the registrant of such disapproval, if the Secretary has reason to believe that such registrant is not in compliance with a registration condition.

''(ii) SUBSEQUENT APPROVAL.—The Secretary may subsequently approve a registration that was denied under clause (i) if the Secretary finds that the registrant is in compliance with all registration conditions.

''(3) LIST.—The Secretary shall—

''(A) maintain an up-to-date list of registered exporters (including qualifying Internet pharmacies that sell qualifying drugs to individuals);

''(B) make such list available to the public on the Internet site of the Food and Drug Administration and via a toll-free telephone number; and

''(C) update such list promptly after the approval of a registration under this subsection.

''(4) EDUCATION OF CONSUMERS.—The Secretary shall carry out activities, by use of the Internet website and toll-free telephone number under paragraph (3), that educate consumers with regard to the availability of qualifying drugs for import for personal use under this section, including information on how to verify whether an exporter is registered.

''(5) INSPECTION OF IMPORTERS AND REGISTERED EXPORTERS.—The Secretary shall inspect the warehouses, other facilities, and records of importers and registered exporters as often as the Secretary determines necessary to ensure that such importers and registered exporters are in compliance with this section.''.

(g) SUSPENSION OF IMPORTATION.—Section 804(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(g)) is amended by—

(1) striking ''and the Secretary determines that the public is adequately protected from

counterfeit and violative prescription drugs being imported under subsection (b)''; and

(2) by adding after the period at the end the following: ''The Secretary shall reinstate the importation by a specific importer upon a determination by the Secretary that the violation has been corrected and that the importer has demonstrated that further violations will not occur. This subsection shall not apply to a prescription drug imported by an individual, or to a prescription drug shipped to an individual by a qualifying Internet pharmacy.''.

(h) WAIVER AUTHORITY FOR INDIVIDUALS.—Section 804(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(j)) is amended to read as follows:

''(j) IMPORTATION BY INDIVIDUALS.—

''(1) IN GENERAL.—Not later than 180 days after the enactment of the Pharmaceutical Market Access Act of 2005, the Secretary shall by regulation permit an individual to import a drug from a permitted country to the United States if the drug is—

''(A) a qualifying drug;

''(B) imported from a licensed pharmacy or qualifying Internet pharmacy;

''(C) for personal use by an individual, or family member of the individual, not for resale;

''(D) in a quantity that does not exceed a 90-day supply during any 90-day period; and

''(E) accompanied by a copy of a prescription for the drug, which—

''(i) is valid under applicable Federal and State laws and;

''(ii) was issued by a practitioner who is authorized administer prescription drugs.

''(2) DRUGS DISPENSED OUTSIDE THE UNITED STATES.—An individual may import a drug from a country that is not a permitted country if—

''(A) the drug was dispensed to the individual while the individual was in such country, and the drug was dispensed in accordance with the laws and regulations of such country;

''(B) the individual is entering the United States and the drug accompanies the individual at the time of entry;

''(C) the drug is approved for commercial distribution in the country in which the drug was obtained;

''(D) the drug does not appear to be adulterated; and

''(E) the quantity of the drug does not exceed a 14-day supply.''.

(i) REPEAL OF CERTAIN PROVISIONS.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) is amended by striking subsections (l) and (m).

**SEC. 5. REGISTRATION FEES.**

Subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 397f et seq.) is amended by adding at the end the following:

**''PART 5—FEES RELATING TO PRESCRIPTION DRUG IMPORTATION**

**''SEC. 740A. FEES RELATING TO PRESCRIPTION DRUG IMPORTATION.**

''(a) REGISTRATION FEE.—The Secretary shall establish a registration fee program under which a registered exporter under section 804 shall be required to pay an annual fee to the Secretary in accordance with this subsection.

''(b) COLLECTION.—

''(1) COLLECTION ON INITIAL REGISTRATION.—A fee under this section shall be payable for the fiscal year in which the registered exporter first submits a registration under section 804 (or reregisters under that section if that person has withdrawn its registration and subsequently reregisters) in a amount of $10,000, due on the date the exporter first submits a registration to the Secretary under section 804.

''(2) COLLECTION IN SUBSEQUENT YEARS.—After the fee is paid for the first fiscal year, the fee described under this subsection shall be payable on or before October 1 of each year.

''(3) ONE FEE PER FACILITY.—The fee shall be paid only once for each registered exporter for a fiscal year in which the fee is payable.

''(c) FEE AMOUNT.—

''(1) IN GENERAL.—The amount of the fee shall be determined each year by the Secretary and shall be based on the anticipated costs to the Secretary of enforcing the amendments made by the Pharmaceutical Market Access Act of 2005 in the subsequent fiscal year.

''(2) LIMITATION.—

''(A) IN GENERAL.—The aggregate total of fees collected under this section shall not exceed 1 percent of the total price of drugs exported annually to the United States by registered exporters under this section.

''(B) REASONABLE ESTIMATE.—Subject to the limitation in described in subparagraph (A), a fee under this subsection for an exporter shall be an amount that is a reasonable estimate by the Secretary of the annual share of the exporter of the volume of drugs exported by exporters under this section.

''(d) USE OF FEES.—The fees collected under this section shall be used for the sole purpose of administering this section with respect to registered exporters, including the costs associated with—

''(1) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug;

''(2) developing, implementing, and maintaining a system to determine registered exporters' compliance with the registration conditions under the Pharmaceutical Market Access Act of 2005, including when shipments of qualifying drugs are offered for import into the United States; and

''(3) inspecting such shipments, as necessary, when offered for import into the United States to determine if any such shipment should be refused admission.

''(e) ANNUAL FEE SETTING.—The Secretary shall establish, 60 days before the beginning of each fiscal year beginning after September 30, 2005, for that fiscal year, registration fees.

''(f) EFFECT OF FAILURE TO PAY FEES.—

''(1) DUE DATE.—A fee payable under this section shall be paid by the date that is 30 days after the date on which the fee is due.

''(2) FAILURE TO PAY.—If a registered exporter subject to a fee under this section fails to pay the fee, the Secretary shall not permit the registered exporter to engage in exportation to the United States or offering for exportation prescription drugs under this Act until all such fees owed by that person are paid.

''(g) REPORTS.—

''(1) FEE ESTABLISHMENT.—Not later than 60 days before the beginning of each fiscal year, the Secretary shall—

''(A) publish registration fees under this section for that fiscal year;

''(B) hold a meeting at which the public may comment on the recommendations; and

''(C) provide for a period of 30 days for the public to provide written comments on the recommendations.

''(2) PERFORMANCE AND FISCAL REPORT.—Beginning with fiscal year 2005, not later than 60 days after the end of each fiscal year during which fees are collected under this section, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes—

''(A) implementation of the registration fee authority during the fiscal year; and

''(B) the use by the Secretary of the fees collected during the fiscal year for which the report is made.''.

**SEC. 6. COUNTERFEIT-RESISTANT TECHNOLOGY.**

(a) MISBRANDING.—Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352; deeming drugs and devices to be misbranded) is amended by adding at the end the following:

''(v) If it is a drug subject to section 503(b), unless the packaging of such drug complies with the requirements of section 505C for counterfeit-resistant technologies.''.

(b) REQUIREMENTS.—Title V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 505B the following:

**''SEC. 505C. COUNTERFEIT-RESISTANT TECHNOLOGIES.**

''(a) INCORPORATION OF COUNTERFEIT-RESISTANT TECHNOLOGIES INTO PRESCRIPTION DRUG PACKAGING.—The Secretary shall require that the packaging of any drug subject to section 503(b) incorporate—

''(1) overt optically variable counterfeit-resistant technologies that are described in subsection (b) and comply with the standards of subsection (c); or

''(2) technologies that have an equivalent function of security, as determined by the Secretary.

''(b) ELIGIBLE TECHNOLOGIES.—Technologies described in this subsection—

''(1) shall be visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

''(2) shall be similar to that used by the Bureau of Engraving and Printing to secure United States currency;

''(3) shall be manufactured and distributed in a highly secure, tightly controlled environment; and

''(4) should incorporate additional layers of non-visible covert security features up to and including forensic capability.

''(c) STANDARDS FOR PACKAGING.—

''(1) MULTIPLE ELEMENTS.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to section 503(b), manufacturers of the drugs shall incorporate the technologies described in subsection (b) into multiple elements of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

''(2) LABELING OF SHIPPING CONTAINER.—Shipments of drugs described in subsection (a) shall include a label on the shipping container that incorporates the technologies described in subsection (b), so that officials inspecting the packages will be able to determine the authenticity of the shipment. Chain of custody procedures shall apply to such labels and shall include procedures applicable to contractual agreements for the use and distribution of the labels, methods to audit the use of the labels, and database access for the relevant governmental agencies for audit or verification of the use and distribution of the labels.

''(d) EFFECTIVE DATE.—This section shall take effect 180 days after the date of enactment of the Pharmaceutical Market Access Act of 2005.''.

**SEC. 7. PROHIBITED ACTS.**

Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after subsection (k) the following:

''(l) The failure to register in accordance with section 804(f) or to import or offer to import a prescription drug in violation of a suspension order under section 804(g).''.

**SEC. 8. PATENTS.**

Section 271 of title 35, United States Code, is amended—

(1) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(2) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 (21 U.S.C. 384) of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.''.

**SEC. 9. OTHER ENFORCEMENT ACTIONS.**

(a) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act (as amended in section 4) is amended by adding at the end the following:

''(1) UNFAIR OR DISCRIMINATORY ACTS AND PRACTICES.—

''(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing or other agreement) to—

''(A) discriminate by charging a higher price for a prescription drug sold to a person in a permitted country that exports a prescription drug to the United States under this section than the price that is charged to another person that is in the same country and that does not export a prescription drug into the United States under this section;

''(B) discriminate by charging a higher price for a prescription drug sold to a person that distributes, sells, or uses a prescription drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a prescription drug under this section, or that does not distribute, sell, or use such a drug;

''(C) discriminate by denying supplies of a prescription drug to a person in a permitted country that exports a prescription drug to the United States under this section or distributes, sells, or uses a prescription drug imported into the United States under this section;

''(D) discriminate by publicly, privately, or otherwise refusing to do business with a person in a permitted country that exports a prescription drug to the United States under this section or distributes, sells, or uses a prescription drug imported into the United States under this section;

''(E) discriminate by specifically restricting or delaying the supply of a prescription drug to a person in a permitted country that exports a prescription drug to the United States under this section or distributes, sells, or uses a prescription drug imported into the United States under this section;

''(F) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country for the purpose of restricting importation of the drug into the United States under this section;

''(G) refuse to allow an inspection authorized under this section of an establishment that manufactures a prescription drug that may be imported or offered for import under this section;

''(H) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a prescription drug that may be imported or offered for import under this section to good manufacturing practice under this Act;

''(I) become a party to a licensing or other agreement related to a prescription drug that fails to provide for compliance with all requirements of this section with respect to such prescription drug or that has the effect of prohibiting importation of the drug under this section; or

''(J) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages in, or to impede, delay, or block the process for, the importation of a prescription drug under this section.

''(2) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge that a person has discriminated under subparagraph (A), (B), (C), (D), or (E) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial of supplies of a prescription drug to a person, the refusal to do business with a person, or the specific restriction or delay of supplies to a person is not based, in whole or in part, on—

''(A) the person exporting or importing a prescription drug into the United States under this section; or

''(B) the person distributing, selling, or using a prescription drug imported into the United States under this section.

''(3) PRESUMPTION AND AFFIRMATIVE DEFENSE.—

''(A) PRESUMPTION.—A difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) created after January 1, 2005, between a prescription drug for distribution in the United States and the drug for distribution in a permitted country shall be presumed under paragraph (1)(H) to be for the purpose of restricting importation of the drug into the United States under this section.

''(B) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to the presumption under subparagraph (A) that—

''(i) the difference was required by the country in which the drug is distributed; or

''(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug.

''(4) EFFECT OF SUBSECTION.—

''(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

''(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

''(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B in return for inclusion of the drug on a formulary;

''(ii) require that such discounts be made available to other purchasers of the prescription drug; or

''(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

''(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

''(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

''(ii) apply to such donations or supplying of a prescription drug.

''(5) ENFORCEMENT.—

''(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act.

''(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

''(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this section; and

''(ii) may seek monetary relief threefold the damages sustained.

''(6) ACTIONS BY STATES.—

''(A) IN GENERAL.—

''(i) CIVIL ACTIONS.—The attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction for a violation of paragraph (1) to—

''(I) enjoin that practice;

''(II) enforce compliance with this subsection;

''(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

''(IV) obtain such other relief as the court may consider to be appropriate.

''(ii) NOTICE.—

''(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

''(aa) written notice of that action; and

''(bb) a copy of the complaint for that action.

''(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

''(B) INTERVENTION.—

''(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Commission shall have the right to intervene in the action that is the subject of the notice.

''(ii) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subparagraph (A), it shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

''(i) conduct investigations;

''(ii) administer oaths or affirmations; or

''(iii) compel the attendance of witnesses or the production of documentary and other evidence.

''(D) ACTIONS BY THE COMMISSION.—

''(i) IN GENERAL.—In any case in which an action is instituted by or on behalf of the Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

''(ii) INTERVENTION.—An attorney general of a State may intervene, on behalf of the residents of that State, in an action instituted by the Commission.

''(iii) EFFECT OF INTERVENTION.—If an attorney general of a State intervenes in an

action instituted by the Commission, such attorney general shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(G) LIMITATION OF ACTIONS.—Any action under this paragraph to enforce a cause of action under this subsection by the Federal Trade Commission or the attorney general of a State shall be forever barred unless commenced within 5 years after the Federal Trade Commission, or the attorney general, as the case may be, knew or should have known that the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

''(H) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

''(I) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

''(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(8) MANUFACTURER.—In this subsection, the term 'manufacturer' means any entity, including any affiliate or licensee of that entity, that is engaged in—

''(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

''(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.''.

(b) REGULATIONS.—The Federal Trade Commission shall promulgate regulations to carry out the enforcement program under section 804(l) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(c) SUSPENSION AND TERMINATION OF EXPORTERS.—Section 804(g) of the Federal Food, Drug, and Cosmetic Act (as amended by section 4(g)) (21 U.S.C. 384(g)) is amended by—

(1) striking ''SUSPENSION OF IMPORTATION.—The Secretary'' and inserting ''SUSPENSION OF IMPORTATION.—

''(1) The Secretary—''; and

(2) adding at the end the following:

''(2) SUSPENSION AND TERMINATION OF EXPORTERS.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under subsection (f) by a registered exporter:

''(i) Subject to clause (ii), if the Secretary determines, after notice and opportunity for a hearing, that the registered exporter has failed to maintain substantial compliance with all registration conditions, the Secretary may suspend the registration.

''(ii) If the Secretary determines that, under color of the registration, the registered exporter has exported a drug that is not a qualifying drug, or a drug that does not meet the criteria under this section, or has exported a qualifying drug to an individual in violation of this section, the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registered exporter involved an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registered exporter has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under subsection (f) of a registered exporter if the Secretary determines that the registered exporter has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registered exporter. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration of a registered exporter is terminated, any registration submitted under subsection (f) by such exporter or a person who is a partner in the export enterprise or a principal officer in such enterprise, and any registration prepared with the assistance of such exporter or such a person, has no legal effect under this section.''.

**SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this Act (and the amendments made by this Act).

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By Mrs. FEINSTEIN:

S. 110. A bill for the relief of Robert Liang and Alice Liang; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private relief legislation to provide lawful permanent residence status to Robert Kuan Liang and his wife, Chun-Mei (''Alice'') Hsu-Liang, foreign nationals who live in San Bruno, California.

I have decided to offer private relief immigration bills on their behalf because I believe that, without it, this hardworking couple and their three United States citizen children would endure an immense and unfair hardship. Indeed, without this legislation, this family may not remain a family for much longer.

The Liangs are foreign nationals facing deportation on account of their overstay of visitors visas and the failure of their previous attorney to timely file a suspension of deportation application before the immigration laws changed in 1996.

Mr. Liang is a foreign national and refugee from Laos. His wife is a citizen of Taiwan. They entered the United States 22 years ago as tourists and established residency in the San Bruno, CA. Because they overstayed the terms of their temporary visas, they now face deportation from the United States.

After living here for so many years, removal from the United States would not come easily or perhaps without tearing this family apart. The Liangs have three children born in this country: Wesley, 13 years old, Bruce, 10 years old, and Eva, 7 years old. Young Wesley suffers from asthma and has a history of social and emotional anxiety. The immigration judge who presided over the Liang's case in 1997 concluded that there was no question that the Liang children would be adversely impacted if they were required to leave their relatives and friends behind in California to follow their parents to Taiwan, a country whose language and culture is unfamiliar to them. And that was 7 years ago. I can only imagine how much more they would be adversely impacted now given the passage of 7 more years.

The Liangs have filed annual income tax returns; established a successful business, Fong Yong Restaurant, in the United States; are home owners, and are financially successful. Since they arrived in the United States, they have pursued and, to a degree, achieved the American Dream.

Mr. and Mrs. Liang's quest to legalize their immigration status began in 1993 when they filed for relief from deportation before an immigration judge. The Immigration and Naturalization Service, however, did not act on their application until nearly 5 years later, in 1997, after which time the immigration laws had significantly changed.

According to the immigration judge, had the INS acted on their application for relief from deportation in a timely manner, they would have qualified for suspension of deportation, given that they were long-term residents of this country with US citizen children and other positive factors. By the time INS processed their application, however, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which changed the requirements for relief from removal to the Liangs' disadvantage.

I supported the changes of the 1996 law, but I believe sometimes there are exceptions which merit special consideration. The Liangs are such a couple and family. Perhaps what distinguishes this family from many others is that through hard work and perseverance, Mr. Liang has achieved a significant degree of success in the United States while battling a severe form of Post Traumatic Stress Disorder. According to his psychologist, this disorder stems from the persecution he, his family and community experienced in his native

country of Laos during the Vietnam War. Throughout his childhood and adolescence, Mr. Liang was exposed to numerous traumatic experiences, including the murder of his mother by the North Vietnamese and frequent episodes of wartime violence. He also routinely witnessed the brutal persecution and deaths of others in his village. In 1975, he was granted refugee status in Taiwan.

The emotional impact of Mr. Liang's experiences in his war-torn native country have been profound and continue to haunt him. In addition to being diagnosed with Post Traumatic Stress Disorder, his psychologist has also indicated that he suffers from severe clinical depression, which has been exacerbated by the prospect of being deported to Taiwan, where on account of his nationality, he believes he and his family would be treated as second-class citizens. Moreover, Mr. Liang believes that the pursuit of further mental health treatment in Taiwan would only exacerbate the stigma of being an outsider in a country whose language he does not speak. Given those prospects, he also fears the impact such a stigma would have on the well-being and future of his children.

Given these extraordinary and unique facts, I ask my colleagues to support this private relief bill on behalf of the Liangs.

I also ask unanimous consent that the text of the legislation be printed in the RECORD and that the attached three letters of community support also be printed.

There being no objection, the bill and letters were ordered to be printed in the RECORD, as follows:

S. 110

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ADJUSTMENT OF STATUS.**

(a) IN GENERAL.—Notwithstanding any other provision of law or any order, for the purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Robert Liang and Alice Liang shall be deemed to have been lawfully admitted to, and remained in, the United States, and shall be eligible for issuance of an immigrant visa or for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(b) APPLICATION AND PAYMENT OF FEES.—Subsection (a) shall apply only if the applications for issuance of immigrant visas or the applications for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(c) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of immigrant visas to Robert Liang and Alice Liang, the Secretary of State shall instruct the proper officer to reduce by 2, during the current or subsequent fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152(e), 1153(a)), as applicable.

Re the Liang Family.

Hon. DIANNE FEINSTEIN,
*U.S. Senate, Hart Senate Office Building, Washington, DC.*

DEAR SENATOR FEINSTEIN: Robert and Alice Liang and their Fon Yong Restaurant at 1065 Holly Street are members in good standing of the San Carlos Chamber of Commerce. As such they have shown their commitment to be members in good standing of the San Carlos business community. Chamber members tend to reflect a desire for community involvement and support for their city. The Liangs took the initiative to start a business here and have maintained it beautifully. They have a very loyal cadre of customers.

The Chamber is always happy to see good small businesses like Fon Yong thrive. The Chamber stands behind Alice and her family in their quest for permanent residence in the United States. Alice is well known to all who frequent her restaurant as a warm, friendly business woman who even takes the time to remember what her regulars' favorites are.

The Liang family is a stable one and they contribute to the community here. They have done good rather than harm as they settled here. I hope you can respond positively to their example and settle the immigration issue quickly.

Sincerely,

SHERYL POMERENK,
*CEO, San Carlos Chamber of Commerce.*

JANUARY 13, 2005.

Hon. DIANNE FEINSTEIN,
*331 Hart Senate Office Building, Washington, DC.*

DEAR SENATOR FEINSTEIN: I am writing in support of a private bill for Robert and Alice Liang, two outstanding residents of our community for the past twenty-one years.

Robert and Alice are two of the most caring and hardworking people I have ever met. Despite the demands of running a small business and taking care of their three children, they are always trying to help others in need. Recently, Alice heard about Chloe Chang, a young local girl who had acute promyelocytic leukemia. Chloe had undergone chemotherapy, but had a relapse. She needed a bone marrow transplant, and was looking for a donor. Her family was facing mounting bills from the donor search. Alice asked me if there was any way she could help. I should point out that she had never met this family, she just knew they were in need from newspaper articles and TV broadcasts. We put together a fund-raising dinner event at Stanford University in which I bought the ingredients, and Robert and Alice worked all day cooking a hundred dinners. Together, we raised almost a thousand dollars to help Chloe's family.

This is not the only time that Robert and Alice have gone out of their way to help others, even while they themselves face deportation. It amazes me that they can think of others at such a time, but that's the kind of people they are. I am so worried about Robert, especially, because he is still suffering from all the things he saw as a child and a teenager in Laos. People were dragged out and killed in front of him, and his own mother was killed by the Communists before the rest of the family escaped. After two decades here, Robert has found a little peace, and I can't even think what it will do to him to have that taken away. I want you as my senator to do whatever it takes to make sure that these two wonderful people can stay here where they belong. Please sponsor a private bill and try to convince other members of Congress to support it. If there's anything I can do to help, please let me know.

Sincerely,

*Sue Chow.*

JANUARY 12, 2005.

Senator DIANNE FEINSTEIN,
*Hart Senate Office Building, Washington, DC.*

DEAR SENATOR FEINSTEIN: I am writing you as a friend and customer of Robert and Alice Liang of San Bruno, because I understand that you may be considering resubmitting a private bill in their favor. I certainly hope that you do resubmit and support this private bill. These are extraordinary people in the way they and their business have enhanced our community of San Carlos. Alice and Robert have really created a special community of customers and friends with their restaurant.

It's hard to describe how much of an asset the Liangs are to our community. They are good neighbors. They are welcoming friends and hosts. They expect only good from people and they reach out with friendship and aid to those around them.

Robert and Alice have touched the hundreds of customers who have walked in the doors of Fon Yong Restaurant by not only preparing very good food, but by reaching us personally with very caring, unsolicited acts of kindness and neighborliness. A couple of examples include their bringing my husband's favorite vegetarian meal to him at Sequoia Hospital, when he was undergoing rehabilitation from a stroke, and regularly assisting the disabled daughter of a customer as she works to feed herself dinner in the restaurant. Their actions of kindness remind all of us what it is to be a good neighbor. These are the values and qualities we hope for in our neighbors.

The private bill you submitted in the last Congress did help reduce Robert's anxiety level. (As you know, he is being treated for Post Traumatic Stress Disorder.) I am very concerned though, about what may happen to the family if they are forced to leave the United States and relocate to a place the children have never seen, is a half a life away for Alice, and is certainly not Robert's home. I hope you will resubmit your bill for the Liangs and encourage your fellow members of the Senate to support the Liangs in their quest to join us as citizens of the United States.

Thank you so much for your support of the Liangs. Also, please know that I am ready and willing to help you help them.

Sincerely,

BARBARA MAAS.

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By Mrs. FEINSTEIN:

S. 111. A bill for the relief of Shigeru Yamada; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private relief legislation to provide lawful permanent residence status to Shigeru Yamada, a 22-year-old Japanese national who lives in Chula Vista, CA.

I have decided to introduce a private bill on his behalf because I believe that Mr. Yamada represents a model American citizen, for whom removal from this country would represent an unfair hardship. Without this legislation, Mr. Yamada will be forced to return to a country in which he lacks any linguistic, cultural or family ties.

Mr. Yamada legally entered the United States with his mother and two sisters in 1992 at the young age of 10. The family was fleeing from Mr. Yamada's alcoholic father, who had been physically abusive to his mother, the children and even his own parents. Since then, he has had no contact with his father and is unsure if he is even alive. Tragically, Mr. Yamada experienced further hardship when his mother was killed in a car crash in 1995. Orphaned at the age of 13, Mr. Yamada

spent time living with his aunt before moving to Chula Vista to live with a close friend of his late mother.

The death of his mother marked more than a personal tragedy for Mr. Yamada; it also served to impede the process for him to legalize his status. At the time of her death, Mr. Yamada's family was living legally in the United States. His mother had acquired a student visa for herself and her children qualified as her dependents. Her death revoked his legal status in the United States. In addition, Mr. Yamada's mother was engaged to an American citizen at the time of her death. Had she survived, her son would likely have become an American citizen through this marriage.

Mr. Yamada has exhausted all administrative options under our current immigration system. Throughout high school, he contacted attorneys in the hopes of legalizing his status, but his attempts were unsuccessful. Unfortunately, time has run out and, for Mr. Yamada, the only option available to him today is private relief legislation.

For several reasons, it would be tragic for Mr. Yamada to be deported from the United States and forced to return to Japan.

First, since arriving in the United States, Mr. Yamada has lived as a model American. He graduated with honors from Eastlake High School in 2000, where he excelled in both academics and athletics. Academically, he earned a number of awards including being named an ''Outstanding English Student'' his freshman year, an All-American Scholar, and earning the United States National Minority Leadership Award. His teacher and coach, Mr. John Inumerable, describes him as being ''responsible, hard working, organized, honest, caring and very dependable.'' His role as the Vice-President of the Associated Student Body his senior year is an indication of Mr. Yamada's high level of leadership, as well as, his popularity and trustworthiness among his peers. As an athlete, Mr. Yamada was named the ''Most Inspirational Player of the Year'' in Junior Varsity baseball and football, as well as, Varsity football. His football coach, Mr. Jose Mendoza, expressed his admiration by saying that he has ''seen in Shigeru Yamada the responsibility, dedication and loyalty that the average American holds to be virtuous.''

Second, Mr. Yamada has distinguished himself as a local volunteer. As a member of the Eastlake High School Link Crew, he helped freshman find their way around campus, offered tutoring and mentoring services, and set an example of how to be a successful member of the student body. After graduating from high school, he volunteered his time for 4 years as the coach of the Eastlake High School Girl's softball team. The former head coach, who has since retired, Dr. Charles Sorge, describes him as an individual full of ''integrity'' who understands that as a coach it is important to work as a ''team player.'' His level of commitment to the team was further illustrated to Dr. Sorge when he discovered, halfway through the season, that Mr. Yamada's commute to and from practice was 2 hours long each way. It takes an individual with character to volunteer his time to coach and never bring up the issue of how long his commute takes him each day. Dr. Sorge hopes that, once Mr. Yamada legalizes his immigration status, he will be formally hired to continue coaching the team.

Third, sending Mr. Yamada back to Japan would be an immense hardship for him and his family here. Mr. Yamada does not speak Japanese. He is unaware of the nation's current cultural trends. And, he has no immediate family members that he knows of in Japan. Currently, both of his sisters are in the process of legalizing their immigration status in the United States. His older sister is married to a United States citizen and his younger sister is being adopted by a maternal aunt, who is a United States citizen. Since as all of his family lives in California, sending Mr. Yamada back to Japan would serve to split his family apart and separate him from everyone and everything that he knows. His sister contends that her younger brother would be ''lost'' if he had to return to live in Japan on his own. It is unlikely that he would be able to find any gainful employment in Japan due to his inability to speak or read the language.

As a member of the Chula Vista community, Mr. Yamada has distinguished himself as an honorable individual. His teacher, Mr. Robert Hughes, describes him as being an ''upstanding 'All-American' young man''. Until being picked up during a routine check of riders' immigration status on a city bus, he had never been arrested or convicted of any crime. Mr. Yamada is not, and has never been, a burden on the State. He has never received any Federal or State assistance.

Currently, Mr. Yamada holds sophomore status at Southwestern Community College. However, he is taking this semester off in order to alleviate his financial burdens by working full time. He had hoped to pursue a career in law enforcement, but his plans have recently changed due to his current immigration status dilemma. Until he obtains citizenship, Mr. Yamada will be prohibited from pursuing a career in law enforcement. Due to the circumstances, Mr. Yamada has changed his career goal to that of becoming a high school teacher. Mr. Yamada's commitment to his education is admirable. He could have easily taken a different path but, through his own ''individual fortitude,'' he has dedicated himself to his studies so that he can live a better life.

With his hard work and giving attitude, Shigeru Yamada represents the ideal American citizen. Although born in Japan, he is truly American in every other sense. I ask you to help right a wrong and grant Mr. Yamada lawful permanent resident status so that he can continue towards his bright future.

Given these extraordinary and unique facts, I ask my colleagues to support this private relief bill on behalf of Mr. Yamada.

I ask unanimous consent that the text of the bill be printed in the RECORD and that the three letters of community support be printed in the RECORD.

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

S. 111

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PERMANENT RESIDENT STATUS FOR SHIGERU YAMADA.**

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act (8 U.S.C. 1151), Shigeru Yamada shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Shigeru Yamada enters the United States before the filing deadline specified in subsection (c), Shigeru Yamada shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Shigeru Yamada, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Shigeru Yamada under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Shigeru Yamada under section 202(e) of that Act.

EASTLAKE HIGH SCHOOL,
*Chula Vista, CA, January 17, 2005.*

Senator DIANNE FEINSTEIN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR FEINSTEIN: I am more than happy to write this letter on behalf of Shigeru Yamada as he pursues his efforts to stay in the United States. I was Shigeru's counselor while he attended Eastlake High School. During that time he always displayed exemplary behavior, academic focus, and personal determination.

Academically Shigeru was a model student. He earned a 3.84 grade point average; he made the National Honor Roll and was nominated to Who's Who Among High School Students for three straight years. Shigeru plans to attend a university to study sports medicine and physical therapy so he has set high goals for himself. He has the ability to not only handle college-level work, but to thrive on the challenge the university will

bring. His quiet determination has been an example to his peers and was a joy to his instructors.

Shigeru Yamada not only took the most from his high school experience, but he has consistently ''given back'' his talents, time, and effort to serve the school community. He was elected ASB vice-president during his senior year. He demonstrated leadership skills as president of the Inter-Club Council on campus; he mentored incoming ninth-grade students and worked on numerous service projects. In addition to his involvement in student government, Shigeru participated in football, baseball, and wrestling. He was named ''Most Inspirational Player of the Year'' for both his junior varsity baseball and football teams. He was also awarded the J.T. Franks Memorial Award (most inspirational) from the varsity football team. (This award carries a great deal of respect amongst the players as it is named after a teammate who died of cancer.) Shigeru was a role model for our students when he attended our school: He earned good grades; he was an athlete; and he was involved in a variety of additional activities. He is the kind of student that Eastlake High School has been proud to have.

A further testimony to Shigeru's character is what he has been doing since graduating. This young man has come back to serve as an assistant football and wrestling coach for our students. He gives his time and energy to working with individual students during the week and on weekends; he not only advises them on how to improve their athletic skills, but he is also a wonderful role model and mentor. He is someone to whom the young men can relate, a person whose opinions are valued. I have personally seen Shigeru interact with these boys; the respect he gives them and the respect they give Shigeru is an absolute indication of the positive influence he has in their lives.

Shigeru is seeking permanent resident status in the United States through a private bill that you have agreed to sponsor. Were his mother still alive, his residency would not be in question. However, since she died a few years ago in a car accident, Shigeru has had to get through high school without her guidance and support, and now his future in the United States is in jeopardy. Shigeru Yamada has already proven himself to be a hard-working, law-abiding, goal-oriented young man. He has already proven himself to be a productive member of society. And, most importantly, Shigeru wants to not only take the best this society has to offer, but to also give back to the society to make it a better place for those around him.

Perhaps the best endorsement that I can give is that I would be proud to claim Shigeru Yamada as my son. He embodies all the qualities that I have tried to instill in my own sons. Please, I urge you to submit the bill that would give Shigeru Yamada permanent residency in the United States. He will represent all of us well.

Sincerely,

ANN M. STEVENS,
*Asst. Principal.*

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EASTLAKE HIGH SCHOOL,
*Chula Vista, CA, January 13, 2005.*

HON. DIANNE FEINSTEIN: I am writing to bring to your attention the need to support a fine young man, Shigeru Yamada. I am a teacher and coach at Eastlake High School; I have known Shigeru for 8 years, both as a student and as a volunteer coach during the last 5 years. What has singularly impressed me about this young man is that he has created himself and never complained about his life's struggles. His mother died when he was young. He got little support from his aunt—materially, emotionally, spiritually. Yet all the while you would not have known that. He set goals for himself academically and athletically; modeled himself on good ideals of community service and service to his school. He was vice-president of the Associated Student Body at Eastlake High and would have pursued an academic future at UCLA were it not for his citizenship status. Instead, he did what he could do and has gone to community college in an effort to pursue his college degree.

All the while, he volunteered his time during these past 5 years to help coach our school's softball team (as well as other sports on campus). It was only recently that I had discovered that it would take him 2 hours with bus transfers just to get to softball practice.

I provide this information to you as a testimonial to the character of this young man. Exceptional in attitude and determination. We need this kind of spirit and resolve in America. We do not want to export it somewhere else. Please help.

Respectfully,

CHARLES R. SORGE,
*Ed.D., English Teacher and Head Softball Coach.*

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EASTLAKE HIGH SCHOOL,
ASSOCIATED STUDENT BODY,
*Chula Vista, CA, January 14, 2005.*

CONGRESSMAN FILNER: Please consider the reintroduction of the private bill for permanent residency on behalf of Shigeru Yamada. He is a most outstanding person, with character second to none. Shigeru Yamada has no ties, nor any cultural background with Japan. Since he has been raised in the United States for the past 12 years out of his 22 years, he is not able to communicate in the Japanese language. Therefore, to throw Shiguru back into a world of confusion will not only be a tragic event for him, but a loss for the United States and the Chula Vista community.

Once again we cannot lose a strong member of this society. Please consider his request for sponsorship.

Sincerely,

BOB BARRETT,
*Assistant Principal.*

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By Mrs. FEINSTEIN:

S. 112. A bill for the relief of Denes Fulop and Gyorgyi Fulop; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today a private immigration relief bill to provide lawful permanent residence status to Denes and Gyorgyi Fulop, Hungarian nationals who have lived in California for more than 20 years. The Fulops are the parents of six U.S. citizen children. Today, they face deportation having exhausted all administrative remedies under our immigration system.

The Fulop's story is a compelling one and one which I believe merits Congress' consideration for humanitarian relief.

The most poignant tragedy to affect this family occurred in May 2000, when the Fulops eldest child, Robert ''Bobby'' Fulop, an accomplished 15 year-old teenager, died suddenly of a heart aneurism. Bobby was considered the shining star of his family.

That same year their six-year-old daughter, Elizabeth, was diagnosed with moderate pulmonary stenosis, a potentially life-threatening heart condition and a frightening situation similar to Bobby's. Not long ago, she successfully underwent heart surgery, but requires medical supervision to ensure her good health.

The Fulop's youngest child, Matthew, was born seven weeks premature. He subsequently underwent several kidney surgeries and is still being closely monitored by physicians.

Compounding these tragedies is the fact that today the Fulops face deportation. They face deportation, in part, because in 1995 the family traveled to Hungary and remained there for more than 90 days. Under the pre-1996 immigration law, prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, their stay in Hungary would not have been a factor in their immigration case and they would have been eligible for adjustment of status to lawful permanent residents.

Indeed, in 1996, Mr. and Mrs. Fulop applied to the Immigration and Naturalization Service, INS, for permanent resident status. Due to large backlogs, the INS did not interview them until 1998. By the time their applications were considered, the new 1996 immigration law had taken effect. Given their one-time 90 day trip outside the United States, they were statutorily ineligible for relief pursuant to the cancellation of removal provisions of the Immigration and Nationality Act.

One cannot help but conclude that had the INS acted on the Fulop's application for relief from deportation in a timelier manner, they would have qualified for suspension of deportation under the pre-1996 law, given that they were long-term residents of the United States with U.S. Citizen children and many positive factors in their favor.

The irony of this situation is that the Fulops were gone from the United States for nearly five months in 1995 because they traveled to Hungary to help Mr. Fulop's brother build his home. Mr. Fulop's brother is handicap and they went to help remodel his home.

The Fulops are good and decent people. Mr. Fulop is a masonry contractor and the owner and president of his own construction company—Sumeg International. He has owned this business for 10 years and currently has three full-time employees.

The couple are active in their church and community. As Pastor Peter Petrovic of the Apostolic Christian Church of San Diego says in his letter of support, ''[t]he family is an exceptional asset to their community.'' Mrs. Fulop has served as a Sunday school teacher and volunteers regularly at Heritage K–8 Charter School in Escondido. Mrs. Morris, a Heritage K–8 Charter School faculty member says in her letter of support that Mrs. Fulop is ''. . . a valuable asset to our school and community.''

Mr. President, this is a tragic situation. Essentially, as happened to many families under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the rules of the game were

changed in the middle. When the Fulops applied for relief from deportation they were eligible for suspension of deportation. By the time the INS got around to their application, nearly three years later, they were no longer eligible and in fact suspension of deportation as a form of relief ceased to exist.

The Fulops today have been in the United States since the early 1980s. Most harmful is the effect that their deportation will have on the children, all of whom were born here and who range from one year old to 17 years of age. Their eldest, Dennis, is a 4.0 honor student at Palomar Community College having graduated from high school one year early. His sister, Linda, has a 3.8 grade point average and is an honor student in high school.

It is my hope that Congress sees fit to provide an opportunity for this family to remain together in the United States given their many years here, the profound sadness they have already experienced and the harm that would come from their deportation to their six U.S. citizen children.

Mr. President, I ask unanimous consent that the text of the bill and three letters be printed in the RECORD.

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

S. 112

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ADJUSTMENT OF STATUS.**

(a) IN GENERAL.—Notwithstanding any other provision of law or any order, for the purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Denes Fulop and Gyorgyi Fulop shall be deemed to have been lawfully admitted to, and remained in, the United States, and shall be eligible for issuance of an immigrant visa or for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(b) APPLICATION AND PAYMENT OF FEES.—Subsection (a) shall apply only if the applications for issuance of immigrant visas or the applications for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(c) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of immigrant visas to Denes Fulop and Gyorgyi Fulop, the Secretary of State shall instruct the proper officer to reduce by 2, during the current or subsequent fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152(e), 1153(a)), as applicable.

APOSTOLIC CHRISTIAN CHURCH
OF SAN DIEGO,
*Escondido, CA, January 14, 2005.*

Re the Denes Fulop Family.

TO WHOM IT MAY CONCERN: My family and I have known Denes and Joy Fulop for many years. They have been members in good standing in our church for approximately 20 years. Denes has served the congregation faithfully in many capacities. He was a building committee member during the construction of our church 10 years ago. He also served as church treasurer for four years and Sunday School Superintendent for many years. Presently he is a member on the board of trustees.

Joy Fulop was a building sub-committee member during the construction of the church and also served for a few years as a Sunday school teacher. Joy is a devoted and committed homemaker, and a wonderful example of a loving mother and wife. Their three younger children, Elizabeth, Sarah and Abigail are actively involved in Sunday school and in various youth group activities. The two oldest, Denny and Linda, are also active in the church. They are very diligent and excellent students in High School and outstanding citizens.

The family is an exceptional asset to their community. Denes has been self-employed for many years and is a knowledgeable and successful contractor. Their family has never depended on any government aid, but rather contributes and shares their blessings with others. Denes, Joy, and their six children are truly an asset to our church and community.

Should you have any further questions, please don't hesitate to contact me.

Respectfully submitted,

PETER PETROVIC,
*Pastor.*

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HERITAGE K–8 CHARTER SCHOOL,
*Escondido, CA, January 14, 2005.*

DEAR MEMBERS OF CONGRESS, I am writing this letter on behalf of the Fulop Family. I want to express my deep appreciation for Mrs. Fulop's involvement at our elementary school.

Abigail Fulop is a successful kindergarten student in my class who performs above grade level. Sarah and Elizabeth Fulop attend Heritage charter as well and are outstanding students.

Mrs. Fulop volunteers on a regular basis in my kindergarten classroom helping students become better readers. She takes a reading group and works on reading strategies that increase student' learning. She also takes time to volunteer in her daughter Sarah's class. Her time and effort fosters a learning environment. Recently she participated in a cooking demonstration for the class. She also takes time out of her busy schedule to help her daughter's third grade teacher plan and prepare for field trips.

In all these things I have confidence that she is a valuable asset to our school and community. Please consider supporting their desire to remain with us. Please feel free to contact me with any questions.

Sincerely,

MRS. MORRIS.

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R. RIMMER CONSTRUCTION INC.,
*Cardiff, CA, January 13, 2005.*

TO WHOM IT MAY CONCERN: The purpose of this letter is to describe my relationship with Dennis Fulop, whom I have known for approximately twenty-two years.

As a building contractor in the San Diego area I have been fortunate to have worked with Dennis for most of those years. He has constructed nearly all of the foundations for the room additions and new houses that I have built. Dennis has also constructed most of the driveways, sidewalks, retaining walls, fireplaces and masonry on my projects. He has also attended to much of my finish grading, drainage and backhoe construction needs.

Dennis has long been an invaluable member of my construction ''team''. He is very knowledgeable in nearly all construction matters. He has always been very reliable and responsible in meeting deadlines and upholding high standards of construction quality.

Dennis is also a very successful small business owner. He has his own credit accounts with all of the necessary construction suppliers and to my knowledge has always paid his bills in a timely manner. In fact, I have never been contacted or liened by any of his suppliers to date. Dennis is also very proficient at managing and providing work for his employees.

Dennis's wife Joy is a dedicated wife and mother to their six children.

I am very thankful to know the Fulop family personally and I can attest that their values and deeply held convictions make them valuable contributors to their local community and society as a whole.

Sincerely,

RON RIMMER,
*President.*

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By Mrs. FEINSTEIN:

S. 113. A bill to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust; to the Committee on Indian Affairs.

Mr. President, I rise today to introduce legislation that would strike a small provision in the Omnibus Indian Advancement Act of 2000; language that circumvents the Indian Gaming Regulatory Act's common-sense protections and safeguards against the inappropriate siting of Nevada-style casinos.

In December 2000, a one-paragraph provision was attached to the Omnibus Indian Advancement Act taking land into trust for a single Indian tribe—the Lytton—with the aim of allowing the tribe to bypass the federal and state review process and expedite plans to establish a large, off-reservation gaming complex in an urban area near San Francisco. Most astoundingly, this provision included a clause which mandated that the Secretary of Interior backdate the acquisition of this land to October 17, 1988—despite the fact that the land was actually taken into trust in 2004. This backdating permitted the tribe to completely circumvent the Indian Gaming Regulatory Act's requirements for gaming on newly acquired lands and avoid an important consultative process prescribed in federal law.

Today California is home to 110 federally recognized tribes. Sixty-six tribes have gaming compacts with the state and there are 57 tribal casinos. With more than 50 tribes seeking federal recognition and approximately 25 recognized tribes seeking gaming compacts from the Governor, revenues from California's tribal gaming industry are expected to be the highest of any state's by the end of the decade. According to the latest statistics released by the National Indian Gaming Commission, in 2003 California by itself accounted for about half of the increase in gaming revenues nationwide.

Mr. President, I have serious reservations about the expansion of Nevada-style gaming—with its slot machines and in-house banking—into urban areas, and I am particularly concerned about off-reservation gambling and ''reservation shopping''. Off-reservation casinos often cause counties additional costs in public and local services, intrude on residential areas, and are responsible for an increase of traffic and crime within local communities.

That is why Section 20 of the Indian Gaming Regulatory Act requires that tribes complete a ''two-part determination'' process prior to engaging in Class III gaming on newly acquired, or off-reservation lands. Under this law, tribes seeking to game on lands acquired after October 17, 1988, must receive the approval of both the state Governor and the Secretary of the Interior. In addition, this process requires that the Secretary of the Interior consult with local communities and nearby tribes before making a final decision in these cases.

In August 2004, the Lytton tribe and the Governor of my state reached an agreement on a compact that would have permitted the development of a 6–8 story casino housing 5,000 slot machines. Notably, this would be the largest inventory of slot machines found in any casino outside of Connecticut. After the State Legislature balked at approving this massive deal, the Governor and the tribe agreed to put forward a revised compact that would allow for a 2,500 slot casino, while permitting the tribe to negotiate for additional slots in 2008. This latest proposal remains unratified by the State Legislature.

Mr. President, without this legislation, the Lytton tribe will be able to open a massive gambling complex in a metropolitan area outside the regulations set up by the Indian Gaming Regulatory Act. Allowing this to happen would set a dangerous precedent not only for California, but every state where tribal gaming is permitted.

The changes I seek today are extremely limited. This legislation would not reverse restoration of the tribe. It would not infringe on Native American sovereignty. It does not affect the land acquisition or even block the casino proposal. It only seeks to give the State and the local communities a voice in the process and ensure that gaming continues to be organized within the framework of the Indian Gaming Regulatory Act.

The Indian Gaming Regulatory Act has provided this Nation with a fair and balanced approach to Indian gaming by facilitating tribal plans for economic recovery without compromising a multitude of factors that should be taken into account when deciding on the siting of casinos. This law works. It is a fair process that should continue to be followed.

It is simply not asking too much to require that Lytton be subject to the regulatory and approval processes applicable to newly acquired tribal lands by the Indian Gaming Regulatory Act.

I hope my colleagues will support this legislation and I look forward to working with the Chairman and Ranking Member of the Indian Affairs Committee to pass this legislation quickly.

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

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

S. 113

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. LYTTON RANCHERIA OF CALIFORNIA.**

Section 819 of the Omnibus Indian Advancement Act (114 Stat. 2919) is amended by striking the last sentence.

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By Mr. KERRY (for himself, Mr. KENNEDY, Mrs. MURRAY, Mr. LAUTENBERG, Mr. CORZINE, and Ms. CANTWELL):

S. 114. A bill to amend titles XIX and XXI of the Social Security Act to ensure that every uninsured child in America has health insurance coverage, and for other purposes; to the Committee on Finance.

Mr. KENNEDY. Mr. President, I'm honored to join my friend and colleague, Senator KERRY, in introducing this legislation to guarantee affordable health insurance for every child. We made a good start toward this goal in the 1990s, by enacting the Children's Health Insurance Program to cover more low-income children. Now it is time to finish the job.

Twelve million Americans who are twenty-one years old or younger have no health insurance today. Seven million are already eligible for Medicaid or CHIP, but five million are not eligible for these current programs.

Every uninsured child represents a national failure. Every uninsured child is at risk for losing the healthy start in life that should be birthright of every American. Every uninsured child is a potential source of heartbreak for parents and other loved ones. Every uninsured child is an American tragedy waiting to happen.

This year, three hundred eighty thousand children suffering from asthma will never see a doctor. Five hundred thousand children with recurrent earaches will never see a doctor. Five hundred thousand children with severe sore throats will never see a doctor.

Uninsured children pay for their lack of coverage in human suffering, unnecessary disability, and even death, and our society pays too. Sick children cannot learn. Every child whose education is limited or whose future potential is lost because of avoidable illness is a loss to America, because America's children are America's future.

The legislation we are introducing today will guarantee coverage for every child twenty-one years of age or younger. It makes health insurance affordable for every family, but it also asks families to share the responsibility of covering their children, when they are able to do so.

The bill expands Medicaid and CHIP up to 300 percent of poverty. Families of moderate means will be able to obtain subsidized coverage for their children. Families with incomes above 300 percent of poverty will be able to buy into Medicaid or CHIP for their children, and they will be guaranteed that the cost will not exceed 5 percent of their family income.

The bill also lifts the cap on CHIP funding that has caused some States to limit enrollment. It assists States financially by shifting current State spending for children under 100 percent of poverty to the Federal government. It requires all States to adopt the proven methods that encourage families to enroll and stay enrolled—methods such as presumptive eligibility, the ability to apply on-line or by telephone for the coverage, and coverage for at least twelve months without eligibility redeterminations.

This legislation is vitally important to all children. It is a pledge that they will have access to good health care without regard to their family's wealth. It is a commitment to a healthy start in life for every child.

As important as those objectives are, the significance of this legislation goes beyond coverage of all children. It is a major step toward the day when the basic right to health care will be a reality for every American, whatever their age or income. We will not rest until that goal is achieved, and I commend Senator KERRY for leading this essential effort.

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By Mrs. FEINSTEIN:

S. 115. A bill to require Federal agencies, and persons engaged in interstate commerce, in possession of electronic data containing personal information, to disclose any unauthorized acquisition of such information; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Notification of Risk to Personal Data Act of 2005. This legislation will require that individuals are notified when their most sensitive personal information is stolen from a corporate or government database. This is the second Congress in a row that I have introduced this legislation—it is time for us to pass it to give Americans the notice they need to protect themselves from identity thieves.

Specifically, the bill would require government or private entities to notify individuals if a data breach has compromised their Social Security number, driver's license number, credit card number, debit card number or financial account numbers.

In most cases, if authorities know that someone is a victim of a crime, the victim is notified. But, that isn't the case if an individual's most sensitive personal information is stolen from an electronic database.

Measuring the problem of security breaches is difficult, because many companies never report breaches of their systems for fear that their reputation for securing data would be harmed. But, in a survey conducted in 2004 by the FBI and the Computer Security Institute, 52 percent of respondents reported some level of unauthorized use of their computer systems. (Source: 2004 CSI/FBI Computer Crime and Security Survey)

Data breaches are becoming all too common. Consider the following incidents which have compromised the

records of hundreds of thousands of Americans.

On January 10, 2005, George Mason University in Fairfax, Virginia notified 30,000 students that their names, photos and Social Security numbers were taken by an online intruder; (Source: Cnet news, ''Hackers Steal ID Info from Virginia University,'' Monday, January 11, 2005)

On August 30, 2004, a University of California-Berkeley database containing the personal information of 600,000 people was penetrated. The computer contained names, addresses, telephone numbers, dates of birth and Social Security numbers; (Source: Associated Press, October 21, 2004)

Already in the new year, cell phone carrier T-Mobile announced that a hacker broke into its database and accessed the names and Social Security numbers of 400 customers. (Source: Cnet News, ''Hacker Had Limited Access'' January 12, 2004)

Last year, San Diego State University reported that hackers broke into a server, gaining access to names and Social Security numbers for more than 178,000 former and current students, alumni and staff; (Source: San Francisco Chronicle, ''Colleges Leaking Confidential Data,'' April 5, 2004)

At the Georgia Institute of Technology, a hacker downloaded information that could have included names, addresses, phone numbers and credit card numbers for about 57,775 people; (Source: San Francisco Chronicle, ''Colleges Leaking Confidential Data,'' April 5, 2004) and

Finally, in 2004, a Florida man and his employees hacked into Acxiom Corp.'s computer system for 16 months and stole large amounts of personal information. Christopher Way, a U.S. assistant attorney general, said then that the case represents ''what may be the largest intrusion of personal data ever.'' (Source: Arkansas Democrat-Gazette, ''Hacker Accesses Load of Data from Acxiom,'' July 22, 2004)

My home State of California has a similar data notification law, on which my bill today is modeled. But this sort of protection needs to be extended to all Americans.

I strongly believe Americans should be notified if a hacker gets access to their most personal data. This is both a matter of principle and a practical measure to curb identity theft.

Let me take a moment to describe the proposed legislation.

The Notification of Risk to Personal Data Act will set a national standard for notification of consumers when a data breach occurs.

The legislation requires a business or government entity to notify an individual when there is a reasonable basis to conclude that a hacker or other criminal has obtained unencrypted personal data maintained by the entity.

Personal data is defined by the bill as an individual's Social Security number, State identification number, driver's license number, financial account number, or credit card number.

The legislation's notification scheme minimizes the burdens on companies or agencies that must report a data breach. In general, notice would have to be provided to each person whose data was compromised in writing or through e-mail.

But there are important exceptions.

First, companies that have developed their own reasonable notification policies are given a safe harbor under the bill and are exempted from its notification requirements.

Second, encrypted data is exempted.

Third, where it is too expensive or impractical (e.g., contact address information is incomplete) to notify every individual who is harmed, the bill allows entities to send out an alternative form of notice called ''substitute notice.'' Substitute notice includes posting notice on a website or notifying major media. Substitute notice would be triggered if any of the following factors exist:

(i) the agency or person demonstrates that the cost of providing direct notice would exceed $250,000;

(ii) the affected class of subject persons to be notified exceeds 500,000; or

(iii) the agency or person does not have sufficient contact information to notify people whose information is at risk.

The bill has a tough, but fair enforcement regime. Entities that fail to comply with the bill will be subject to fines by the Federal Trade Commission of $5,000 per violation or up to $25,000 per day while the violation persists. State Attorneys General can also file suit to enforce the statute.

Additionally, the bill would allow California's law to remain in effect, but preempt conflicting state laws. It is my understanding that legislators in a number of states are developing bills modeled after the California law. Reportedly, some of these bills have requirements that are inconsistent with the California legislation. It is not fair to put companies in a situation that forces them to comply with database notification laws of 50 different states.

A year after California's landmark legislation went into effect, the law has raised overall awareness of the need to have strong privacy protections in place. Chris Jay Hoofnagle, associate director of the nonprofit Electronic Privacy Information Center, said: ''the California law has given the public a window into a very serious problem of information security.'' (Source: Associated Press, ''Authorities Probe U.C. Hacking Attack,'' October 21, 2004)

As Beth Givens, director of the Privacy Rights Clearinghouse, points out ''if [California] didn't have this law, the vast majority of these situations would go unreported.'' (Source: The Orange County Register, ''Ingram Micro Discloses Database Break-In,'' May 15, 2004)

I strongly believe individuals have a right to be notified when their most sensitive information is compromised—because it is truly their information. Ask the ordinary person on the street if he or she would like to know if a criminal had illegally gained access to their personal information from a database—the answer will be a resounding yes.

Enabling consumers to be notified in a timely manner of security breaches involving their personal data will help combat the growing scourge of identity theft. If individuals are informed of the theft of their Social Security numbers or other sensitive information, they can take immediate preventative action.

They can place a fraud alert on their credit report to prevent crooks from obtaining credit cards in their name;

They can monitor their credit reports to see if unauthorized activity has occurred;

They can cancel any affected financial or consumer or utility accounts; and

They can change their phone numbers if necessary.

I look forward to working with my colleagues to pass this vitally needed legislation. This bill will give ordinary Americans more control and confidence about the safety of their personal information. Americans will have the security of knowing that should a breach occur, they will be notified and be able to take protective action. Thank you, Mr. President.

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

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

S. 115

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Notification of Risk to Personal Data Act''.

**SEC. 2. DEFINITIONS.**

In this Act, the following definitions shall apply:

(1) AGENCY.—The term ''agency'' has the same meaning given such term in section 551(1) of title 5, United States Code.

(2) BREACH OF SECURITY OF THE SYSTEM.—The term ''breach of security of the system''—

(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to personal information maintained by the person or business; and

(B) does not include good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business, if the personal information is not used or subject to further unauthorized disclosure.

(3) PERSON.—The term ''person'' has the same meaning given such term in section 551(2) of title 5, United States Code.

(4) PERSONAL INFORMATION.—The term ''personal information'' means an individual's last name in combination with any 1 or more of the following data elements, when either the name or the data elements are not encrypted:

(A) Social security number.

(B) Driver's license number or State identification number.

(C) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(5) SUBSTITUTE NOTICE.—The term ''substitute notice'' means—

(A) e-mail notice, if the agency or person has an e-mail address for the subject persons;

(B) conspicuous posting of the notice on the Internet site of the agency or person, if the agency or person maintains an Internet site; or

(C) notification to major media.

**SEC. 3. DATABASE SECURITY.**

(a) DISCLOSURE OF SECURITY BREACH.—

(1) IN GENERAL.—Any agency, or person engaged in interstate commerce, that owns or licenses electronic data containing personal information shall, following the discovery of a breach of security of the system containing such data, notify any resident of the United States whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(2) NOTIFICATION OF OWNER OR LICENSEE.—Any agency, or person engaged in interstate commerce, in possession of electronic data containing personal information that the agency does not own or license shall notify the owner or licensee of the information if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person through a breach of security of the system containing such data.

(3) TIMELINESS OF NOTIFICATION.—Except as provided in paragraph (4), all notifications required under paragraph (1) or (2) shall be made as expediently as possible and without unreasonable delay following—

(A) the discovery by the agency or person of a breach of security of the system; and

(B) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

(4) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT PURPOSES.—If a law enforcement agency determines that the notification required under this subsection would impede a criminal investigation, such notification may be delayed until such law enforcement agency determines that the notification will no longer compromise such investigation.

(5) METHODS OF NOTICE.—An agency, or person engaged in interstate commerce, shall be in compliance with this subsection if it provides the resident, owner, or licensee, as appropriate, with—

(A) written notification;

(B) e-mail notice, if the person or business has an e-mail address for the subject person; or

(C) substitute notice, if—

(i) the agency or person demonstrates that the cost of providing direct notice would exceed $250,000;

(ii) the affected class of subject persons to be notified exceeds 500,000; or

(iii) the agency or person does not have sufficient contact information for those to be notified.

(6) ALTERNATIVE NOTIFICATION PROCEDURES.—Notwithstanding any other obligation under this subsection, an agency, or person engaged in interstate commerce, shall be deemed to be in compliance with this subsection if the agency or person—

(A) maintains its own reasonable notification procedures as part of an information security policy for the treatment of personal information; and

(B) notifies subject persons in accordance with its information security policy in the event of a breach of security of the system.

(7) REASONABLE NOTIFICATION PROCEDURES.—As used in paragraph (6), with respect to a breach of security of the system involving personal information described in section 2(4)(C), the term ''reasonable notification procedures'' means procedures that—

(A) use a security program reasonably designed to block unauthorized transactions before they are charged to the customer's account;

(B) provide for notice to be given by the owner or licensee of the database, or another party acting on behalf of such owner or licensee, after the security program indicates that the breach of security of the system has resulted in fraud or unauthorized transactions, but does not necessarily require notice in other circumstances; and

(C) are subject to examination for compliance with the requirements of this Act by 1 or more Federal functional regulators (as defined in section 509 of the Gramm-Leach Bliley Act (15 U.S.C. 6809)), with respect to the operation of the security program and the notification procedures.

(b) CIVIL REMEDIES.—

(1) PENALTIES.—Any agency, or person engaged in interstate commerce, that violates this section shall be subject to a fine of not more than $5,000 per violation, to a maximum of $25,000 per day while such violations persist.

(2) EQUITABLE RELIEF.—Any person engaged in interstate commerce that violates, proposes to violate, or has violated this section may be enjoined from further violations by a court of competent jurisdiction.

(3) OTHER RIGHTS AND REMEDIES.—The rights and remedies available under this subsection are cumulative and shall not affect any other rights and remedies available under law.

(c) ENFORCEMENT.—The Federal Trade Commission is authorized to enforce compliance with this section, including the assessment of fines under subsection (b)(1).

**SEC. 4. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this Act;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General—

(i) written notice of the action; and

(ii) a copy of the complaint for the action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the time the State attorney general files the action.

(b) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(c) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

**SEC. 5. EFFECT ON STATE LAW.**

The provisions of this Act shall supersede any inconsistent provisions of law of any State or unit of local government relating to the notification of any resident of the United States of any breach of security of an electronic database containing such resident's personal information (as defined in this Act), except as provided under sections 1798.82 and 1798.29 of the California Civil Code.

**SEC. 6. EFFECTIVE DATE.**

This Act shall take effect on the expiration of the date which is 6 months after the date of enactment of this Act.

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By Mrs. FEINSTEIN:

S. 116. A bill to require the consent of an individual prior to the sale and marketing of such individual's personally identifiable information, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased to re-introduce the ''Privacy Act of 2005.''

This legislation would establish, for the first time, a comprehensive national system of privacy protection. This is the second Congress in a row that I have introduced this legislation. Every year that we wait, millions more Americans become victims of identity theft. It is time for us to act.

As you know, Mr. President, I have ardently fought for years for legislation to hamper identity theft. Today, this legislation is one of three bills that I am introducing to continue that fight. I am also introducing the Social Security Number Misuse Prevention Act of 2005, and the Notification of Risk to Personal Data Act of 2005. I urge my colleagues to pass all of them, to protect Americans from those who would steal our very identities.

At the heart of this bill is the requirement that companies may not sell consumers' most intimate personal information unless consumers affirmatively give their authorization. This is known as ''opt-in.'' Therefore, companies must obtain consumers' written consent prior to selling their personal health information, financial information, Social Security numbers, and drivers' license data (opt-in). For this sensitive data, the bill gives the individual ultimate control over whether

or not his or her information is shared. If an individual does not actively decide to permit sharing of personal data, the data is not disclosed.

The bill recognizes that different sorts of information deserve different levels of protection. For information that is still personal, but not as intimate, the bill allows businesses more flexibility. Therefore, for other personal information—names, physical addresses, e-mail addresses, telephones, photographs, birth dates, places of birth, and birth certificate numbers—companies can sell the information so long as consumers receive notice of the companies' intent, and an opportunity to object and prohibit the sale of their information. This is known as ''opt-out.''

That is structure of the overall bill. Let me take a moment to go over some of the specifics.

For financial data, the Privacy Act would tighten the information-sharing provisions of the Gramm-Leach-Bliley Act. This legislation would modify that statute, to prohibit the sale or disclosure of sensitive personal financial information to third parties unless the consumer affirmatively consents or opts in. The legislation would also require that banks let consumers opt out of the sharing of their personal financial information with the bank's affiliates or joint partners. The bill makes exceptions for vital public safety concerns. The Privacy Act of 2005 also prohibits banks from denying a customer a financial product or financial service if the consumer withholds consent.

For sensitive medical information, this legislation would expand on the Department of Health and Human Services privacy regulations, by extending the restrictions placed on ''covered entities'' (health insurers, health providers, and health care clearinghouses) to ''non-covered entities'' (business associates, health researchers, schools or universities, and life insurers). All of those entities will be able to share information only with the patients' consent.

For Social Security numbers, this bill will prohibit the sale or display of an individual's Social Security number to the general public without the individual's express consent, and prohibit federal, state, and local governments from displaying the numbers on the Internet, or from printing them on checks and drivers' licenses. This legislation also recognizes legitimate uses of Social Security numbers, by allowing the sale of Social Security numbers between businesses, or between the government and businesses, among other exceptions.

This legislation protects the privacy of information regardless of the medium through which it is collected. Therefore, it recognizes that both paper and electronic records are important to protecting the identities of Americans.

To minimize the regulatory burden of these privacy rules, the bill sets up a safe harbor so that industries that established approved policies will be exempt from some regulatory requirements of the legislation.

To ensure uniformity of the laws across all 50 states, the bill preempts inconsistent state laws regarding the treatment of non-sensitive information.

I note that this legislation is modeled on the California Financial Information Privacy Act, which gives consumers the right to require their consent before financial companies share their most intimate data. The plan is a good one for Californians, and it is a good one for all Americans. The fact that the California law is under assault in the courts makes it all the more vital that the uniform, national standard I introduce today becomes law.

I want to give a sense of why this legislation is so necessary. Recent statistics on the growth of identity theft show we have no time to waste in protecting personal privacy.

For years, identity theft has topped the list of complaints reported to the Federal Trade Commission. In 2003, the Commission received over half a million such complaints, about 42 percent of the total. While the FTC will not report its numbers for 2004 until early February, I unfortunately expect to again see identity theft as the cause of the most complaints.

According to a 2003 report from the FTC, 10 million Americans discovered that year their identities had been stolen. The report also stated that consumers have to spend an average of 30 hours to clear their name; The Identity Theft Resource Center puts the number at 175 hours. And as Attorney General John Ashcroft said last August, ''Identity theft costs the nation's businesses nearly $50 billion a year in fraudulent transactions and often involves coordinated criminal conduct.''

My own State, California, has more victims of identity theft than any other state. The FTC recorded 39,452 complaints of identity theft cases in 2003 in California alone.

But the numbers tell only part of the story. More important are the individual people whose lives have been devastated by identity theft. Let me tell just one story that I find particularly disturbing:

Eric Drew was a patient in a hospital receiving a bone marrow transplant. Yet unbeknownst to him, a worker in the hospital had stolen Drew's identity, and had taken advantage of this sick patient. As the Associated Press reported, ''Drew said that while he was lying in a hospital bed, dying from cancer and weak from massive doses of chemotherapy, he began to get mail thanking him for opening accounts he knew nothing about.'' In this case, luckily, the criminal was caught and convicted.

Since I introduced this legislation for the first time in the 108th Congress, there are millions more stories like this one.

Indeed, there are also new common methods of identity theft. There has been a massive upswing in the phenomenon known as ''Phishing,'' in which criminals send emails to people, spoofed to fraudulently look like emails from banks and other financial institutions. These emails tell consumers to click on a Web page, and then to enter their name, account numbers, passwords, and other sensitive financial information. The criminals then use this information not only to steal from the unwitting consumers, but to literally lock them out of their own accounts. This one sort of identity theft has, according to a December study from e-mail security company MessageLabs, increased by almost tenfold over the last year.

Given the grave risks that technology poses to our privacy, it is our responsibility to start taking action. This is especially the case for older Americans, who are disproportionately vulnerable to identity theft, as I tried to highlight last year by cosponsoring the ''Protecting Older Americans From Fraud Month'' resolution last October.

I would like to highlight some of the key provisions of the law.

For financial information this legislation tightens the privacy provisions of the Financial Services Modernization Act, commonly known as the Gramm-Leach-Bliley Act. Under Gramm-Leach-Bliley, a bank can share a customer's personal information with other companies so long as it gives consumers notice and the right to opt-out of the data sharing.

The problem with the prevailing opt-out is that most people throw away their privacy notices from banks along with the rest of the unrelenting pile of commercial solicitations they receive. Since the passage of Gramm-Leach-Bliley, banks have sent out over one billion privacy notices.

According to available published information, fewer than 5 percent of bank customers have opted out of sharing their personal information, and for many financial institutions, the response rate has been less than one percent.

Accordingly, this legislation prohibits the sale or disclosure of sensitive personal financial information to third parties unless the consumer affirmatively consents or opts in—the burden thus shifts off of the consumer.

This legislation also toughens Federal financial privacy laws for affiliate-sharing and joint-marketing. An affiliate is a company that is linked by common ownership with another company. Under Federal law, a bank can share with affiliates or joint marketing partners regardless of whether the consumer wants this information shared.

This legislation would require that banks give consumers the option of opting out of the sharing of their personal financial information with the bank's affiliates or joint partners.

I would also like to describe several other key components of the financial privacy section.

The bill prohibits banks from denying a customer a financial product or financial service just because the customer chooses to not disclose his personal information to third parties, affiliates, or joint venture partners. However, the bill does allow banks to offer incentives to customers to encourage them to permit the sharing of their personal information.

Additionally, the bill permits banks to disclose, but not sell, personal information to third parties for vital public interest purposes such as identifying or locating missing and abducted children, witnesses, criminals and fugitives, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs.

Just as with financial data, personal health and medical data deserves the most stringent privacy protections.

The recently adopted Department of Health and Human Services privacy regulations set a basic opt-in framework for disclosure of health information. But more can be done to protect patient privacy.

The regulations only prohibit ''covered entities''—namely health insurers, health providers, and health care clearinghouse—from selling a patient's health information without that patient's prior consent.

Meanwhile, non-covered entities—such as business associates, health researchers, schools or universities, and life insurers—are not subject to this opt-in requirement, except through contractual arrangements.

This legislation would preserve the privacy of health information wherever the information is sold. Any business associate, life insurer, school or non-covered entity trying to sell or market protected health information would, like covered entities, have to get the patient's prior consent. This is a crucial step to protect what is truly our most intimate information.

Drivers' license data also are given the strongest level of protection under this bill.

The Driver's Privacy Protection Act, DPPA was amended in 2000 to offer some meaningful protections for drivers' privacy.

For example, under the DPPA, a State Department of Motor Vehicles must obtain the prior consent (opt-in) of the driver before ''highly sensitive information''—defined as a physical copy of the license, a Social Security number, medical or disability information, and other information can be disclosed to a third party.

However, loopholes remain. Other sensitive information found on a driver's license deserves equal protection.

This legislation would expand the definition of ''highly sensitive information'' to include a physical copy of a driver's license, the driver identification number, birth date, information on the driver's physical characteristics and any biometric identifiers, such as a fingerprint, that are found on the driver's license.

Thus, this bill would ensure consumers have control over how their motor vehicle records and driver's license data are used.

I would like to take a moment to highlight the Social Security number section of this legislation. I have also introduced this section as a standalone bill, the ''Social Security Number Misuse Prevention Act of 2005.''

It is crucial to protect Social Security numbers because Social Security numbers are the key to a person's identity. Many identity theft cases start with the theft of a Social Security number. Once a thief has access to a victim's Social Security number, it is only a short step to acquiring credit cards, driver's licenses, or other crucial identification documents.

This legislation bars the sale or display of Social Security numbers to the public except in a very narrow set of circumstances. In general display or sale is permitted only if the Social Security number holder affirmatively consents or if there are compelling public safety needs. Government entities will have to redact Social Security numbers from electronic records that are readily available to the public on the Internet. State governments will no longer be permitted to use the Social Security number as the default driver's license number.

The legislation, however, recognizes that some industries rely on Social Security numbers to exchange information for certain transactions.

Thus, the bill directs the Attorney General to develop regulations allowing for the sale or purchase of Social Security Numbers to facilitate business-to-business and business-to-government transactions, so long as businesses put appropriate safeguards in place and do not permit public access to the number.

This legislation codifies steps Congress can take to protect citizens from identity thieves and other predators of personal information.

It restores to an individual more control over her most sensitive personal information, such as Social Security numbers, health information, and financial information. It also sets reasonable guidelines for businesses that handle our personal information every day. Every American has a fundamental right to privacy, no matter how fast our technology grows or changes.

Last year, President Bush signed into law the Identity Theft Penalty Enhancement Act, legislation that I helped to write, to increase punishment on people who steal others' identities. I am proud of my work to make that bill into a law. But we all must realize that punishment is no substitute for prevention. My legislation today will make fewer suffer from identity theft in the first place.

I look forward to working with my colleagues to enact this legislation.

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

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

S. 116

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Privacy Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents

TITLE I—COMMERCIAL SALE AND MARKETING OF PERSONALLY IDENTIFIABLE INFORMATION

Sec. 101. Collection and distribution of personally identifiable information
Sec. 102. Enforcement
Sec. 103. Safe harbor
Sec. 104. Definitions
Sec. 105. Preemption
Sec. 106. Effective Date

TITLE II—SOCIAL SECURITY NUMBER MISUSE PREVENTION

Sec. 201. Findings
Sec. 202. Prohibition of the display, sale, or purchase of social security numbers
Sec. 203. Application of prohibition of the display, sale, or purchase of social security numbers to public records
Sec. 204. Rulemaking authority of the Attorney General
Sec. 205. Treatment of social security numbers on government documents
Sec. 206. Limits on personal disclosure of a social security number for consumer transactions
Sec. 207. Extension of civil monetary penalties for misuse of a social security number
Sec. 208. Criminal penalties for the misuse of a social security number
Sec. 209. Civil actions and civil penalties
Sec. 210. Federal injunctive authority

TITLE III—LIMITATIONS ON SALE AND SHARING OF NONPUBLIC PERSONAL FINANCIAL INFORMATION

Sec. 301. Definition of sale
Sec. 302. Rules applicable to sale of nonpublic personal information
Sec. 303. Exceptions to disclosure prohibition
Sec. 304. Conforming amendments
Sec. 305. Regulatory authority
Sec. 306. Effective date

TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION

Sec. 401. Definitions
Sec. 402. Prohibition against selling protected health information
Sec. 403. Authorization for sale or marketing of protected health information by noncovered entities
Sec. 404. Prohibition against retaliation
Sec. 405. Rule of construction
Sec. 406. Regulations
Sec. 407. Enforcement

TITLE V—DRIVER'S LICENSE PRIVACY

Sec. 501. Driver's license privacy

TITLE VI—MISCELLANEOUS

Sec. 601. Enforcement by State Attorneys General
Sec. 602. Federal injunctive authority

**TITLE I—COMMERCIAL SALE AND MARKETING OF PERSONALLY IDENTIFIABLE INFORMATION**

**SEC. 101. COLLECTION AND DISTRIBUTION OF PERSONALLY IDENTIFIABLE INFORMATION.**

(a) PROHIBITION.—

(1) IN GENERAL.—It is unlawful for a commercial entity to collect personally identifiable information and disclose such information to any nonaffiliated third party for marketing purposes or sell such information to any nonaffiliated third party, unless the commercial entity provides—

(A) notice to the individual to whom the information relates in accordance with the requirements of subsection (b); and

(B) an opportunity for such individual to restrict the disclosure or sale of such information.

(2) EXCEPTION.—A commercial entity may collect personally identifiable information and use such information to market to potential customers such entity's product.

(b) NOTICE.—

(1) IN GENERAL.—A notice under subsection (a) shall contain statements describing the following:

(A) The identity of the commercial entity collecting the personally identifiable information.

(B) The types of personally identifiable information that are being collected on the individual.

(C) How the commercial entity may use such information.

(D) A description of the categories of potential recipients of such personally identifiable information.

(E) Whether the individual is required to provide personally identifiable information in order to do business with the commercial entity.

(F) How an individual may decline to have such personally identifiable information used or sold as described in subsection (a).

(2) TIME OF NOTICE.—Notice shall be conveyed prior to the sale or use of the personally identifiable information as described in subsection (a) in such a manner as to allow the individual a reasonable period of time to consider the notice and limit such sale or use.

(3) MEDIUM OF NOTICE.—The medium for providing notice must be—

(A) the same medium in which the personally identifiable information is or will be collected, or a medium approved by the individual; or

(B) in the case of oral communication, notice may be conveyed orally or in writing.

(4) FORM OF NOTICE.—The notice shall be clear and conspicuous.

(c) OPT-OUT.—

(1) OPPORTUNITY TO OPT-OUT OF SALE OR MARKETING.—The opportunity provided to limit the sale of personally identifiable information to nonaffiliated third parties or the disclosure of such information for marketing purposes, shall be easy to use, accessible and available in the medium the information is collected, or in a medium approved by the individual.

(2) DURATION OF LIMITATION.—An individual's limitation on the sale or marketing of personally identifiable information shall be considered permanent, unless otherwise specified by the individual.

(3) REVOCATION OF CONSENT.—After an individual grants consent to the use of that individual's personally identifiable information, the individual may revoke the consent at any time, except to the extent that the commercial entity has taken action in reliance thereon. The commercial entity shall provide the individual an opportunity to revoke consent that is easy to use, accessible, and available in the medium the information was or is collected.

(4) NOT APPLICABLE.—This section shall not apply to disclosure of personally identifiable information—

(A) that is necessary to facilitate a transaction specifically requested by the consumer;

(B) is used for the sole purpose of facilitating this transaction; and

(C) in which the entity receiving or obtaining such information is limited, by contract, to use such formation for the purpose of completing the transaction.

**SEC. 102. ENFORCEMENT.**

(a) IN GENERAL.—In accordance with the provisions of this section, the Federal Trade Commission shall have the authority to enforce any violation of section 101 of this Act.

(b) VIOLATIONS.—The Federal Trade Commission shall treat a violation of section 101 as a violation of a rule under section 18a(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(c) TRANSFER OF ENFORCEMENT AUTHORITY.—The Federal Trade Commission shall promulgate rules in accordance with section 553 of title 5, United States Code, allowing for the transfer of enforcement authority from the Federal Trade Commission to a Federal agency regarding section 101 of this Act. The Federal Trade Commission may permit a Federal agency to enforce any violation of section 101 if such agency submits a written request to the Commission to enforce such violations and includes in such request—

(1) a description of the entities regulated by such agency that will be subject to the provisions of section 101;

(2) an assurance that such agency has sufficient authority over the entities to enforce violations of section 101; and

(3) a list of proposed rules that such agency shall use in regulating such entities and enforcing section 101.

(d) ACTIONS BY THE COMMISSION.—Absent transfer of enforcement authority to a Federal agency under subsection (c), the Federal Trade Commission shall prevent any person from violating section 101 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as provided to such Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Any entity that violates section 101 is subject to the penalties and entitled to the privileges and immunities provided in such Act in the same manner, by the same means, and with the same jurisdiction, power, and duties under such Act.

(e) RELATIONSHIP TO OTHER LAWS.—

(1) COMMISSION AUTHORITY.—Nothing contained in this title shall be construed to limit authority provided to the Commission under any other law.

(2) COMMUNICATIONS ACT.—Nothing in section 101 requires an operator of a website to take any action that is inconsistent with the requirements of section 222 or 631 of the Communications Act of 1934 (47 U.S.C. 222 and 5551).

(3) OTHER ACTS.—Nothing in this title is intended to affect the applicability or the enforceability of any provision of, or any amendment made by—

(A) the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.);

(B) title V of the Gramm-Leach-Bliley Act;

(C) the Health Insurance Portability and Accountability Act of 1996; or

(D) the Fair Credit Reporting Act.

(f) PUBLIC RECORDS.—Nothing in this title shall be construed to restrict commercial entities from obtaining or disclosing personally identifying information from public records.

(g) CIVIL PENALTIES.—In addition to any other penalty applicable to a violation of section 101(a), a penalty of up to $25,000 may be issued for each violation.

(h) ENFORCEMENT REGARDING PROGRAMS.—

(1) IN GENERAL.—A Federal agency or department providing financial assistance to any entity required to comply with section 101 of this Act shall issue regulations requiring that such entity comply with such section or forfeit some or all of such assistance. Such regulations shall prescribe sanctions for noncompliance, require that such department or agency provide notice of failure to comply with such section prior to any action being taken against such recipient, and require that a determination be made prior to any action being taken against such recipient that compliance cannot be secured by voluntary means.

(2) FEDERAL FINANCIAL ASSISTANCE.—The term ''Federal financial assistance'' means assistance through a grant, cooperative agreement, loan, or contract other than a contract of insurance or guaranty.

**SEC. 103. SAFE HARBOR.**

A commercial entity may not be held to have violated any provision of this title if such entity complies with self-regulatory guidelines that—

(1) are issued by seal programs or representatives of the marketing or online industries or by any other person; and

(2) are approved by the Federal Trade Commission, after public comment has been received on such guidelines by the Commission, as meeting the requirements of this title.

**SEC. 104. DEFINITIONS.**

In this title:

(1) COMMERCIAL ENTITY.—The term ''commercial entity''—

(A) means any person offering products or services involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; and

(B) does not include—

(i) any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45);

(ii) any financial institution that is subject to title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.); or

(iii) any group health plan, health insurance issuer, or other entity that is subject to the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 201 note).

(2) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(3) INDIVIDUAL.—The term ''individual'' means a person whose personally identifying information has been, is, or will be collected by a commercial entity.

(4) MARKETING.—The term ''marketing'' means to make a communication about a product or service a purpose of which is to encourage recipients of the communication to purchase or use the product or service.

(5) MEDIUM.—The term ''medium'' means any channel or system of communication including oral, written, and online communication.

(6) NONAFFILIATED THIRD PARTY.—The term ''nonaffiliated third party'' means any entity that is not related by common ownership or affiliated by corporate control with, the commercial entity, but does not include a joint employee of such institution.

(7) PERSONALLY IDENTIFIABLE INFORMATION.—The term ''personally identifiable information'' means individually identifiable information about the individual that is collected including—

(A) a first, middle, or last name, whether given at birth or adoption, assumed, or legally changed;

(B) a home or other physical address, including the street name, zip code, and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a photograph or other form of visual identification;

(F) a birth date, birth certificate number, or place of birth for that person; or

(G) information concerning the individual that is combined with any other identifier in this paragraph.

(8) SALE; SELL; SOLD.—The terms ''sale'', ''sell'', and ''sold'', with respect to personally identifiable information, mean the exchanging of such information for any thing of value, directly or indirectly, including the licensing, bartering, or renting of such information.

(9) WRITING.—The term ''writing'' means writing in either a paper-based or computer-based form, including electronic and digital signatures.

**SEC. 105. PREEMPTION.**

The provisions of this title shall supersede any statutory and common law of States and their political subdivisions insofar as that law may now or hereafter relate to the—

(1) collection and disclosure of personally identifiable information for marketing purposes; and

(2) collection and sale of personally identifiable information.

**SEC. 106. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect 1 year after the date of enactment of this Act.

## TITLE II—SOCIAL SECURITY NUMBER MISUSE PREVENTION

**SEC. 201. FINDINGS.**

Congress makes the following findings:

(1) The inappropriate display, sale, or purchase of social security numbers has contributed to a growing range of illegal activities, including fraud, identity theft, and, in some cases, stalking and other violent crimes.

(2) While financial institutions, health care providers, and other entities have often used social security numbers to confirm the identity of an individual, the general display to the public, sale, or purchase of these numbers has been used to commit crimes, and also can result in serious invasions of individual privacy.

(3) The Federal Government requires virtually every individual in the United States to obtain and maintain a social security number in order to pay taxes, to qualify for social security benefits, or to seek employment. An unintended consequence of these requirements is that social security numbers have become one of the tools that can be used to facilitate crime, fraud, and invasions of the privacy of the individuals to whom the numbers are assigned. Because the Federal Government created and maintains this system, and because the Federal Government does not permit individuals to exempt themselves from those requirements, it is appropriate for the Federal Government to take steps to stem the abuse of social security numbers.

(4) The display, sale, or purchase of social security numbers in no way facilitates uninhibited, robust, and wide-open public debate, and restrictions on such display, sale, or purchase would not affect public debate.

(5) No one should seek to profit from the display, sale, or purchase of social security numbers in circumstances that create a substantial risk of physical, emotional, or financial harm to the individuals to whom those numbers are assigned.

(6) Consequently, this title provides each individual that has been assigned a social security number some degree of protection from the display, sale, and purchase of that number in any circumstance that might facilitate unlawful conduct.

**SEC. 202. PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS.**

(a) PROHIBITION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1028 the following:

**''§ 1028A. Prohibition of the display, sale, or purchase of social security numbers**

''(a) DEFINITIONS.—In this section:

''(1) DISPLAY.—The term 'display' means to intentionally communicate or otherwise make available (on the Internet or in any other manner) to the general public an individual's social security number.

''(2) PERSON.—The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, or any other entity.

''(3) PURCHASE.—The term 'purchase' means providing directly or indirectly, anything of value in exchange for a social security number.

''(4) SALE.—The term 'sale' means obtaining, directly or indirectly, anything of value in exchange for a social security number.

''(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

''(b) LIMITATION ON DISPLAY.—Except as provided in section 1028B, no person may display any individual's social security number to the general public without the affirmatively expressed consent of the individual.

''(c) LIMITATION ON SALE OR PURCHASE.—Except as otherwise provided in this section, no person may sell or purchase any individual's social security number without the affirmatively expressed consent of the individual.

''(d) PREREQUISITES FOR CONSENT.—In order for consent to exist under subsection (b) or (c), the person displaying or seeking to display, selling or attempting to sell, or purchasing or attempting to purchase, an individual's social security number shall—

''(1) inform the individual of the general purpose for which the number will be used, the types of persons to whom the number may be available, and the scope of transactions permitted by the consent; and

''(2) obtain the affirmatively expressed consent (electronically or in writing) of the individual.

''(e) EXCEPTIONS.—Nothing in this section shall be construed to prohibit or limit the display, sale, or purchase of a social security number—

''(1) required, authorized, or excepted under any Federal law;

''(2) for a public health purpose, including the protection of the health or safety of an individual in an emergency situation;

''(3) for a national security purpose;

''(4) for a law enforcement purpose, including the investigation of fraud and the enforcement of a child support obligation;

''(5) if the display, sale, or purchase of the number is for a use occurring as a result of an interaction between businesses, governments, or business and government (regardless of which entity initiates the interaction), including, but not limited to—

''(A) the prevention of fraud (including fraud in protecting an employee's right to employment benefits);

''(B) the facilitation of credit checks or the facilitation of background checks of employees, prospective employees, or volunteers;

''(C) the retrieval of other information from other businesses, commercial enterprises, government entities, or private nonprofit organizations; or

''(D) when the transmission of the number is incidental to, and in the course of, the sale, lease, franchising, or merger of all, or a portion of, a business;

''(6) if the transfer of such a number is part of a data matching program involving a Federal, State, or local agency; or

''(7) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program;

except that, nothing in this subsection shall be construed as permitting a professional or commercial user to display or sell a social security number to the general public.

''(f) LIMITATION.—Nothing in this section shall prohibit or limit the display, sale, or purchase of social security numbers as permitted under title V of the Gramm-Leach-Bliley Act, or for the purpose of affiliate sharing as permitted under the Fair Credit Reporting Act, except that no entity regulated under such Acts may make social security numbers available to the general public, as may be determined by the appropriate regulators under such Acts. For purposes of this subsection, the general public shall not include affiliates or unaffiliated third-party business entities as may be defined by the appropriate regulators.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following:

''1028A. Prohibition of the display, sale, or purchase of social security numbers''.

(b) STUDY; REPORT.—

(1) IN GENERAL.—The Attorney General shall conduct a study and prepare a report on all of the uses of social security numbers permitted, required, authorized, or excepted under any Federal law. The report shall include a detailed description of the uses allowed as of the date of enactment of this Act and shall evaluate whether such uses should be continued or discontinued by appropriate legislative action.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall report to Congress findings under this subsection. The report shall include such recommendations for legislation based on criteria the Attorney General determines to be appropriate.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 30 days after the date on which the final regulations promulgated under section 5 are published in the Federal Register.

**SEC. 203. APPLICATION OF PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS TO PUBLIC RECORDS.**

(a) PUBLIC RECORDS EXCEPTION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code (as amended by section 3(a)(1)), is amended by inserting after section 1028A the following:

**''§ 1028B. Display, sale, or purchase of public records containing social security numbers**

''(a) DEFINITION.—In this section, the term 'public record' means any governmental record that is made available to the general public.

''(b) IN GENERAL.—Except as provided in subsections (c), (d), and (e), section 1028A shall not apply to a public record.

''(c) PUBLIC RECORDS ON THE INTERNET OR IN AN ELECTRONIC MEDIUM.—

''(1) IN GENERAL.—Section 1028A shall apply to any public record first posted onto the Internet or provided in an electronic medium by, or on behalf of a government entity after the date of enactment of this section, except as limited by the Attorney General in accordance with paragraph (2).

''(2) EXCEPTION FOR GOVERNMENT ENTITIES ALREADY PLACING PUBLIC RECORDS ON THE INTERNET OR IN ELECTRONIC FORM.—Not later than 60 days after the date of enactment of this section, the Attorney General shall issue regulations regarding the applicability of section 1028A to any record of a category of public records first posted onto the Internet or provided in an electronic medium by, or on behalf of a government entity prior to the date of enactment of this section. The regulations will determine which individual records within categories of records of these government entities, if any, may continue to be posted on the Internet or in electronic form after the effective date of this section. In promulgating these regulations, the Attorney General may include in the regulations a set of procedures for implementing the regulations and shall consider the following:

''(A) The cost and availability of technology available to a governmental entity to redact social security numbers from public records first provided in electronic form after the effective date of this section.

''(B) The cost or burden to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments of complying with section 1028A with respect to such records.

''(C) The benefit to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments if the Attorney General were to determine that section 1028A should apply to such records.

Nothing in the regulation shall permit a public entity to post a category of public records on the Internet or in electronic form after the effective date of this section if such category had not been placed on the Internet or in electronic form prior to such effective date.

''(d) HARVESTED SOCIAL SECURITY NUMBERS.—Section 1028A shall apply to any public record of a government entity which contains social security numbers extracted from other public records for the purpose of displaying or selling such numbers to the general public.

''(e) ATTORNEY GENERAL RULEMAKING ON PAPER RECORDS.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Attorney General shall determine the feasibility and advisability of applying section 1028A to the records listed in paragraph (2) when they appear on paper or on another nonelectronic medium. If the Attorney General deems it appropriate, the Attorney General may issue regulations applying section 1028A to such records.

''(2) LIST OF PAPER AND OTHER NONELECTRONIC RECORDS.—The records listed in this paragraph are as follows:

''(A) Professional or occupational licenses.

''(B) Marriage licenses.

''(C) Birth certificates.

''(D) Death certificates.

''(E) Other short public documents that display a social security number in a routine and consistent manner on the face of the document.

''(3) CRITERIA FOR ATTORNEY GENERAL REVIEW.—In determining whether section 1028A should apply to the records listed in paragraph (2), the Attorney General shall consider the following:

''(A) The cost or burden to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments of complying with section 1028A.

''(B) The benefit to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments if the Attorney General were to determine that section 1028A should apply to such records.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code (as amended by section 202(a)(2)), is amended by inserting after the item relating to section 1028A the following:

''1028B. Display, sale, or purchase of public records containing social security numbers''.

(b) STUDY AND REPORT ON SOCIAL SECURITY NUMBERS IN PUBLIC RECORDS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study and prepare a report on social security numbers in public records. In developing the report, the Comptroller General shall consult with the Administrative Office of the United States Courts, State and local governments that store, maintain, or disseminate public records, and other stakeholders, including members of the private sector who routinely use public records that contain social security numbers.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1). The report shall include a detailed description of the activities and results of the study and recommendations for such legislative action as the Comptroller General considers appropriate. The report, at a minimum, shall include—

(A) a review of the uses of social security numbers in non-federal public records;

(B) a review of the manner in which public records are stored (with separate reviews for both paper records and electronic records);

(C) a review of the advantages or utility of public records that contain social security numbers, including the utility for law enforcement, and for the promotion of homeland security;

(D) a review of the disadvantages or drawbacks of public records that contain social security numbers, including criminal activity, compromised personal privacy, or threats to homeland security;

(E) the costs and benefits for State and local governments of removing social security numbers from public records, including a review of current technologies and procedures for removing social security numbers from public records; and

(F) an assessment of the benefits and costs to businesses, their customers, and the general public of prohibiting the display of social security numbers on public records (with separate assessments for both paper records and electronic records).

(c) EFFECTIVE DATE.—The prohibition with respect to electronic versions of new classes of public records under section 1028B(b) of title 18, United States Code (as added by subsection (a)(1)) shall not take effect until the date that is 60 days after the date of enactment of this Act.

**SEC. 204. RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL.**

(a) IN GENERAL.—Except as provided in subsection (b), the Attorney General may prescribe such rules and regulations as the Attorney General deems necessary to carry out the provisions of section 1028A(e)(5) of title 18, United States Code (as added by section 202(a)(1)).

(b) DISPLAY, SALE, OR PURCHASE RULEMAKING WITH RESPECT TO INTERACTIONS BETWEEN BUSINESSES, GOVERNMENTS, OR BUSINESS AND GOVERNMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the Commissioner of Social Security, the Chairman of the Federal Trade Commission, and such other heads of Federal agencies as the Attorney General determines appropriate, shall conduct such rulemaking procedures in accordance with subchapter II of chapter 5 of title 5, United States Code, as are necessary to promulgate regulations to implement and clarify the uses occurring as a result of an interaction between businesses, governments, or business and government (regardless of which entity initiates the interaction) permitted under section 1028A(e)(5) of title 18, United States Code (as added by section 202(a)(1)).

(2) FACTORS TO BE CONSIDERED.—In promulgating the regulations required under paragraph (1), the Attorney General shall, at a minimum, consider the following:

(A) The benefit to a particular business, to customers of the business, and to the general public of the display, sale, or purchase of an individual's social security number.

(B) The costs that businesses, customers of businesses, and the general public may incur as a result of prohibitions on the display, sale, or purchase of social security numbers.

(C) The risk that a particular business practice will promote the use of a social security number to commit fraud, deception, or crime.

(D) The presence of adequate safeguards and procedures to prevent—

(i) misuse of social security numbers by employees within a business; and

(ii) misappropriation of social security numbers by the general public, while permitting internal business uses of such numbers.

(E) The presence of procedures to prevent identity thieves, stalkers, and other individuals with ill intent from posing as legitimate businesses to obtain social security numbers.

**SEC. 205. TREATMENT OF SOCIAL SECURITY NUMBERS ON GOVERNMENT DOCUMENTS.**

(a) PROHIBITION OF USE OF SOCIAL SECURITY ACCOUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY GOVERNMENTAL AGENCIES.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following:

''(x) No Federal, State, or local agency may display the social security account number of any individual, or any derivative of such number, on any check issued for any payment by the Federal, State, or local agency.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to violations of section 205(c)(2)(C)(x) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(x)), as added by paragraph (1), occurring after the date that is 3 years after the date of enactment of this Act.

(b) PROHIBITION OF APPEARANCE OF SOCIAL SECURITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR MOTOR VEHICLE REGISTRATION.—

(1) IN GENERAL.—Section 205(c)(2)(C)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi)) is amended—

(A) by inserting ''(I)'' after ''(vi)''; and

(B) by adding at the end the following:

''(II)(aa) An agency of a State (or political subdivision thereof), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display the social security account numbers issued by the Commissioner of Social Security, or any derivative of such numbers, on the face of any driver's license or motor vehicle registration or any other document issued by such State (or political subdivision thereof) to an individual for purposes of identification of such individual.

''(bb) Nothing in this subclause shall be construed as precluding an agency of a State (or political subdivision thereof), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, from using a social security account

number for an internal use or to link with the database of an agency of another State that is responsible for the administration of any driver's license or motor vehicle registration law.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to licenses, registrations, and other documents issued or reissued after the date that is 1 year after the date of enactment of this Act.

(c) PROHIBITION OF INMATE ACCESS TO SOCIAL SECURITY ACCOUNT NUMBERS.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) (as amended by subsection (b)) is amended by adding at the end the following:

''(xi) No Federal, State, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the social security account numbers of other individuals. For purposes of this clause, the term 'prisoner' means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of a criminal offense.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to employment of prisoners, or entry into contract with prisoners, after the date that is 1 year after the date of enactment of this Act.

**SEC. 206. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.**

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following:

**''SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.**

''(a) IN GENERAL.—A commercial entity may not require an individual to provide the individual's social security number when purchasing a commercial good or service or deny an individual the good or service for refusing to provide that number except—

''(1) for any purpose relating to—

''(A) obtaining a consumer report for any purpose permitted under the Fair Credit Reporting Act;

''(B) a background check of the individual conducted by a landlord, lessor, employer, voluntary service agency, or other entity as determined by the Attorney General;

''(C) law enforcement; or

''(D) a Federal, State, or local law requirement; or

''(2) if the social security number is necessary to verify the identity of the consumer to effect, administer, or enforce the specific transaction requested or authorized by the consumer, or to prevent fraud.

''(b) APPLICATION OF CIVIL MONEY PENALTIES.—A violation of this section shall be deemed to be a violation of section 1129(a)(3)(F).

''(c) APPLICATION OF CRIMINAL PENALTIES.—A violation of this section shall be deemed to be a violation of section 208(a)(8).

''(d) LIMITATION ON CLASS ACTIONS.—No class action alleging a violation of this section shall be maintained under this section by an individual or any private party in Federal or State court.

''(e) STATE ATTORNEY GENERAL ENFORCEMENT.—

''(1) IN GENERAL.—

''(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under this section, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

''(i) enjoin that practice;

''(ii) enforce compliance with such section;

''(iii) obtain damages, restitution, or other compensation on behalf of residents of the State; or

''(iv) obtain such other relief as the court may consider appropriate.

''(B) NOTICE.—

''(i) IN GENERAL.—Before filing an action under subparagraph (A), the attorney general of the State involved shall provide to the Attorney General—

''(I) written notice of the action; and

''(II) a copy of the complaint for the action.

''(ii) EXEMPTION.—

''(I) IN GENERAL.—Clause (i) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

''(II) NOTIFICATION.—With respect to an action described in subclause (I), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the same time as the State attorney general files the action.

''(2) INTERVENTION.—

''(A) IN GENERAL.—On receiving notice under paragraph (1)(B), the Attorney General shall have the right to intervene in the action that is the subject of the notice.

''(B) EFFECT OF INTERVENTION.—If the Attorney General intervenes in the action under paragraph (1), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

''(A) conduct investigations;

''(B) administer oaths or affirmations; or

''(C) compel the attendance of witnesses or the production of documentary and other evidence.

''(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General for violation of a practice that is prohibited under this section, no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint in that action for violation of that practice.

''(5) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(f) SUNSET.—This section shall not apply on or after the date that is 6 years after the effective date of this section.''.

(b) EVALUATION AND REPORT.—Not later than the date that is 6 years and 6 months after the date of enactment of this Act, the Attorney General, in consultation with the chairman of the Federal Trade Commission, shall issue a report evaluating the effectiveness and efficiency of section 1150A of the Social Security Act (as added by subsection (a)) and shall make recommendations to Congress as to any legislative action determined to be necessary or advisable with respect to such section, including a recommendation regarding whether to reauthorize such section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests to provide a social security number occurring after the date that is 1 year after the date of enactment of this Act.

**SEC. 207. EXTENSION OF CIVIL MONETARY PENALTIES FOR MISUSE OF A SOCIAL SECURITY NUMBER.**

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking ''who'' and inserting ''who—'';

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following:

''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(B) makes such a statement or representation for such use with knowing disregard for the truth; or

''(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to'';

(C) by inserting ''or each receipt of such benefits while withholding disclosure of such fact'' after ''each such statement or representation'';

(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation''; and

(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation''.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—The first sentence of section 1129A(a) of the Social Security Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking ''who'' and inserting ''who—''; and

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following:

''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(2) makes such a statement or representation for such use with knowing disregard for the truth; or

''(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to''.

(b) APPLICATION OF CIVIL MONEY PENALTIES TO ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8(a)), as amended by subsection (a)(1), is amended—

(1) by redesignating paragraph (2) as paragraph (4);

(2) by redesignating the last sentence of paragraph (1) as paragraph (2) and inserting such paragraph after paragraph (1); and

(3) by inserting after paragraph (2) (as so redesignated) the following:

''(3) Any person (including an organization, agency, or other entity) who—

''(A) uses a social security account number that such person knows or should know has been assigned by the Commissioner of Social Security (in an exercise of authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Commissioner by any person;

''(B) falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to any individual, when such person knows or should know that such number is not the social security account number assigned by the Commissioner to such individual;

''(C) knowingly alters a social security card issued by the Commissioner of Social Security, or possesses such a card with intent to alter it;

''(D) knowingly displays, sells, or purchases a card that is, or purports to be, a card issued by the Commissioner of Social Security, or possesses such a card with intent to display, purchase, or sell it;

''(E) counterfeits a social security card, or possesses a counterfeit social security card with intent to display, sell, or purchase it;

''(F) discloses, uses, compels the disclosure of, or knowingly displays, sells, or purchases the social security account number of any person in violation of the laws of the United States;

''(G) with intent to deceive the Commissioner of Social Security as to such person's true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner with respect to any information required by the Commissioner in connection with the establishment and maintenance of the records provided for in section 205(c)(2);

''(H) offers, for a fee, to acquire for any individual, or to assist in acquiring for any individual, an additional social security account number or a number which purports to be a social security account number; or

''(I) being an officer or employee of a Federal, State, or local agency in possession of any individual's social security account number, willfully acts or fails to act so as to cause a violation by such agency of clause (vi)(II) or (x) of section 205(c)(2)(C), shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each violation. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from such violation, of not more than twice the amount of any benefits or payments paid as a result of such violation.''.

(c) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of the Social Security Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking ''In the case of amounts recovered arising out of a determination relating to title VIII or XVI,'' and inserting ''In the case of any other amounts recovered under this section,''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of the Social Security Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

(2) Section 1129(c)(1) of the Social Security Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

(3) Section 1129(e)(1)(A) of the Social Security Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to violations of sections 1129 and 1129A of the Social Security Act (42 U.S.C. 1320–8 and 1320a–8a), as amended by this section, committed after the date of enactment of this Act.

(2) VIOLATIONS BY GOVERNMENT AGENTS IN POSSESSION OF SOCIAL SECURITY NUMBERS.—Section 1129(a)(3)(I) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)(I)), as added by subsection (b), shall apply with respect to violations of that section occurring on or after the effective date described in section 202(c).

**SEC. 208. CRIMINAL PENALTIES FOR THE MISUSE OF A SOCIAL SECURITY NUMBER.**

(a) PROHIBITION OF WRONGFUL USE AS PERSONAL IDENTIFICATION NUMBER.—No person may obtain any individual's social security number for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for any illegal purpose.

(b) CRIMINAL SANCTIONS.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) in paragraph (8), by inserting ''or'' after the semicolon; and

(2) by inserting after paragraph (8) the following:

''(9) except as provided in subsections (e) and (f) of section 1028A of title 18, United States Code, knowingly and willfully displays, sells, or purchases (as those terms are defined in section 1028A(a) of title 18, United States Code) any individual's social security account number without having met the prerequisites for consent under section 1028A(d) of title 18, United States Code; or

''(10) obtains any individual's social security number for the purpose of locating or identifying the individual with the intent to injure or to harm that individual, or to use the identity of that individual for an illegal purpose;''.

**SEC. 209. CIVIL ACTIONS AND CIVIL PENALTIES.**

(a) CIVIL ACTION IN STATE COURTS.—

(1) IN GENERAL.—Any individual aggrieved by an act of any person in violation of this title or any amendments made by this title may, if otherwise permitted by the laws or rules of the court of a State, bring in an appropriate court of that State—

(A) an action to enjoin such violation;

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater; or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of the regulations prescribed under this title. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B).

(2) STATUTE OF LIMITATIONS.—An action may be commenced under this subsection not later than the earlier of—

(A) 5 years after the date on which the alleged violation occurred; or

(B) 3 years after the date on which the alleged violation was or should have been reasonably discovered by the aggrieved individual.

(3) NONEXCLUSIVE REMEDY.—The remedy provided under this subsection shall be in addition to any other remedies available to the individual.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—Any person who the Attorney General determines has violated any section of this title or of any amendments made by this title shall be subject, in addition to any other penalties that may be prescribed by law—

(A) to a civil penalty of not more than $5,000 for each such violation; and

(B) to a civil penalty of not more than $50,000, if the violations have occurred with such frequency as to constitute a general business practice.

(2) DETERMINATION OF VIOLATIONS.—Any willful violation committed contemporaneously with respect to the social security numbers of 2 or more individuals by means of mail, telecommunication, or otherwise, shall be treated as a separate violation with respect to each such individual.

(3) ENFORCEMENT PROCEDURES.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a), other than subsections (a), (b), (f), (h), (i), (j), (m), and (n) and the first sentence of subsection (c) of such section, and the provisions of subsections (d) and (e) of section 205 of such Act (42 U.S.C. 405) shall apply to a civil penalty action under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act (42 U.S.C. 1320a–7a(a)), except that, for purposes of this paragraph, any reference in section 1128A of such Act (42 U.S.C. 1320a–7a) to the Secretary shall be deemed to be a reference to the Attorney General.

**SEC. 210. FEDERAL INJUNCTIVE AUTHORITY.**

In addition to any other enforcement authority conferred under this title or the amendments made by this title, the Federal Government shall have injunctive authority with respect to any violation by a public entity of any provision of this title or of any amendments made by this title.

## TITLE III—LIMITATIONS ON SALE AND SHARING OF NONPUBLIC PERSONAL FINANCIAL INFORMATION

**SEC. 301. DEFINITION OF SALE.**

Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) is amended by adding at the end the following:

''(12) SALE.—The terms 'sale', 'sell', and 'sold', with respect to nonpublic personal information, mean the exchange of such information for any thing of value, directly or indirectly, including the licensing, bartering, or renting of such information.''.

**SEC. 302. RULES APPLICABLE TO SALE OF NONPUBLIC PERSONAL INFORMATION.**

Section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802) is amended—

(1) in the section heading, by inserting ''SALES, AND OTHER SHARING'' after ''DISCLOSURES'';

(2) in subsection (a), by striking ''disclose to'' and inserting ''sell or otherwise disclose to an affiliate or'';

(3) in subsection (b)—

(A) in the subsection heading, by inserting ''FOR DISCLOSURES TO AFFILIATES'' before the period;

(B) by striking ''a nonaffiliated third party'' each place that term appears and inserting ''an affiliate'';

(C) by striking ''such third party'' each place that term appears and inserting ''such affiliate'';

(D) by striking ''may not disclose'' and inserting ''may not sell or otherwise disclose''; and

(E) by striking paragraph (2) and inserting the following:

''(2) EXCEPTION.—This subsection shall not prevent a financial institution from providing nonpublic personal information to an affiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, if the financial institution fully discloses the provision of such information and requires the affiliate to maintain the confidentiality of such information.'';

(4) in subsection (d), by striking ''disclose'' and inserting ''sell or otherwise disclose'';

(5) by striking subsection (e);

(6) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively; and

(7) by inserting after subsection (b) the following:

''(c) OPT IN FOR DISCLOSURES TO NONAFFILIATED THIRD PARTIES.—

''(1) AFFIRMATIVE CONSENT REQUIRED.—A financial institution may not sell or otherwise disclose nonpublic personal information to any nonaffiliated third party, unless the consumer to whom the information pertains—

''(A) has affirmatively consented to the sale or disclosure of such information; and

''(B) has not withdrawn the consent.

''(2) EXCEPTION.—This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services (subject to subsection (d) with respect to joint agreements between 2 or more financial institutions), if the financial institution fully discloses the provision of such information and enters into a contractual agreement with the nonaffiliated third party that requires that third party to maintain the confidentiality of such information.

''(d) OPT OUT FOR JOINT AGREEMENTS.—A financial institution may not sell or otherwise disclose nonpublic personal information to a nonaffiliated third party for the purpose of offering financial products or services pursuant to a joint agreement between 2 or more financial institutions, unless—

''(1) the financial institution clearly and conspicuously discloses to the consumer to whom the information pertains, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, that such information may be disclosed to such nonaffiliated third party;

''(2) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such nonaffiliated third party;

''(3) the consumer is given an explanation of how the consumer can exercise that nondisclosure option; and

''(4) the financial institution receiving the nonpublic personal information signs a written agreement obliging it—

''(A) to maintain the confidentiality of the information; and

''(B) to refrain from using, selling, or otherwise disclosing the information other than to carry out the joint offering or servicing of the financial product or financial service that is the subject of the written agreement.''.

**SEC. 303. EXCEPTIONS TO DISCLOSURE PROHIBITION.**

(a) IN GENERAL.—Section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802), as amended by this title, is amended by adding at the end the following:

''(g) GENERAL EXCEPTIONS.—Notwithstanding any other provision of this section, this section does not prohibit—

''(1) the sale or other disclosure of nonpublic personal information to an affiliate or a nonaffiliated third party—

''(A) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer to whom the information pertains, or in connection with—

''(i) servicing or processing a financial product or service requested or authorized by the consumer;

''(ii) maintaining or servicing the account of the consumer with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

''(iii) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

''(B) with the consent or at the direction of the consumer, in accordance with applicable rules prescribed under this subtitle;

''(C) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978; or

''(D) to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury, with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

''(2) the disclosure, other than the sale, of nonpublic personal information to identify or locate missing and abducted children, witnesses, criminals, and fugitives, parties to lawsuits, parents, delinquents in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs; or

''(3) the disclosure, other than the sale, of nonpublic personal information—

''(A) to protect the confidentiality or security of the records of the financial institution pertaining to the consumer, the service or product, or the transaction therein;

''(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

''(C) for required institutional risk control, or for resolving customer disputes or inquiries;

''(D) to persons holding a legal or beneficial interest relating to the consumer;

''(E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

''(F) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the compliance of the institution with industry standards, or the attorneys, accountants, or auditors of the institution;

''(G) to a consumer reporting agency, in accordance with the Fair Credit Reporting Act or from a consumer report reported by a consumer reporting agency, as those terms are defined in that Act;

''(H) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit;

''(I) to comply with Federal, State, or local laws, rules, or other applicable legal requirements, or with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or

''(J) to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes, as authorized by law.

''(h) DENIAL OF SERVICE PROHIBITED.—A financial institution may not deny any consumer a financial product or a financial service as a result of the refusal by the consumer to grant consent to disclosure under this section or the exercise by the consumer of a nondisclosure option under this section, except that nothing in this subsection may be construed to prohibit a financial institution from offering incentives to elicit consumer consent to the use of his or her nonpublic personal information.''.

(b) REPEAL OF REGULATORY EXEMPTION AUTHORITY.—Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804) is amended—

(1) by striking subsection (b);

(2) by striking ''(a) REGULATORY AUTHORITY.—'';

(3) by redesignating paragraphs (1), (2), and (3) as subsections (a), (b), and (c), respectively, and moving the margins 2 ems to the left; and

(4) by striking ''paragraph (1)'' and inserting ''subsection (a)''.

**SEC. 304. CONFORMING AMENDMENTS.**

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 503(b)(1) (15 U.S.C. 6803(b)(1))—

(A) by inserting ''affiliates and'' before ''nonaffiliated''; and

(B) in subparagraph (A), by striking ''502(e)'' and inserting ''502(g)''; and

(2) in section 509(3)(D) (15 U.S.C. 6809(3)(D)), by striking ''502(e)(1)(C)'' and inserting ''502(g)(1)(A)(iii)''.

**SEC. 305. REGULATORY AUTHORITY.**

Not later than 6 months after the date of enactment of this Act, the agencies referred to in section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) shall promulgate final regulations in accordance with that section 504 to carry out the amendments made by this Act.

**SEC. 306. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect 6 months after the date of enactment of this Act.

**TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION**

**SEC. 401. DEFINITIONS.**

In this title:

(1) BUSINESS ASSOCIATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''business associate'' means, with respect to a covered entity, a person who—

(i) on behalf of such covered entity or of an organized health care arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of—

(I) a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

(II) any other function or activity regulated under subchapter C of title 45, Code of Federal Regulations; or

(ii) provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in section 164.501 of title 45, Code of Federal Regulations), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized

health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.

(B) LIMITATIONS.—

(i) IN GENERAL.—A covered entity participating in an organized health care arrangement that performs a function or activity as described by subparagraph (A)(i) for or on behalf of such organized health care arrangement, or that provides a service as described in subparagraph (A)(ii) to or for such organized health care arrangement, does not, simply through the performance of such function or activity or the provision of such service, become a business associate of other covered entities participating in such organized health care arrangement.

(ii) LIMITATION.—A covered entity may be a business associate of another covered entity.

(2) COVERED ENTITY.—The term ''covered entity'' means—

(A) a health plan;

(B) a health care clearinghouse; and

(C) a health care provider who transmits any health information in electronic form in connection with a transaction covered by parts 160 through 164 of title 45, Code of Federal Regulations.

(3) DISCLOSURE.—The term ''disclosure'' means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

(4) EMPLOYER.—The term ''employer'' has the meaning given that term in section 3401(d) of the Internal Revenue Code of 1986.

(5) GROUP HEALTH PLAN.—The term ''group health plan'' means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act, 42 U.S.C. 300gg–91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that—

(A) has 50 or more participants (as defined in section 3(7) of Employee Retirement Income and Security Act of 1974, 29 U.S.C. 1002(7)); or

(B) is administered by an entity other than the employer that established and maintains the plan.

(6) HEALTH CARE.—The term ''health care'' includes, but is not limited to, the following:

(A) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body.

(B) The sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(7) HEALTH CARE CLEARINGHOUSE.—The term ''health care clearinghouse'' means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and value-added networks and switches, that—

(A) processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or

(B) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

(8) HEALTH CARE PROVIDER.—The term ''health care provider'' has the meaning given the terms ''provider of services'' and ''provider of medical or health services'' in subsections (u) and (s) of section 1861 of the Social Security Act (42 U.S.C. 1395x), respectively, and includes any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(9) HEALTH INFORMATION.—The term ''health information'' means any information, whether oral or recorded in any form or medium, that—

(A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

(10) HEALTH INSURANCE ISSUER.—The term ''health insurance issuer'' means a health insurance issuer (as defined in section 2791(b)(2) of the Public Health Service Act, 42 U.S.C. 300gg–91(b)(2)) and used in the definition of health plan in this section and includes an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance. Such term does not include a group health plan.

(11) HEALTH MAINTENANCE ORGANIZATION.—The term ''health maintenance organization'' (HMO) (as defined in section 2791(b)(3) of the Public Health Service Act, 42 U.S.C. 300gg–91 (b)(3)) and used in the definition of health plan in this section, means a federally qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such an HMO.

(12) HEALTH OVERSIGHT AGENCY.—The term ''health oversight agency'' means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

(13) HEALTH PLAN.—The term ''health plan'' means an individual or group plan that provides, or pays the cost of, medical care, as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(2))—

(A) including, singly or in combination—

(i) a group health plan;

(ii) a health insurance issuer;

(iii) an HMO;

(iv) part A or B of the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(v) the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(vi) an issuer of a medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss(g)(1));

(vii) an issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy;

(viii) an employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers;

(ix) the health care program for active military personnel under title 10, United States Code;

(x) the veterans health care program under chapter 17 of title 38, United States Code;

(xi) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in section 1072(4) of title 10, United States Code);

(xii) the Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);

(xiii) the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code;

(xiv) an approved State child health plan under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), providing benefits for child health assistance that meet the requirements of section 2103 of such Act (42 U.S.C. 1397cc);

(xv) the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.);

(xvi) a high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals; and

(xvii) any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(2)); and

(B) excluding—

(i) any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(c)(1)); and

(ii) a government-funded program (other than 1 listed in clause (i) through (xvi) of subparagraph (A)), whose principal purpose is other than providing, or paying the cost of, health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

(14) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term ''individually identifiable health information'' means information that is a subset of health information, including demographic information collected from an individual, that—

(A) is created or received by a covered entity or employer; and

(B)(i) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

(ii)(I) identifies an individual; or

(II) with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.

(15) LAW ENFORCEMENT OFFICIAL.—The term ''law enforcement official'' means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to—

(A) investigate or conduct an official inquiry into a potential violation of law; or

(B) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(16) LIFE INSURER.—The term ''life insurer'' means a life insurance company (as defined in section 816 of the Internal Revenue Code of 1986), including the employees and agents of such company.

(17) MARKETING.—The term ''marketing'' means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

(18) NONCOVERED ENTITY.—The term ''noncovered entity'' means any person or public or private entity that is not a covered entity, including but not limited to a business associate of a covered entity, a covered entity if such covered entity is acting as a business associate, a health researcher, school or university, life insurer, employer, public health authority, health oversight agency, or law enforcement official, or any person acting as an agent of such entities or persons.

(19) ORGANIZED HEALTH CARE ARRANGEMENT.—The term ''organized health care arrangement'' means—

(A) a clinically integrated care setting in which individuals typically receive health care from more than 1 health care provider;

(B) an organized system of health care in which more than 1 covered entity participates, and in which the participating covered entities—

(i) hold themselves out to the public as participating in a joint arrangement; and

(ii) participate in joint activities including at least—

(I) utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;

(II) quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or

(III) payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk;

(C) a group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are or who have been participants or beneficiaries in such group health plan;

(D) a group health plan and 1 or more other group health plans each of which are maintained by the same plan sponsor; or

(E) the group health plans described in subparagraph (D) and health insurance issuers or HMOs with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

(20) PROTECTED HEALTH INFORMATION.—

(A) IN GENERAL.—The term ''protected health information'' means individually identifiable health information that, except as provided in subparagraph (B), is—

(i) transmitted by electronic media;

(ii) maintained in any medium described in the definition of electronic media in section 162.103 of title 45, Code of Federal Regulations; or

(iii) transmitted or maintained in any other form or medium.

(B) EXCLUSIONS.—Such term does not include individually identifiable health information in—

(i) education records covered by the Family Educational Rights and Privacy Act of 1974 (section 444 of the General Education Provisions Act (20 U.S.C. 1232g));

(ii) records described in subsection (a)(4)(B)(iv) of that Act; or

(iii) employment records held by a covered entity in its role as an employer.

(21) PUBLIC HEALTH AUTHORITY.—The term ''public health authority'' means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(22) SCHOOL OR UNIVERSITY.—The term ''school or university'' means an institution or place for instruction or education, including an elementary school, secondary school, or institution of higher learning, a college, or an assemblage of colleges united under 1 corporate organization or government.

(23) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(24) SALE; SELL; SOLD.—The terms ''sale'', ''sell'', and ''sold'', with respect to protected health information, mean the exchange of such information for anything of value, directly or indirectly, including the licensing, bartering, or renting of such information.

(25) USE.—The term ''use'' means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

(26) WRITING.—The term ''writing'' means writing in either a paper-based or computer-based form, including electronic and digital signatures.

**SEC. 402. PROHIBITION AGAINST SELLING PROTECTED HEALTH INFORMATION.**

(a) VALID AUTHORIZATION REQUIRED.—

(1) IN GENERAL.—A noncovered entity shall not sell the protected health information of an individual or use such information for marketing purposes without an authorization that is valid under section 403. When a noncovered entity obtains or receives authorization to sell such information, such sale must be consistent with such authorization.

(2) NO DUPLICATE AUTHORIZATION REQUIRED.—Nothing in paragraph (1) shall be construed as requiring a noncovered entity that receives from a covered entity an authorization that is valid under section 403 to obtain a separate authorization from an individual before the sale or use of the individual's protected health information so long as the sale or use of the information is consistent with the terms of the authorization.

(b) SCOPE.—A sale of protected health information as described under subsection (a) shall be limited to the minimum amount of information necessary to accomplish the purpose for which the sale is made.

(c) PURPOSE.—A recipient of information sold pursuant to this title may use or disclose such information solely to carry out the purpose for which the information was sold.

(d) NOT REQUIRED.—Nothing in this title permitting the sale of protected health information shall be construed to require such sale.

(e) IDENTIFICATION OF INFORMATION AS PROTECTED HEALTH INFORMATION.—Information sold pursuant to this title shall be clearly identified as protected health information.

(f) NO WAIVER.—Except as provided in this title, an individual's authorization to sell protected health information shall not be construed as a waiver of any rights that the individual has under other Federal or State laws, the rules of evidence, or common law.

**SEC. 403. AUTHORIZATION FOR SALE OR MARKETING OF PROTECTED HEALTH INFORMATION BY NONCOVERED ENTITIES.**

(a) VALID AUTHORIZATION.—A valid authorization is a document that complies with all requirements of this section. Such authorization may include additional information not required under this section, provided that such information is not inconsistent with the requirements of this section.

(b) DEFECTIVE AUTHORIZATION.—An authorization is not valid, if the document submitted has any of the following defects:

(1) The expiration date has passed or the expiration event is known by the noncovered entity to have occurred.

(2) The authorization has not been filled out completely, with respect to an element described in subsections (e) and (f).

(3) The authorization is known by the noncovered entity to have been revoked.

(4) The authorization lacks an element required by subsections (e) and (f).

(5) Any material information in the authorization is known by the noncovered entity to be false.

(c) REVOCATION OF AUTHORIZATION.—An individual may revoke an authorization provided under this section at any time provided that the revocation is in writing, except to the extent that the noncovered entity has taken action in reliance thereon.

(d) DOCUMENTATION.—

(1) IN GENERAL.—A noncovered entity must document and retain any signed authorization under this section as required under paragraph (2).

(2) STANDARD.—A noncovered entity shall, if a communication is required by this title to be in writing, maintain such writing, or an electronic copy, as documentation.

(3) RETENTION PERIOD.—A noncovered entity shall retain the documentation required by this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

(e) CONTENT OF AUTHORIZATION.—

(1) CONTENT.—An authorization described in subsection (a) shall—

(A) contain a description of the information to be sold that identifies such information in a specific and meaningful manner;

(B) contain the name or other specific identification of the person, or class of persons, authorized to sell the information;

(C) contain the name or other specific identification of the person, or class of persons, to whom the information is to be sold;

(D) include an expiration date or an expiration event relating to the selling of such information that signifies that the authorization is valid until such date or event;

(E) include a statement that the individual has a right to revoke the authorization in writing and the exceptions to the right to revoke, and a description of the procedure involved in such revocation;

(F) be in writing and include the signature of the individual and the date, or if the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual; and

(G) include a statement explaining the purpose for which such information is sold.

(2) PLAIN LANGUAGE.—The authorization shall be written in plain language.

(f) NOTICE.—

(1) IN GENERAL.—The authorization shall include a statement that the individual may—

(A) inspect or copy the protected health information to be sold; and

(B) refuse to sign the authorization.

(2) COPY TO THE INDIVIDUAL.—A noncovered entity shall provide the individual with a copy of the signed authorization.

(g) MODEL AUTHORIZATIONS.—The Secretary, after notice and opportunity for public comment, shall develop and disseminate model written authorizations of the type described in this section and model statements of the limitations on such authorizations. Any authorization obtained on a model authorization form developed by the Secretary pursuant to the preceding sentence shall be deemed to satisfy the requirements of this section.

(h) NONCOERCION.—A covered entity or noncovered entity shall not condition the purchase of a product or the provision of a service to an individual based on whether such individual provides an authorization to such entity as described in this section.

**SEC. 404. PROHIBITION AGAINST RETALIATION.**

A noncovered entity that collects protected health information, may not adversely affect another person, directly or indirectly, because such person has exercised a right under this title, disclosed information relating to a possible violation of this title, or associated with, or assisted, a person in the exercise of a right under this title.

**SEC. 405. RULE OF CONSTRUCTION.**

The requirements of this title shall not be construed to impose any additional requirements or in any way alter the requirements imposed upon covered entities under parts 160 through 164 of title 45, Code of Federal Regulations.

**SEC. 406. REGULATIONS.**

(a) IN GENERAL.—The Secretary shall promulgate regulations implementing the provisions of this title.

(b) TIMEFRAME.—Not later than 1 year after the date of enactment of this Act, the Secretary shall publish proposed regulations in the Federal Register. With regard to such proposed regulations, the Secretary shall provide an opportunity for submission of comments by interested persons during a period of not less than 90 days. Not later than 2 years after the date of enactment of this Act, the Secretary shall publish final regulations in the Federal Register.

**SEC. 407. ENFORCEMENT.**

(a) IN GENERAL.—A covered entity or noncovered entity that knowingly violates section 402 shall be subject to a civil money penalty under this section.

(b) AMOUNT.—The civil money penalty described in subsection (a) shall not exceed $100,000. In determining the amount of any penalty to be assessed, the Secretary shall take into account the previous record of compliance of the entity being assessed with the applicable provisions of this title and the gravity of the violation.

(c) ADMINISTRATIVE REVIEW.—

(1) OPPORTUNITY FOR HEARING.—The entity assessed shall be afforded an opportunity for a hearing by the Secretary upon request made within 30 days after the date of the issuance of a notice of assessment. In such hearing the decision shall be made on the record pursuant to section 554 of title 5, United States Code. If no hearing is requested, the assessment shall constitute a final and unappealable order.

(2) HEARING PROCEDURE.—If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within 30 days after the date of the decision of the judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (d).

(d) JUDICIAL REVIEW.—

(1) FILING OF ACTION FOR REVIEW.—Any entity against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which such entity is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary.

(2) CERTIFICATION OF ADMINISTRATIVE RECORD.—The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed.

(3) STANDARD FOR REVIEW.—The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(4) APPEAL.—Any final decision, order, or judgment of the district court concerning such review shall be subject to appeal as provided in chapter 83 of title 28 of such Code.

(e) FAILURE TO PAY ASSESSMENT; MAINTENANCE OF ACTION.—

(1) FAILURE TO PAY ASSESSMENT.—If any entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed by action in the appropriate United States district court.

(2) NONREVIEWABILITY.—In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(f) PAYMENT OF PENALTIES.—Except as otherwise provided, penalties collected under this section shall be paid to the Secretary (or other officer) imposing the penalty and shall be available without appropriation and until expended for the purpose of enforcing the provisions with respect to which the penalty was imposed.

## TITLE V—DRIVER'S LICENSE PRIVACY

**SEC. 501. DRIVER'S LICENSE PRIVACY.**

Section 2725 of title 18, United States Code, is amended by striking paragraphs (2) through (4) and adding the following:

''(2) 'person' means an individual, organization, or entity, but does not include a State or agency thereof;

''(3) 'personal information' means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, medical or disability information, any physical copy of a driver's license, birth date, information on physical characteristics, including height, weight, sex or eye color, or any biometric identifiers on a license, including a finger print, but not information on vehicular accidents, driving violations, and driver's status;

''(4) 'highly restricted personal information' means an individual's photograph or image, social security number, medical or disability information, any physical copy of a driver's license, driver identification number, birth date, information on physical characteristics, including height, weight, sex, or eye color, or any biometric identifiers on a license, including a finger print; and''.

## TITLE VI—MISCELLANEOUS

**SEC. 601. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under title I, II, or IV of this Act or under any amendment made by such a title, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with such titles or such amendments;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General—

(i) written notice of the action; and

(ii) a copy of the complaint for the action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the same time as the State attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Attorney General shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Attorney General intervenes in an action under subsection (a), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General for violation of a practice that is prohibited under title I, II, IV, or V of this Act or under any amendment made by such a title, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that practice.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

**SEC. 602. FEDERAL INJUNCTIVE AUTHORITY.**

In addition to any other enforcement authority conferred under this Act or under an amendment made by this Act, the Federal Government shall have injunctive authority with respect to any violation of any provision of title I, II, or IV of this Act or of any amendment made by such a title, without regard to whether a public or private entity violates such provision.

By Mrs. FEINSTEIN (for herself and Mr. VOINOVICH):

S. 117. A bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President. I rise today with Senator VOINOVICH to introduce legislation to expand the federal loan forgiveness program to include Head Start teachers.

Nationwide, only 30 percent of Head Start teachers have completed a baccalaureate or advanced degree program.

In California, that number is even smaller: about eighteen percent of Head Start teachers have completed a bachelor's degree.

To prepare Head Start children for elementary school, we must recruit highly qualified teachers who have demonstrated knowledge and teaching skills in reading, writing, early childhood development, and other areas of the preschool curriculum with a particular focus on cognitive learning.

Recruiting and maintaining teachers with such qualifications is the only way to jump-start cognitive development and ensure that our children start elementary school ready to learn.

A survey conducted by the U.S. Department of Health and Human Services called the Head Start Family and Child Experiences Survey (FACES) found a strong relationship between the education of Head Start teachers and classroom quality. Teachers with higher education levels were found to be more sensitive and responsive to their children, to have more high quality language activities, and more creative activities in their classrooms.

Teachers with higher levels of education also had classes with higher quality language activities such as reading books for the children and provided more opportunities for children to develop skills in expressing thoughts.

Head Start is the primary federal program that has the potential to reach out to low-income children early in their formative years when their cognitive skills are just developing.

We know that poor children disproportionately start school behind their peers—they are less likely to count to 10 or to recite the alphabet.

Many of our nation's youngsters enter elementary school without the basic skills necessary to succeed. Often these children lag behind their peers throughout their academic career.

As taxpayers, we will spend millions on efforts to help these children catch up. Many of these children will never catch up. A recent national study by The High/Scope Perry Preschool confirms the importance of providing preschool children with the opportunity early on to gain the basic skills necessary for school.

The study found that preschoolers were more likely to graduate from high school and be employed at age 40, earn more money a year, and were more likely to own a home and have a savings account.

We can save millions by providing low-income children with access to quality preschool where they will gain the necessary skills to succeed in school and life.

In order to give every child a head start in life, we must continue to recruit highly qualified teachers to the Head Start field and prevent the best teachers from leaving.

Many Head Start programs across the country, including in California, are losing qualified teachers to local school districts in part because the pay is better.

Nationally, the average Head Start teacher earns a salary of $21,287 compared to $43,152 for an elementary school teacher.

Head Start teachers are making half of what elementary school teachers are paid on average.

Low pay, combined with increasing student debt, is a real deterrent to getting college graduates to become Head Start teachers.

And every teacher that Head Start loses impacts the quality and access to services for our nation's low-income children.

One way to recruit and retain highly qualified Head Start teachers is to offer incentives to pursue a career in this field.

Current law allows elementary and secondary school teachers to receive up to $5,000 in loan forgiveness in exchange for five years of service.

We believe Head Start teachers should be given this same opportunity.

The legislation we are introducing today is meant to encourage recent graduates, current Head Start teachers without a degree, and college students to enter and remain in the Head Start field.

In exchange for 5 years of service, a Head Start teacher could receive up to $5,000 of their federal loans forgiven.

We must continue to improve the Head Start program so that children will have the necessary cognitive skills when they leave the program, such as being able to count to ten, begin to recite the alphabet, and recognize sizes and colors.

This is just the first step. To further ensure cognitive learning, we must also continue to raise the standards and pay for Head Start teachers.

Providing our nation's low-income children with access to highly educated and qualified teachers so that they enter school ready to learn is critical to their future success and should be a priority of this Congress.

I urge my colleagues to support this legislation. I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 117

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. LOAN FORGIVENESS FOR HEAD START TEACHERS.**

(a) SHORT TITLE.—This section may be cited as the ''Loan Forgiveness for Head Start Teachers Act of 2005''.

(b) HEAD START TEACHERS.—Section 428J of the Higher Education Act of 1965 (20 U.S.C 1078–10) is amended—

(1) in subsection (b), by striking paragraph (1) and inserting the following:

''(1)(A) has been employed—

''(i) as a full-time teacher for 5 consecutive complete school years in a school that qualifies under section 465(a)(2)(A) for loan cancellation for Perkins loan recipients who teach in such a school; or

''(ii) as a Head Start teacher for 5 consecutive complete program years under the Head Start Act; and

''(B)(i) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

''(ii) if employed as a Head Start teacher, has demonstrated knowledge and teaching skills in reading, writing, early childhood development, and other areas of a preschool curriculum, with a focus on cognitive learning; and'';

(2) in subsection (g), by adding at the end the following:

''(3) HEAD START.—An individual shall be eligible for loan forgiveness under this section for service described in clause (ii) of subsection (b)(1)(A) only if such individual received a baccalaureate or graduate degree on or after the date of enactment of the Loan Forgiveness for Head Start Teachers Act of 2005.''; and

(3) by adding at the end the following:

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and succeeding fiscal years to carry out loan repayment under this section for service described in clause (ii) of subsection (b)(1)(A).''.

(c) DIRECT STUDENT LOAN FORGIVENESS.—

(1) IN GENERAL.—Section 460 of the Higher Education Act of 1965 (20 U.S.C 1087j) is amended—

(A) in subsection (b)(1), by striking subparagraph (A) and inserting the following:

''(A)(i) has been employed—

''(I) as a full-time teacher for 5 consecutive complete school years in a school that qualifies under section 465(a)(2)(A) for loan cancellation for Perkins loan recipients who teach in such a school; or

''(II) as a Head Start teacher for 5 consecutive complete program years under the Head Start Act; and

''(ii)(I) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

''(II) if employed as a Head Start teacher, has demonstrated knowledge and teaching skills in reading, writing, early childhood development, and other areas of a preschool curriculum, with a focus on cognitive learning; and'';

(B) in subsection (g), by adding at the end the following

''(3) HEAD START.—An individual shall be eligible for loan forgiveness under this section for service described in subclause (II) of subsection (b)(1)(A)(i) only if such individual received a baccalaureate or graduate degree on or after the date of enactment of the Loan Forgiveness for Head Start Teachers Act of 2005.''; and

(C) by adding at the end the following:

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and succeeding fiscal years to carry out loan

repayment under this section for service described in subclause (II) of subsection (b)(1)(A)(i).''.

(d) CONFORMING AMENDMENTS.—

(1) FFEL PROGRAM.—Section 428J of the Higher Education Act of 1965 (20 U.S.C. 1078–10) is amended—

(A) in subsection (c)(1), by inserting ''or fifth complete program year'' after ''fifth complete school year of teaching'';

(B) in subsection (f), by striking ''subsection (b)'' and inserting ''subsection (b)(1)(A)(i)'';

(C) in subsection (g)(1)(A), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(1)(A)(i)''; and

(D) in subsection (h), by inserting ''except as part of the term 'program year','' before ''where''.

(2) DIRECT LOAN PROGRAM.—Section 460 of the Higher Education Act of 1965 (20 U.S.C. 1087j) is amended—

(A) in subsection (c)(1), by inserting ''or fifth complete program year'' after ''fifth complete school year of teaching'';

(B) in subsection (f), by striking ''subsection (b)'' and inserting ''subsection (b)(1)(A)(i)(I)'';

(C) in subsection (g)(1)(A), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(1)(A)(i)(I)''; and

(D) in subsection (h), by inserting ''except as part of the term 'program year','' before ''where''.

LOAN FORGIVENESS FOR HEAD START TEACHERS ACT OF 2005

Mr. VOINOVICH. Mr. President, I am pleased to join my friend and colleague from California, Senator DIANNE FEINSTEIN, in introducing very important legislation that I believe will encourage young teachers to go into early childhood education, improve the qualifications of current early educators, and lead to a better education for our Nation's youngest children.

Study after study on human development has found that there is no more important time in a child's life than their earliest years. In fact, the learning opportunities in these years have a critical and decisive impact on the development of the brain and on the nature and extent of their adult capacities.

To maximize their potential, we must begin to teach our children the necessary learning skills they will utilize throughout their lives as early as possible; well before they reach kindergarten.

I know of few other programs that have the same potential to meet this goal as Head Start.

When I was Governor of Ohio, we invested heavily in Head Start, increasing funding from $18 million in 1990, to $180 million in 1998.

By the time I left office, there was a space available for every eligible child in Ohio whose parents wanted them in a Head Start or pre-school program, and because of our efforts, Ohio led the Nation in terms of children served by Head Start.

Now that I am in the Senate, I continue to believe that it is absolutely critical that we do more to help our young people prepare to begin school ''ready to learn.''

The results of a survey undertaken by the U.S. Department of Health and Human Services in 1999 and 2000 has shown a significant correlation between the quality of education a child receives and the amount of education that child's teacher possesses.

Unfortunately, nationwide, just 30 percent of Head Start teachers have earned a baccalaureate or advanced degree.

Under Ohio law, by 2007, all Head Start teachers must have at least an associate's degree. It is hoped that this requirement will encourage Head Start educators to pursue a bachelor's or even an advanced degree. After all, the more education our teachers have, the better off our children will be.

Unfortunately, as we all know, education can be expensive.

The bill we are introducing is designed to encourage currently enrolled and incoming college students working on a bachelor's or a master's degree to pursue a career as a Head Start teacher. It is also intended to assist current Head Start teachers, who wish to pursue a degree, to remain in the field.

In exchange for a 5-year teaching commitment in a qualified Head Start program, a college graduate with a minimum of a bachelor's degree could receive up to $5,000 in forgiveness for their Federal student loan. Current law already permits elementary and secondary educators to receive this type of loan forgiveness. It is time to give Head Start teachers this same opportunity.

Recruiting and retaining Head Start and early childhood teachers continues to be a challenge for Ohio and other States. This is not surprising. On average, Head Start teachers earn about half of the average salary of kindergarten teachers. For Head Start providers, this financial difference combined with the growing cost of a college education and student debt makes it difficult to recruit quality teachers.

This bill will help communities, schools and other funded Head Start providers to meet the challenge of recruiting and retaining high quality teachers. It is one of the best ways that I know of where we can make a real difference in the lives of our most precious resource, our children.

One of the best uses of our Federal education resources is to target them toward our youngest citizens where they can have the most impact.

I am pleased to have been able to work with my colleague Senator FEINSTEIN on this legislation, and I ask for my colleagues' support.

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By Mrs. FEINSTEIN:

S. 118. A bill for the relief of Maria Cristina DeGrassi; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private relief legislation to provide lawful permanent residence status to Maria Cristina Degrassi, a 37-year-old severely disabled Italian national currently living with her family in San Mateo, California.

I have decided to offer private relief legislation on Ms. Degrassi's behalf because I believe that her removal from the United States would be tragically unfair not only to her, but to her sister and brother-in-law, Daniela Degrassi and Luca Prasso, who reside legally in the United States and who are Ms. Degrassi's closest family and only willing caregivers.

Ms. Degrassi has legally resided in the United States since 1997 on a nonimmigrant tourist visa. However, she is not like an ordinary tourist. She cannot enjoy California's beautiful coastline or stunning mountain ranges. She cannot tour Hollywood movie studios or Napa Valley wineries. Ms. Degrassi was born premature in 1965 and, consequently, is severely mentally handicapped and autistic. Because of these disabilities, Ms. Degrassi has the mental capacity of a two-year old, cannot speak and understands only a few sentences in Italian.

In addition to these challenges, Ms. Degrassi was diagnosed with diabetes in 2001 and now requires daily insulin shots and a carefully monitored diet.

For Ms. Degrassi, the sum of these health problems means that she must have 24-hour-a-day, 7-day-a-week personal care and attention. Luckily, however, there are two people in Ms. Degrassi's life who are more than happy not only to care for her daily needs, but to love and nurture her.

Ms. Degrassi's sister, Daniela, and her brother-in-law, Luca, are legal permanent residents of the United States. Mr. Prasso is a highly skilled and valued employee of PDI-DreamWorks, the world renowned movie production company. Serving as a Character Technical Supervisor and earning nearly $200,000 per year, Mr. Prasso has worked on such critically acclaimed films as ''Shrek'' and ''ANTZ.'' In the course of that work, Mr. Prasso has developed and patented new technologies and become a leader in his field. In a letter in support of this private legislation, DreamWorks referred to Mr. Prasso's skills as ''rar[e]'' and ''irreplaceable.''

Daniela Degrassi has also excelled in the United States, starting a successful freelance photography career and business.

Together, Mr. Prasso and Daniela Degrassi have provided Ms. Degrassi with the love, care and attention that she so desperately needs. When Ms. Degrassi's father and aunt died in 1997, the couple knew that they were the only family left who was willing to care for her. The choice for them was clear. Mr. Prasso wrote in a letter he sent me, ''My wife and I then faced a big decision. We refuse[d] completely to put her in an institution. We [could not] accept the idea of not being able to properly take care of her. No other relative was alive or came forward to offer help. We were the only and closest persons to Cristina. We decided to take care of her like a daughter.''

For the past seven years, Mr. Prasso and Daniela Degrassi have done just that, organizing their lives around caring for and attending to Ms. Degrassi.

They cook for her and clothe and bathe her on a daily basis. Because of the close monitoring Ms. Degrassi's diabetic condition requires, when the couple wants to go out to dinner or see a movie, they must do so separately so that one of them is always with Ms. Degrassi in case of an emergency.

Despite the hardships that caring for Ms. Degrassi have imposed upon Mr. Prasso and Daniela Degrassi, the experience has deeply enriched their lives. In Mr. Prasso's letter, he wrote, ''despite my long work hours and my wife['s] new successful business as a photographer, we are able and fully committed to continue to take care [of Cristina] 24 hours a day . . . The reward of a kiss, hug or smile from Cristina is an amazing thing and makes all the pain disappear.''

Unfortunately, if this private relief bill is not approved, this wonderful family will face a tragic set of choices. Since 1997, Ms. Degrassi has applied for and always received six-month extensions of her non-immigrant tourist visa. The Degrassi's lawyer has informed the couple that approval of the current extension is unlikely and has recommended they withdraw their petition. This would leave Ms. Degrassi with nothing. There are no other avenues available for her to remain in the United States lawfully. In short, if this private relief legislation is not approved, Ms. Degrassi will be forced to return to Italy.

However, Mr. Prasso and Daniela Degrassi's love for their sister will never allow her to return to Italy alone. Faced with Ms. Degrassi's removal, the couple will leave their lives in California and move back with her in order to continue to provide the care and attention on which Ms. Degrassi depends.

The consequences of such a move will be tragic for this family. It will mean the end of Mr. Prasso's highly accomplished career with DreamWorks, as well as, the end of the photography career Daniela Degrassi has worked so hard to build. In addition, both Mr. Prasso and Daniela Degrassi are eligible to become United States citizens this year.

I can think of no compelling reasons why the United States should not enable this family to continue as they have in California. Because of the substantial salary that Mr. Prasso and Daniela Degrassi earn and because of the monthly pension Ms. Degrassi receives, due to her disability, from the Italian government, there is almost no chance that Ms. Degrassi will become a burden on the state or federal government.

In Mr. Prasso's letter to me, he made this simple request, ''We are looking forward to find[ing] a permanent solution to this dilemma that does not involve dismembering this family or giving up on a wonderful job. A solution that will allow us to live a normal life like a normal family.''

We can make this solution a reality for Ms. Degrassi and this wonderful family. For that reason, I offer this private relief legislation and ask my colleagues to support it.

Given these extraordinary and unique facts, I ask my colleagues to support this private relief bill on behalf of Ms. Degrassi.

I also ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 118

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ADJUSTMENT OF STATUS.**

(a) IN GENERAL.—Notwithstanding any other provision of law or any order, for the purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Maria Cristina DeGrassi shall be deemed to have been lawfully admitted to, and remained in, the United States, and shall be eligible for issuance of an immigrant visa or for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(b) APPLICATION AND PAYMENT OF FEES.—Subsection (a) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(c) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa to Maria Cristina DeGrassi, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or subsequent fiscal year, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 202(e) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152(e), 1153(a)), as applicable.

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By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. SCHUMER, Mr. HAGEL, Mr. DURBIN, Mr. DEWINE, Ms. CANTWELL, Mr. INOUYE, and Mr. FEINGOLD):

S. 119. A bill to provide for the protection of unaccompanied alien children, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I introduce today the ''Unaccompanied Alien Child Protection Act of 2005'', legislation to reform the way the federal government treats unaccompanied alien children who are apprehended by federal immigration officials at our borders or within the United States.

I first introduced legislation similar to this bill during the 107th Congress and still strongly believe that its passage is necessary to ensure the proper treatment of unaccompanied alien children within our federal system. With each passing year, as members realize the necessity for this legislation, the bill has moved further along in the process.

I am pleased to be joined by Senators COLLINS, SCHUMER, HAGEL, DURBIN, DEWINE, CANTWELL, INOUYE and FEINGOLD as original co-sponsors of this legislation.

During the 108th Congress, the ''Unaccompanied Alien Child Protection Act'' passed the Senate by unanimous consent, after garnering no less than 34 co-sponsors. Unfortunately, the bill stalled in the House of Representatives.

So today I re-introduce this legislation, and again, this will be one of my top legislative priorities because I believe we have a special obligation to ensure that every child that comes into contact with federal officials is afforded fair and humane treatment.

In 2004, approximately 6,200 unaccompanied alien children were apprehended by Department of Homeland Security officials and transferred to the care of the Office of Refugee Resettlement within the Department of Health and Human Services. This number has grown over the years and shows no signs of abating.

Thousands of foreign-born children under the age of 18 enter the United States each year unaccompanied by parents or other legal guardians. These children are among the most vulnerable of the immigrant population and these numbers are going to continue to grow given the greater emphasis on enforcement actions by immigration officials—which I support—and the relatively unchanged conditions bringing them here.

These children are from all over the world, although the majority encountered by immigration officials today are from Honduras, Guatemala and El Salvador. Some are asylum seekers fleeing human rights abuses and armed conflict in their homelands. Others are fleeing abuses specific to children, such as forced recruitment of child soldiers, forced prostitution and servitude, sexual slavery and exploitation, child labor, abuse of street children, child brides and female genital mutilation. Yet other children come to the United States because they have been abused, abandoned or neglected by their parents or caregivers. And finally, some come seeking to reunify with family members already in the United States or seeking a better life.

Historically, U.S. immigration law and policies have been developed and implemented without regard to their effect on children. This result has been similar to trying to fit a square peg in a round hole—it just doesn't work.

Under current immigration law, these children are forced to struggle through a system designed for adults, even though they lack the capacity to understand nuanced legal principles or courtroom and administrative procedures. Because of this, children who may very well be eligible for relief are often vulnerable to being deported back to the very life-threatening situations from which they fled—before they are even able to make their cases before the Department of Homeland Security or an immigration judge.

Prior to March 1, 2003, the Immigration and Naturalization Service had responsibility for the care, custody and treatment of unaccompanied alien children. Unfortunately, the Immigration and Naturalization Service fell short in

fulfilling these responsibilities. The legislation that I am introducing today builds on Section 462 of Public Law 107–296, the Homeland Security Act of 2002, which provided for the transfer of responsibility for the care and placement of unaccompanied alien children from the now-abolished Immigration and Naturalization Service to the Office of Refugee Resettlement within the Department of Health and Human Services.

Section 462 was based on S. 121, comprehensive legislation relating to unaccompanied alien children that I introduced during the 107th Congress.

With the enactment of the Homeland Security Act of 2002, we set into motion the centralization of responsibility for the care and custody of unaccompanied alien children with the Office of Refugee Resettlement. The first phase of this transfer of responsibility occurred on March 1, 2003. Once the transition was completed, we finally resolved the conflict of interest inherent in the former system which pitted the enforcement side of the Immigration and Naturalization Service against the benefits side of that same agency in the care of unaccompanied alien children.

I am pleased that the provision transferring responsibility for the care and custody of unaccompanied alien children was contained in the Homeland Security Act and that by all accounts the transition in the care of children between the affected agencies has gone well.

But, the transfer of authority to the Office of Refugee Resettlement—by itself—is not enough to ensure that these children are treated fairly and humanely. Congress now has a responsibility to go beyond the simple transfer to actually laying out the process and steps to ensure that unaccompanied alien children are treated fairly and humanely. We must provide the Office of Refugee Resettlement, the Department of Homeland Security and the Department of Justice with the tools they will need to succeed in their missions regarding the care of unaccompanied alien children after the transfer of jurisdiction took place.

First of all, I want to stress that this bill is not about benefits, as it provides no new immigration benefit to unaccompanied alien children. Rather, this bill is about the process of how we treat these children.

The ''Unaccompanied Alien Child Protection Act'' provides guidance and instruction to the Office of Refugee Resettlement, the Department of Homeland Security and the Department of Justice in the following areas:

First, in the custody, release, family reunification and detention of unaccompanied alien children;

Second, it provides access by unaccompanied alien children to guardians ad litem and pro bono counsel;

Third, it streamlines the Special Immigrant Juvenile (SIJ) program and provides guidance on the training of federal government officials and private parties who come into contact with unaccompanied alien children;

Fourth, it requires the issuance of guidelines specific to children's asylum claims;

Fifth, it authorizes appropriations for the care of unaccompanied alien children; and

Sixth, it amends the Homeland Security Act of 2002 to provide additional responsibilities and powers to the Office of Refugee Resettlement with respect to unaccompanied alien children.

Central throughout the ''Unaccompanied Alien Child Protection Act'' are two concepts:

The United States government has a fundamental responsibility to protect unaccompanied children in its custody; and in all proceedings and actions, the government should have as a priority protecting the interests of these children.

I first became involved in this issue in 2000 when I heard about a young 15-year old Chinese girl who stood before a U.S. immigration court facing deportation proceedings with her hands chained to her waist, like a criminal. She had found her way to the United States as a stowaway in a container ship captured off of Guam, hoping to escape the repression she had experienced in her home country.

She had been placed on a boat bound for the United States by her very own parents, fleeing China's rigid family planning laws. Under these laws, she was denied citizenship, education and medical care. She came to this country alone and desperate.

And what did our immigration authorities do when they found her? The Immigration and Naturalization Service detained her in a juvenile jail in Portland, Oregon for eight months before her asylum hearing, and more than seven weeks after she was granted asylum.

At her asylum hearing, the young girl stood before a judge, unrepresented by counsel, confused and unable to understand the proceedings against her. She could not wipe away the tears from her face because her hands were chained to her waist. According to a lawyer who later came to represent her, ''her only crime was that her parents had put her on a boat so she could get a better life over here.''

While the young girl eventually received asylum in our country, she unnecessarily faced an ordeal no child should bear under our immigration system. This young Chinese girl represents only one of the more than 6,000 foreign-born children who, without parents or legal guardians to protect them, are discovered in the United States each year in need of protection.

This is unacceptable treatment and we have a responsibility to do better than this.

Imagine the fear of an unaccompanied alien child, in the United States alone, without a parent or guardian. Imagine that child being thrust into a system he or she does not understand, provided no access to pro bono counsel or guardians ad litem, placed in jail with adults or housed with juveniles with serious criminal convictions. I find it hard to believe that our country would allow children to be treated in such a manner.

That is why I am introducing this legislation today. The ''Unaccompanied Alien Child Protection Act'' will help our country fulfill the special obligation to these children to treat them fairly and humanely.

I am proud to have the support of the United States Conference of Catholic Bishops, the Women's Commission on Refugee Women and Children, the Lutheran Immigration and Refugee Service, Amnesty International USA and the United Nations High Commissioner for Refugees, and many other organizations with whom I have worked closely to develop this legislation.

I urge my colleagues to join with me by cosponsoring this important measure and ensuring that these reforms are finally enacted.

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

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

S. 119

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents
Sec. 2. Definitions

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States
Sec. 103. Appropriate conditions for detention of unaccompanied alien children
Sec. 104. Repatriated unaccompanied alien children
Sec. 105. Establishing the age of an unaccompanied alien child
Sec. 106. Effective date

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

Sec. 201. Guardians ad litem
Sec. 202. Counsel
Sec. 203. Effective date; applicability

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile visa
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children
Sec. 303. Report
Sec. 304. Effective date

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children's asylum claims

Sec. 402. Unaccompanied refugee children
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children
Sec. 602. Technical corrections
Sec. 603. Effective date

**SEC. 2. DEFINITIONS.**

(a) IN GENERAL.—In this Act:

(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney who—

(A) complies with the duties set forth in this Act;

(B) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

(C) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law; and

(D) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office.

(3) DIRECTORATE.—The term ''Directorate'' means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the meaning given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

(c) RULE OF CONSTRUCTION.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

## TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

**SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.**

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in this subparagraph;

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right, and shall be informed of that right in the child's native language—

(i) to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation; and

(ii) to consult, telephonically, with the Office.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Directorate.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such

alien meets such age requirements shall be made by the Director in accordance with section 105.

**SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.**

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4), section 103(a)(2), and section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and promulgate regulations in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments, has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, and subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall—

(i) assess the suitability of placing the child with the parent or legal guardian; and

(ii) make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—Programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of involvement in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of involvement in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action, which may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—The Director may award grants to, and enter into contracts with, voluntary agencies to carry out this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(6) REIMBURSEMENT OF STATE EXPENSES.—The Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

(c) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

**SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.**

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to such behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—A child shall not be placed with an entity described in section 102(a)(1)(E), unless the entity is licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated under subparagraph (A) shall provide that all children are notified of such standards orally and in writing in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

**SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.**

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The annual Country Reports on Human Rights Practices published by the Department of State shall contain an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Directorate shall consult the Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(B) a description of the type of immigration relief sought and denied to such children;

(C) a statement of the nationalities, ages, and gender of such children;

(D) a description of the procedures used to effect the removal of such children from the United States;

(E) a description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin; and

(F) any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

**SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.**

(a) PROCEDURES.—

(1) IN GENERAL.—The Director shall develop procedures to make a prompt determination of the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue.

(2) EVIDENCE.—The procedures developed under paragraph (1) shall—

(A) permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention; and

(B) allow the appeal of a determination to an immigration judge.

(3) ACCESS TO ALIEN.—The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary so as to ensure a prompt determination of the age of such alien.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Radiographs or the attestation of an alien shall not be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

**SEC. 106. EFFECTIVE DATE.**

This title shall take effect on the date which is 90 days after the date of enactment of this Act.

## TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

**SEC. 201. GUARDIANS AD LITEM.**

(a) ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.—

(1) APPOINTMENT.—The Director may appoint a guardian ad litem, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to the child's presence in the United States, including facts and circumstances—

(i) arising in the country of the child's nationality or last habitual residence; and

(ii) arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that—

(i) the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(ii) the child understands the nature of the legal proceedings or matters and determinations made by the court, and that all information is conveyed to the child in an age-appropriate manner; and

(F) report factual findings relating to—

(i) information collected under subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information collected under subparagraph (D).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until the earliest of the date on which—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(b) TRAINING.—

(1) IN GENERAL.—The Director shall provide professional training for all persons serving as guardians ad litem under this section.

(2) TRAINING TOPICS.—The training provided under paragraph (1) shall include training in—

(A) the circumstances and conditions that unaccompanied alien children face; and

(B) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a).

(2) PURPOSE.—The purpose of the pilot program established under paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established under paragraph (1).

(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

**SEC. 202. COUNSEL.**

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director should ensure that all unaccompanied alien children in the custody of the Office or the Directorate, who are not described in section 101(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director should—

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to unaccompanied alien children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with, or award grants to, nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING.—Nonprofit agencies may enter into subcontracts with, or award grants to, private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(C) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in question to properly administer the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed under subparagraph (A) shall

be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed under subparagraph (A) and submit the guidelines for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Directorate;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be given an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

**SEC. 203. EFFECTIVE DATE; APPLICABILITY.**

(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

## TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

**SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.**

(a) J VISA.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant, who is 18 years of age or younger on the date of application and who is present in the United States—

''(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien,

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

''(A) paragraphs (4), (5)(A), (6)(A), and (7) of section 212(a) shall not apply; and''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

(d) TRANSITION RULE.—Notwithstanding any other provision of law, any child described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) who filed an application for a visa before the date of enactment of this Act and who was 19, 20, or 21 years of age on the date such application was filed shall not be denied a visa after the date of enactment of this Act because of such alien's age.

**SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.**

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children.

(2) CURRICULUM.—The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. Training for Border Patrol agents and immigration inspectors shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

**SEC. 303. REPORT.**

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardian ad litem and counsel services under this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

**SEC. 304. EFFECTIVE DATE.**

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

## TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

**SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

**SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

**SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.**

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a), shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51).''.

**TITLE V—AUTHORIZATION OF APPROPRIATIONS**

**SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) the provisions of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) the provisions of this Act.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

**TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002**

**SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.**

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

''(4) AUTHORITY.—In carrying out the duties under paragraph (3), the Director is authorized to—

''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2005; and

''(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2005, including the power to—

''(i) declare providers to be in breach and seek damages for noncompliance;

''(ii) terminate the contracts of providers that are not in compliance with such conditions; and

''(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.''.

**SEC. 602. TECHNICAL CORRECTIONS.**

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

**SEC. 603. EFFECTIVE DATE.**

The amendments made by this title shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

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By Mrs. FEINSTEIN:

S. 120. A bill for the relief of Esidronio Arreola-Saucedo, Maria Elna Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private immigration relief legislation to provide lawful permanent residence status to Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola and Cindy Jael Arreola, Mexican nationals living in the Fresno area of California.

Mr. and Mrs. Arreola have lived in the United States for almost 20 years. Two of their five children, Nayely, age 18, and Cindy, age 16, also stand to benefit from this legislation. Their other three children, Roberto, age 13, Daniel, age 9, and Saray, age 8, are United States citizens. Today, Mr. and Mrs. Arreola and their two eldest children face deportation.

The story of the Arreola family is compelling and I believe they merit Congress's special consideration for such an extraordinary form of relief as a private bill.

The Arreolas are in this uncertain situation in part because of grievous errors committed by their previous counsel, who has since been disbarred. In fact, the attorney's conduct was so egregious that it compelled an immigration judge to write the Executive Office of Immigration Review seeking his disbarment for the detriment he caused his immigration clients.

Mr. Arreola has lived in the United States since 1986. He was an agricultural migrant worker in the fields of California for several years, and as such would have been eligible for permanent residence through the Seasonal Agricultural Workers, SAW, program had he known about it.

Mrs. Arreola was living in the United States at the time she became pregnant with her daughter Cindy, but returned to Mexico to give birth so as to avoid any problems with the Immigration and Naturalization Service.

Given the length of time that the Arreolas had, and have been, in the United States it is quite likely that they would have qualified for relief from deportation pursuant to the cancellation of removal provisions of the Immigration and Nationality Act, but for the conduct of their previous attorney.

Perhaps one of the most compelling reasons for permitting the family to remain in the United States is the devastating impact their deportation would have on their children—three of whom are U.S. citizens, as I stated earlier, and the other two who have lived in the United States since they were toddlers. For these children, this country is the only country they really know.

Nayely, the oldest, is a freshman at Fresno Pacific University. She was the first in her family to graduate from high school and the first to attend college. She attends Fresno Pacific University, a regionally ranked university, on a full tuition scholarship package and works part-time in the admissions office.

At her young age, Nayely has demonstrated a strong commitment to the ideals of citizenship in her adopted country. She has worked hard to achieve her full potential both in her academic endeavors and through the service she provides her community. As the Associate Dean of Enrollment Services, Cary Templeton, at Fresno Pacific University states in a letter of support, ''[t]he leaders of Fresno Pacific University saw in Nayely, a young person who will become exemplary of all that is good in the American dream.''

In high school, Nayely was a member of Advancement Via Individual Determination, AVID, a college preparatory program in which students commit to determining their own futures through achieving a college degree. Nayely was also president of the Key Club, a community service organization. She helped mentor freshmen and participates in several other student organizations in her school. Perhaps the greatest hardship to this family, if forced to return to Mexico, will be her lost opportunity to realize her dreams and further contribute to her community and to this country.

It is clear to me that Nayely feels a strong sense of responsibility for her community and country. By all indications, this is the case as well for all of the members of her family.

The Arreolas also have other family who are lawful permanent residents of this country or United States citizens. Mrs. Arreola has three brothers who are U.S. citizens and Mr. Arreola has a sister who is a U.S. citizen. It is also my understanding that they have no immediate family in Mexico.

According to immigration authorities, this family has never had any problems with law enforcement. I am told that they have filed their taxes for every year from 1990 to the present. They have always worked hard to support themselves. As I previously mentioned, Mr. Arreola was previously employed as a farm worker, but now has his own business repairing electronics. His business has been successful enough to enable him to purchase a home for his family.

It seems so clear to me that this family has embraced the American dream and their continued presence in our country would do so much to enhance the values we hold dear. Enactment of the legislation I have introduced today will enable the Arreolas to continue to make significant contributions to their community as well as the United States.

I ask my colleagues to support this private bill. I also ask unanimous consent that the text of the legislation be printed in the RECORD and that the three letters of community support be printed in the RECORD.

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

S. 120

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ADJUSTMENT OF STATUS.**

(a) IN GENERAL.—Notwithstanding any other provision of law or any order, for the purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Esidronio Arreola-Saucedo, Maria Elna Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola shall be deemed to have been lawfully admitted to, and remained in, the United States, and shall be eligible for issuance of an immigrant visa or for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(b) APPLICATION AND PAYMENT OF FEES.—Subsection (a) shall apply only if the applications for issuance of immigrant visas or the applications for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(c) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of immigrant visas to Esidronio Arreola-Saucedo, Maria Elna Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola, the Secretary of State shall instruct the proper officer to reduce by 4, during the current or subsequent fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152(e), 1153(a)), as applicable.

FRESNO PACIFIC UNIVERSITY,
*Fresno, CA.*

Hon. DIANNE FEINSTEIN,
*Washington, DC.*

SENATOR FEINSTEIN: I am writing to ask you to continue your support for the Arreola family of Porterville, CA. and to ask you to reintroduce a private bill to grant the family permanent residency. It is laudable that you came to this families aid in May 2003 because of grievous errors committed by their former immigration attorney. You recognized the outstanding academic achievements of Nayely, Esidronio and Maria Arreola's oldest daughter, as one of the most compelling reasons to allow the family to remain in the United States. You recognized that the ''Arreola family had and continues to embrace the American dream and that their continued presence in our country would enhance the values that we as Americans hold dear.'' Unfortunately the private bill you introduced was not passed into law and the family is in need of your support again.

You were right about Nayely!!! Nayely Arreola, the oldest daughter, has continued in her outstanding academic achievements and community service. The leaders at Fresno Pacific University saw in Nayely, a young person who will become exemplary of all that is good in the American dream. She has heart in the face of tough times, desire leading to solid community service, and leadership that our country desperately needs. Nayely has become a role model of success and hope that is so important to many young Hispanic students in Central California. She works in the admission office and often speaks to young people about the importance of a college education. Fresno Pacific was so impressed with her high school achievements that we offered her a full tuition scholarship package to attend our fully accredited and regionally ranked university.

Nayely's sister Cindy, now 16, is following Nayely's example. So are Roberto, now 13, Daniel, now 9, and Saray, now 8 years old. Nayely's parents, Esidronio Arreola-Saucedo and Maria Elena Cobian Arreola are continuing to be positive role models to their children and no burden on our American way of life. They would have been eligible for permanent residence through the Seasonal Agricultural Workers (SAW) program except for poor advice from their attorney who government officials have since disbarred. Please reintroduce a private bill seeking to grant this Porterville Family permanent resident status. All of us at Fresno Pacific University who have come to know and love this family would be in your debt as you to continue your support of the Arreola family.

Sincerely,

CARY W. TEMPLETON,
*Associate Dean of Enrollment Services.*

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GRANITE HILLS HIGH SCHOOL,
*Porterville, CA, January 14, 2005.*

DEAR SENATOR FEINSTEIN: This letter is in support of Granite Hills High School graduate Nayely Arreola whom I have had the pleasure of knowing for the past four and one-half years. Nayely is a responsible, hard working and intelligent young lady.

Nayely was born in Mexico; English is her second language. She came to the United States when she was approximately five years old. When Nayely enrolled in high school at Granite Hills High School she was enrolled in our AVID program. AVID, ''Advancement via Individual Determination'', is a program for students who have the ability and desire to go to college but no one in their family has attended college.

Nayely took our AVID program and Granite Hills High School by storm. What a successful four year high school career she had. Throughout high school she was still listed as an ''English Language Learner''. Nayely successfully overcame not only a language barrier but many other obstacles and emerged as a respected scholar.

Nayely graduated from Granite Hills High School with honors, was a speaker at our graduation ceremony, and was and is highly regarded and respected by her peers and our teachers. Upon graduation, she earned The Good Samaratin Scholarship a ''full ride'' scholarship to Fresno Pacific University where she will excel as she did here I am sure. She will be successful in any career she pursues. Her parents did an excellent job: I wish I had done as well with my children.

Cindy Arreola, Nayely's younger sister, is currently a student at Granite Hills High School.

We need more families like the Arreolas in our country. Thank you for supporting them in the past and I fervently hope and pray the family will be allowed to remain in the United States.

Sincerely yours,

VERYL ANN DUNCAN,
*Principal.*

GRANITE HILLS HIGH SCHOOL,
*Porterville, CA.*

DEAR SENATOR FEINSTEIN: I am writing you this letter on behalf of Nayely Arreola and her family. It is with a grateful heart that I praise you for all you have done so far for this family. I am urging that the Arreola bill be reintroduced so that this great family can stay in our country.

While Nayely was at Granite Hills High School, she was my prized pupil. I am the Speech and Debate teacher and Nayely represented our school in the Optimist Speech contest and the Lions Club Speech contest. In the Optimist contest she was a Club and Zone winner and last year in the Lions Club contest she was a club winner. Nayely was not only had my respect as a speaker and a student in my program, she had my highest opinion as the person she represented to her peers and teachers. I can honestly say Nayely was the hardest working student I have encountered in my tenure at Granite Hills High. She graduated fourth in her class and was a C. S. F. seal bearer at graduation. She was the president of the Key Club where she assisted in food, coat and toy drives for the needy of our community. She was a LINK, leader, which works with freshmen and their orientation to our school.

Nayely Arreola is more than a remarkable student, she is a remarkable person. Everything she has done has been to prepare her to go to a University in the United States. She was accepted at Fresno Pacific University as a President's Scholar. She is doing an outstanding job at Fresno Pacific University as a freshman. She is America's dream-her contribution to our country will be great. I have watched with great pride as she has grown into a wonderful young lady, ready to take on the world.

Please, I urge you to reintroduce this bill and work to have it passed.

CHRISTINE L. AMANN,
*Reading Specialist/Speech Coordinator.*

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By Mr. DEWINE (for himself, Mr. DURBIN, Mr. ALLEN, Mr. HAGEL, Mr. COLEMAN, Mr. JOHNSON, Mr. OBAMA, and Mr. LEAHY):

S. 121. A bill to amend titles 10 and 38, United States Code, to improve the benefits provided for survivors of deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. DEWINE. Mr. President, I rise today to honor the many families of our Nation's servicemen and women. We owe them a tremendous debt of gratitude for the services they have performed in supporting their family members in uniform. These families embody courage, patriotism, and dedication.

Mr. President, we have all heard the saying, ''if the military wanted you to have a family, they would have issued you one at boot camp.'' But, the truth today is that more than 50% of America's men and women in uniform are married and about 50% of those families also have children. These families supply endless support for our servicemen and women in life and I believe we need to provide them that same support in the event of the death of the service member while serving on active duty. That is why I am joining my colleagues Senators DURBIN, ALLEN, HAGEL, COLEMAN, JOHNSON, OBAMA, and LEAHY in introducing legislation today

to improve critical survivor benefits for those families who have lost a loved one on active duty.

Our legislation would amend four key benefit programs to improve the overall quality of life for survivors and dependent children. First, it would increase the death gratuity to $100,000 and create a death gratuity for each child under the age of 18 in the amount of $25,000. Currently, the gratuity for spouses is just $12,000, while no benefit exits for dependent children. This change would provide flexibility for the spouse in maintaining a home, paying off remaining debt, and providing immediate funds to transition the family to a life without the service member. Additionally, the dependent benefit would offer surviving children an initial investment that can be used to transition to adulthood, for example, as a down payment on a house or for college tuition.

Second, our legislation would extend military health insurance, known as TRICARE Prime, to every dependent child of a deceased service member at no cost until the age of 21, or until 23 if the dependent attends college. The Department of Defense indicates that this important benefit would save dependents approximately $15,000 per year compared to the cost of private health insurance premiums. Expanded TRICARE coverage also guarantees that surviving dependents would continue to have access to some of the best doctors this country has to offer and would receive adequate health care and treatment.

Third, our legislation would increase the dependency and indemnity compensation, or DIC, for a spouse to $1500 per month, as well as $750 per month for each child. In July 2004, the Government Accountability Office released a report titled ''Military Personnel: Survivor Benefits for Service members and Federal, State, and City Employees.'' This report outlined hypothetical situations to demonstrate the benefits received at certain pay grades. This report indicated that an E–3, meaning a Private First Class or a Lance Corporal, with two dependents and three years of service would receive $1,182 per month from the Survivor Benefit Plan, SBP, and $1208 per month for DIC. This equals $28,680 per year for the family to live on if the surviving spouse is not employed.

In 2003, the USDA Center for Nutrition Policy and Promotion released a report on the costs associated with raising children. The study indicated that, on average across the United States, families spent between $9,500 and $10,500 per child on expenses in a two child, husband-wife family. Further, this study indicated that families with a household income below $47,000 per year were only able to spend from $7000 to $8000 per year on expenses to raise a child. For the hypothetical family I just described, it would cost more than $18,000 per year just to meet the expenses of raising the two dependents. However, since the household income, if the surviving spouse is not employed, would reach just $28,860, then it is likely that only about $14,000 will be spent for that purpose. Clearly, that's just not enough. Our bill would help ensure that the essential needs of the family can be met.

Finally, our legislation would increase the benefits available from the Survivors' and Dependents' Educational Assistance Program. It would eliminate the current 45 month cap on benefit payments and establish an $80,000 lump sum that can be drawn down for any educational expenses, including tuition, fees, room, board, and books. Under current law, a survivor only has access to about $38,867 if he/she attends college or a trade school on a full-time basis. As we know, this amount would not even guarantee a survivor access to a college degree from a state university. In fact, let's use the Ohio State University as an example. This public institution will cost in-state students roughly $18,600 for the 2004–2005 school year. Now, if there were no cost increases over the course of a four year matriculation, which, in this day and age, is an unrealistic assumption, a degree from OSU would cost $75,600. That is $36,733 more than the current benefit available from the Department of Veterans Affairs. Clearly a gap exists.

Mr. President, we owe the families of those who have lost loved ones in active duty our gratitude and support. The President's inauguration last week reminded me of something President Abraham Lincoln said in his second inaugural address. He said this: ''With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan. . . .'' It is time to do a better job of caring for these families. It is time to ensure that this Congress does what is right. I ask my colleagues to stand with me in support for these families and do our part, as they have done theirs.

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

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

S. 121

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DEATH GRATUITIES PAYABLE WITH RESPECT TO DECEASED MEMBERS OF THE ARMED FORCES.**

(a) INCREASED AMOUNT OF DEATH GRATUITY.—Section 1478(a) of title 10, United States Code, is amended by striking ''$12,000'' in the first sentence and inserting ''$100,000''.

(b) ADDITIONAL DEATH GRATUITY PAYABLE TO CHILD OF DECEASED.—

(1) PAYMENT AT AGE 21.—Section 1477 of such title is amended by adding at the end the following new subsection:

''(e) ADDITIONAL DEATH GRATUITY FOR DEPENDENT CHILDREN.—(1) If, in the case of a death for which a death gratuity is payable under section 1475 or 1476 of this title, the deceased is survived by one or more children described in subsection (b) who are under 18 years of age on the date of the death, the Secretary concerned shall pay an additional death gratuity to each such child when that child attains 21 years of age.

''(2) A death gratuity payable to any person under this subsection with respect to a death is in addition to any death gratuity that is payable to that person under section 1475 or 1476 of this title with respect to such death pursuant to subsection (a)(2).''.

(2) AMOUNT.—

(A) Subsection (a) of section 1478 of such title, as amended by subsection (a) of this section, is further amended by inserting after the first sentence the following new sentence: ''The death gratuity payable to a child of a deceased person under section 1477(e) of this title shall be $25,000.''.

(B) Subsection (c) of such section is amended by striking ''the amount'' and inserting ''each amount''.

(3) CONFORMING AMENDMENTS.—(A) Section 1477(d) of such title is amended by striking ''he receives the death gratuity,'' and inserting ''receiving payment of a death gratuity under section 1475 or 1476 of this title,''.

(B) Section 1479 of such title is amended—

(i) by striking ''immediate''; and

(ii) by inserting ''or 1477(e)'' after ''section 1475''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall take effect as of October 1, 2001, and shall apply with respect to deaths occurring on or after such date.

(2) EXCEPTION.—The amendment made by subsection (b)(2)(B) shall take effect as of October 28, 2004, immediately following the enactment of Public Law 108–375.

**SEC. 2. INCREASED PERIOD OF CONTINUED TRICARE COVERAGE OF CHILDREN OF MEMBERS OF THE UNIFORMED SERVICES WHO DIE WHILE SERVING ON ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.**

(a) PERIOD OF ELIGIBILITY.—Section 1079(g) of title 10, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)'';

(2) by striking the second sentence and inserting the following:

''(2) In addition to any continuation of eligibility for benefits under paragraph (1), when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the three-year period beginning on the date of the member's death, except that, in the case of such a dependent who is a child of the deceased, the period of continued eligibility shall be the longer of the following periods beginning on such date:

''(A) Three years.

''(B) The period ending on the date on which the child attains 21 years of age.

''(C) In the case of a child of the deceased who, at 21 years of age, is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the administering Secretary and was, at the time of the member's death, in fact dependent on the member for over one-half of the child's support, the period ending on the earlier of the following dates:

''(i) The date on which the child ceases to pursue such a course of study, as determined by the administering Secretary.

''(ii) The date on which the child attains 23 years of age.

''(3) For the purposes of paragraph (2)(C), a child shall be treated as being enrolled in a full-time course of study in an institution of higher education during any reasonable period of transition between the child's completion of a full-time course of study in a secondary school and the commencement of an enrollment in a full-time course of study in an institution of higher education, as determined by the administering Secretary.

''(4) No charge may be imposed for any benefits coverage under this chapter that is provided for a child for a period of continued eligibility under paragraph (2), or for any benefits provided to such child during such period under that coverage.''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect as of October 1, 2001, and shall apply with respect to deaths occurring on or after such date.

**SEC. 3. INCREASE AND ENHANCEMENT OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.**

(a) IN GENERAL.—Subsection (a) of section 1311 of title 38, United States Code, is amended—

(1) in paragraph (1), by striking ''$967'' and inserting ''$1,500'';

(2) in paragraph (2), by inserting ''or (4)'' after ''paragraph (1)''; and

(3) by adding at the end the following new paragraph:

''(4) In the case of a surviving spouse who remarries, dependency and indemnity compensation shall be paid to the surviving spouse at a monthly rate equal to 50 percent of the monthly rate otherwise provided under paragraph (1) for—

''(A) the first 60 months beginning after the date of such remarriage; or

''(B) in the case of a surviving spouse with one or more children below the age of 18, each month until the first month beginning after the date on which each such child has attained the age of 18.''.

(b) RATES FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN.—Such section is further amended—

(1) by striking subsection (b) and inserting the following new subsection (b):

''(b)(1) If there is a surviving spouse with one or more children below the age of 18, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $750 for each such child.

''(2)(A) Except as provided in subparagraph (B), the increase in dependency and indemnity compensation payable to a surviving spouse under paragraph (1) shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18.

''(B) The cessation under subparagraph (A) of the increase in dependency and indemnity compensation payable to a surviving spouse under paragraph (1) shall not occur with respect to any child of the surviving spouse who, before attaining the age of 18, becomes permanently incapable of support.''; and

(2) by striking subsection (e), as added by section 301(a) of the Veterans Benefits Improvements Act of 2004 (Public Law 104–454).

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 2001, and shall apply with respect to months beginning on or after that date.

(2) The amendment made by subsection (b)(2) shall take effect on the date of the enactment of this Act.

**SEC. 4. EXPANSION AND ENHANCEMENT OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.**

(a) TERMINATION OF DURATIONAL LIMITATION ON USE OF EDUCATIONAL ASSISTANCE.—

(1) TERMINATION OF LIMITATION AND RESTATEMENT OF CONTINUING REQUIREMENTS.—Subsection (a) of section 3511 of title 38, United States Code, is amended to read as follows:

''(a)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of educational assistance described in paragraph (2) shall not be charged against the entitlement of any individual under this chapter.

''(2) The payment of educational assistance referred to in paragraph (1) is the payment of such assistance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

''(A) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10; and

''(B) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A), the course pursuit.''.

(2) CONFORMING AMENDMENTS.—(A) The heading of section 3511 of such title is amended to read as follows:

**''§ 3511. Treatment of certain interruptions in pursuit of programs of education''.**

(B) Section 3532(g) of such title, as amended by section 106(b)(3) of the Veterans Earn and Learn Act of 2004 (title I of Public Law 108–454), is further amended—

(i) by striking paragraph (2); and

(ii) by redesignating paragraph (3) as paragraph (2).

(C) Section 3541 of such title is amended to read as follows:

**''§ 3541. Special restorative training**

''(a) The Secretary may, at the request of an eligible person—

''(1) determine whether such person is in need of special restorative training; and

''(2) if such need is found to exist, prescribe a course which is suitable to accomplish the purposes of this chapter.

''(b) A course of special restorative training under subsection (a) may, at the discretion of the Secretary, contain elements that would contribute toward an ultimate objective of a program of education.''.

(D) Section 3695(a)(4) of such title is amended by striking ''35,''.

(b) EXTENSION OF DELIMITING AGE OF ELIGIBILITY FOR DEPENDENTS.—Section 3512(a) of title 38, United States Code, is amended by striking ''twenty-sixth birthday'' each place it appears and inserting ''thirtieth birthday''.

(c) AMOUNT OF EDUCATIONAL ASSISTANCE.—

(1) IN GENERAL.—Section 3532 of title 38, United States Code, is amended to read as follows:

**''§ 3532. Amount of educational assistance**

''(a) The aggregate amount of educational assistance to which an eligible person is entitled under this chapter is $80,000, as increased from time to time under section 3564 of this title.

''(b) Within the aggregate amount provided for in subsection (a), educational assistance under this chapter may be paid for any purpose, and in any amount, as follows:

''(1) A program of education consisting of institutional courses.

''(2) A full-time program of education that consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion.

''(3) A farm cooperative program consisting of institutional agricultural courses prescheduled to fall within forty-four weeks of any period of twelve consecutive months that is pursued by an eligible person who is concurrently engaged in agricultural employment which is relevant to such institutional agricultural courses as determined under standards prescribed by the Secretary.

''(4) A course or courses or other program of special educational assistance as provided in section 3491(a) of this title.

''(5) A program of apprenticeship or other on-job training pursued in a State as provided in section 3687(a) of this title.

''(6) In the case of an eligible spouse or surviving spouse, a program of education exclusively by correspondence as provided in section 3686 of this title.

''(7) A special training allowance for special restorative training as provided in section 3542 of this title.

''(c) If a program of education is pursued by an eligible person at an institution located in the Republic of the Philippines, any educational assistance for such person under this chapter shall be paid at the rate of $0.50 for each dollar.

''(d)(1) Subject to paragraph (2), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3501(a)(5) of this title is the lesser of $2,000 or the fee charged for the test.

''(2) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.''.

(2) CONFORMING AMENDMENTS.—(A) Section 3533 of such title is amended to read as follows:

**''§ 3533. Tutorial assistance**

''An eligible person shall, without any charge to any entitlement of such person to educational assistance under section 3532(a) of this title be entitled to the benefits provided an eligible veteran under section 3492 of this title.''.

(B) Section 3534 of such title is repealed.

(C) Section 3542 of such title is amended—

(i) in subsection (a), by striking ''computed at the basic rate'' and all that follows through the end of the subsection and inserting a period; and

(ii) in subsection (b), by striking ''an educational assistance allowance'' and inserting ''educational assistance''.

(D) Section 3543(c) of such title is amended—

(i) in paragraph (1), by adding ''and'' at the end;

(ii) by striking paragraph (2); and

(iii) by redesignating paragraph (3) as paragraph (2).

(E) Section 3564 of such title is amended by striking ''rates payable under sections 3532, 3534(b), and 3542(a)'' and inserting ''aggregate amount of educational assistance payable under section 3532''.

(F) Paragraph (1) of section 3565(b) of such title is amended to read as follows:

''(1) educational assistance payable under section 3532 of this title, including the special training allowance referred to in subsection (b)(7) of such section, shall be paid at the rate of $0.50 for each dollar; and''.

(G) Section 3687 of such title is amended—

(i) in subsection (a)—

(I) in the matter preceding paragraph (1), by striking ''or an eligible person (as defined in section 3501(a) of this title)''; and

(II) in the flush matter following paragraph (2), by striking ''chapters 34 and 35'' and inserting ''chapter 34'';

(ii) in subsection (c), by striking ''chapters 34 and 35'' and inserting ''chapter 34''; and

(iii) in subsection (e), as added by section 102(a) of the Veterans Earn and Learn Act of

2004 (title I of Public Law 108–454), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) In this subsection, the term 'individual' means an eligible veteran who is entitled to monthly educational assistance allowances payable under section 3015(e) of this title.''.

(d) OTHER CONFORMING AMENDMENTS.—(1) Section 3524 of title 38, United States Code, is amended by striking ''allowance'' each place it appears.

(2)(A) Section 3531 of such title is amended—

(i) in subsection (a), by striking ''an educational assistance allowance'' and inserting ''educational assistance''; and

(ii) in subsection (b), by striking ''allowance''.

(B) The heading of such section is amended by striking ''**allowance**''.

(3) Section 3537(a) of such title is amended by striking ''additional''.

(e) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 35 of title 38, United States Code, is amended—

(1) by striking the item relating to section 3511 and inserting the following new item:

''3511. Treatment of certain interruptions in pursuit of programs of education.'';

(2) by striking the items relating to section 3531, 3532, and 3533 and inserting the following new items:

''3531. Educational assistance.
''3532. Amount of educational assistance.
''3533. Tutorial assistance.'';

(3) by striking the item relating to section 3534; and

(4) by striking the item relating to section 3541 and inserting the following new item:

''3541. Special restorative training.''.

(f) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 2001.

(2) The amendments made by subsections (a)(2)(B) and (c)(2)(G)(iii) shall take effect on the date of the enactment of this Act.

(3) Notwithstanding the effective date under paragraph (1) of the amendment to section 3564 of title 38, United States Code, made by subsection (c)(2)(E), the Secretary of Veterans Affairs shall make the first increase in the aggregate amount of educational assistance under section 3532 of such title as required by such section 3564 (as so amended) for fiscal year 2006.

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By Mr. FEINGOLD:

S. 122. A bill to abolish the death penalty under Federal law; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I introduce the Federal Death Penalty Abolition Act of 2005. This bill would abolish the death penalty at the Federal level. It would put an immediate halt to executions and forbid the imposition of the death penalty as a sentence for violations of Federal law.

Since 1976, when the death penalty was reinstated by the Supreme Court, there have been almost 1,000 executions across the country, including three at the Federal level. At the same time, over 100 people on death row were later found innocent and released from death row. Exonerated inmates are not only removed from death row, but they are usually released from prison altogether. Apparently, these people never should have been convicted in the first place. While death penalty proponents claim that the death penalty is fair, efficient, and a deterrent, the fact remains that our criminal justice system has failed and has resulted in at least 117 very grave mistakes.

Nine hundred and forty-four executions, and 117 exonerations in the modern death penalty era. That is an embarrassing statistic, one that should have us all questioning the use of capital punishment in this country. And we continue to learn about more cases in which our justice system has failed. Since I first introduced this bill in November of 1999, 36 death row inmates have been exonerated throughout the country, 12 since I introduced this bill in the last Congress in February 2003. Since I last introduced this bill, 115 people have been executed nationwide. How many innocents are among them? We may never know.

While executions continue and the death row population grows, the national debate on the death penalty intensifies and has become even more vigorous. The number of voices joining in to express doubt about the use of capital punishment in America is growing. As evidence of the flaws in our system mounts, it has created an awareness that has not escaped the attention of the American people. Layer after layer of confidence in the death penalty system has been gradually peeling away, and the voices of those questioning its fairness are growing louder and louder. Now they can be heard from college campuses and courtrooms and podiums across the Nation, to the Senate Judiciary Committee hearing room, to the Supreme Court. We must not ignore them.

That our modern society relies on killing as punishment is disturbing enough. Even more disturbing, however, is that our States' and Federal Government's use of the death penalty is often not consistent with principles of due process, fairness, and justice. These principles are the foundation of our criminal justice system. It is clearer than ever before that we have put innocent people on death row. In addition, statistics show that those States that have the death penalty are more likely to put people to death for killing white victims than for killing black victims.

After the death penalty was reinstated by the Supreme Court in 1976, the Federal Government first resumed death penalty prosecutions after enactment of a 1988 Federal law that provided for the death penalty for murder in the course of a drug-kingpin conspiracy. The Federal death penalty was then expanded significantly in 1994, when the omnibus crime bill allowed its use to apply to a total of some 60 Federal offenses. Since 1994, Federal prosecutions seeking the death penalty have now accelerated.

A survey on the Federal death penalty system from 1988 to early 2000 was released by the U.S. Department of Justice in September 2000. That report showed troubling racial and geographic disparities in the Federal Government's administration of the death penalty. In other words, who lives and who dies in the Federal system appears to relate to the color of the defendant's skin or the region of the country where the defendant is prosecuted. Attorney General Janet Reno was so disturbed by the results of that report that she ordered a further, in-depth study of the results. Attorney General John Ashcroft pledged to continue that study, but we still await the results of that further study. The Federal Government must do all that it can to ensure that no person is ever subject to harsher penalties because of the color of the defendant's skin.

I am certain that not one of my colleagues here in the Senate, not a single one, would defend racial discrimination in this ultimate punishment. The most fundamental guarantee of our Constitution is equal justice under law, and equal protection of the laws. Yet we have a system in place today that raises grave questions about whether that guarantee is being met.

While the Federal death penalty system is clearly plagued by flaws, there are 38 States across our Nation that also authorize the use of capital punishment. And like the Federal system, those systems are not free from error.

Five years ago, Governor George Ryan took the historic step of placing a moratorium on executions in Illinois and creating an independent, blue ribbon commission to review the State's death penalty system. The Commission conducted an extensive study of the death penalty in Illinois and released a report with 85 recommendations for reform of the death penalty system. The Commission concluded that the death penalty system is not fair, and that the risk of executing the innocent is alarmingly real. Governor Ryan later pardoned four death row inmates and commuted the sentences of all remaining Illinois death row inmates to life in prison before he left office in January 2003:

Illinois is not alone. Four years ago, then Governor Parris Glendening learned of suspected racial disparities in the administration of the death penalty in Maryland. Governor Glendening did not look the other way. He commissioned the University of Maryland to conduct the most exhaustive study of Maryland's application of the death penalty in history. Then faced with the rapid approach of a scheduled execution, Governor Glendening acknowledged that it was unacceptable to allow executions to take place while the study he had ordered was not yet complete. So, in May 2002, he placed a moratorium on executions. Unfortunately, Governor Bob Ehrlich later lifted that moratorium and executions have resumed in Maryland.

The Maryland study was released in January 2003, and the findings should startle us all. The study found that blacks accused of killing whites are

simply more likely to receive a death sentence than blacks who kill blacks, or than white killers. According to the report, black offenders who kill whites are four times as likely to be sentenced to death as blacks who kill blacks, and twice as likely to get a death sentence as whites who kill whites.

Maryland and Illinois are not exceptions to a rule, nor anomalies in an otherwise perfect system. In fact, since reinstatement of the modern death penalty, 81 percent of capital cases across the country have involved white victims, even though only 50 percent of murder victims are white. Nationwide, more than half of the death row inmates are African Americans or Hispanic Americans.

There is evidence of racial disparities, inadequate counsel, prosecutorial misconduct, and false scientific evidence in death penalty systems across the country. While the research done in Maryland and Illinois has yielded shocking results, there are 36 other States that authorize the use of the death penalty, most of them far more frequently. Twenty of the 38 States that authorize capital punishment have executed more inmates than Maryland, and 14 of those States have carried out more executions than Illinois. So while we are closer to uncovering the unthinkable truth about the flaws in the Maryland and Illinois death penalty systems, there are 36 other States with systems that are most likely plagued with the same flaws. And yet, the killing continues.

At the beginning of 2005, I cannot help but believe that our progress has been tarnished by our Nation's not only continuing, but increasing use of the death penalty. We are a Nation that prides itself on the fundamental principles of justice, liberty, equality and due process. We are a Nation that scrutinizes the human rights records of other nations. Historically, we are one of the first nations to speak out against torture and killings by foreign governments. We should hold our own system of justice to the highest standard.

Over the last few years, some prominent voices in our country have done just that. And they are not just voices of liberals, or of the faith community. They are the voices of Justice Sandra Day O'Connor, Reverend Pat Robertson, George Will, former FBI Director William Sessions, Republican Governor George Ryan, and Democratic Governor Parris Glendening. The voices of those questioning our application of the death penalty are growing in number, and they are growing louder.

And while we examine the flaws in our death penalty system, we cannot help but note that our use of the death penalty stands in stark contrast to the majority of nations, which have abolished the death penalty in law or practice. There are now 117 countries that have abolished the death penalty in law or in practice. The European Union denies membership in the alliance to those nations that use the death penalty. In fact, it passed a resolution calling for the immediate and unconditional global abolition of the death penalty, and it specifically called on all States within the United States to abolish the death penalty. This is significant because it reflects the unanimous view of a group of nations with which the United States enjoys the closest of relationships and shares the deepest common values.

What is even more troubling in the international context is that the United States is now one of only five countries that imposes the death penalty for crimes committed by juveniles. So, while a May 2002 Gallup poll found that 69 percent of Americans oppose the death penalty for those under the age of 18, we are one of only five nations on this earth that puts to death people who were under 18 years of age when they committed their crimes. The others are Iran, the Democratic Republic of the Congo, Nigeria, and Saudi Arabia. In the last decade, the United States has executed more juvenile offenders than all other nations combined.

These are countries that we often criticize for human rights abuses. We should remove any basis for charges that human rights violations are taking place on our own soil by halting the execution of people who were not even adults when they committed the crimes for which they were sentenced to die. No one can reasonably argue that executing child offenders is a normal or acceptable practice in the world community. And I do not think that we should be proud that the United States is the world leader in the execution of child offenders.

As we begin a new year and another Congress, our society is still far from fully just. The continued use of the death penalty shames us. The penalty is at odds with our best traditions. It is wrong and it is immoral. The adage ''two wrongs do not make a right,'' applies here in the most fundamental way. Our Nation has long ago done away with other barbaric punishments like whipping and cutting off the ears of criminals. Just as our Nation did away with these punishments as contrary to our humanity and ideals, it is time to abolish the death penalty as we seek justice in this new century. And it is not just a matter of morality. The continued viability of our justice system as a truly just system that deserves the respect of our own people and the world requires that we do so. Our Nation's striving to remain the leading defender of freedom, liberty and equality demands that we do so.

Abolishing the death penalty will not be an easy task. It will take patience, persistence, and courage. As we work to move forward in a rapidly changing world, let us leave this archaic practice behind.

I ask my colleagues to join me in taking the first step in abolishing the death penalty in our great Nation. I also call on each State that authorizes the use of the death penalty to cease this practice. Let us step away from the culture of violence and restore fairness and integrity to our criminal justice system.

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

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

S. 122

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Federal Death Penalty Abolition Act of 2005''.

**SEC. 2. REPEAL OF FEDERAL LAWS PROVIDING FOR THE DEATH PENALTY.**

(a) HOMICIDE-RELATED OFFENSES.—

(1) MURDER RELATED TO THE SMUGGLING OF ALIENS.—Section 274(a)(1)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(B)(iv)) is amended by striking ''punished by death or''.

(2) DESTRUCTION OF AIRCRAFT, MOTOR VEHICLES, OR RELATED FACILITIES RESULTING IN DEATH.—Section 34 of title 18, United States Code, is amended by striking ''to the death penalty or''.

(3) MURDER COMMITTED DURING A DRUG-RELATED DRIVE-BY SHOOTING.—Section 36(b)(2)(A) of title 18, United States Code, is amended by striking ''death or''.

(4) MURDER COMMITTED AT AN AIRPORT SERVING INTERNATIONAL CIVIL AVIATION.—Section 37(a) of title 18, United States Code, is amended, in the matter following paragraph (2), by striking ''punished by death or''.

(5) CIVIL RIGHTS OFFENSES RESULTING IN DEATH.—Chapter 13 of title 18, United States Code, is amended—

(A) in section 241, by striking '', or may be sentenced to death'';

(B) in section 242, by striking '', or may be sentenced to death'';

(C) in section 245(b), by striking '', or may be sentenced to death''; and

(D) in section 247(d)(1), by striking '', or may be sentenced to death''.

(6) MURDER OF A MEMBER OF CONGRESS, AN IMPORTANT EXECUTIVE OFFICIAL, OR A SUPREME COURT JUSTICE.—Section 351 of title 18, United States Code, is amended—

(A) in subsection (b)(2), by striking ''death or''; and

(B) in subsection (d)(2), by striking ''death or''.

(7) DEATH RESULTING FROM OFFENSES INVOLVING TRANSPORTATION OF EXPLOSIVES, DESTRUCTION OF GOVERNMENT PROPERTY, OR DESTRUCTION OF PROPERTY RELATED TO FOREIGN OR INTERSTATE COMMERCE.—Section 844 of title 18, United States Code, is amended—

(A) in subsection (d), by striking ''or to the death penalty'';

(B) in subsection (f)(3), by striking ''subject to the death penalty, or'';

(C) in subsection (i), by striking ''or to the death penalty''; and

(D) in subsection (n), by striking ''(other than the penalty of death)''.

(8) MURDER COMMITTED BY USE OF A FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME.—Section 924(j)(1) of title 18, United States Code, is amended by striking ''by death or''.

(9) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking ''death or''.

(10) FIRST DEGREE MURDER.—Section 1111(b) of title 18, United States Code, is amended by striking ''by death or''.

(11) MURDER BY A FEDERAL PRISONER.—Section 1118 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by death or''; and

(B) in subsection (b), in the third undesignated paragraph—

(i) by inserting ''or'' before ''an indeterminate''; and

(ii) by striking '', or an unexecuted sentence of death''.

(12) MURDER OF A STATE OR LOCAL LAW ENFORCEMENT OFFICIAL OR OTHER PERSON AIDING IN A FEDERAL INVESTIGATION; MURDER OF A STATE CORRECTIONAL OFFICER.—Section 1121 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by sentence of death or''; and

(B) in subsection (b)(1), by striking ''or death''.

(13) MURDER DURING A KIDNAPING.—Section 1201(a) of title 18, United States Code, is amended by striking ''death or''.

(14) MURDER DURING A HOSTAGE-TAKING.—Section 1203(a) of title 18, United States Code, is amended by striking ''death or''.

(15) MURDER WITH THE INTENT OF PREVENTING TESTIMONY BY A WITNESS, VICTIM, OR INFORMANT.—Section 1512(a)(2)(A) of title 18, United States Code, is amended by striking ''the death penalty or''.

(16) MAILING OF INJURIOUS ARTICLES WITH INTENT TO KILL OR RESULTING IN DEATH.—Section 1716(i) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(17) ASSASSINATION OR KIDNAPING RESULTING IN THE DEATH OF THE PRESIDENT OR VICE PRESIDENT.—Section 1751 of title 18, United States Code, is amended—

(A) in subsection (b)(2), by striking ''death or''; and

(B) in subsection (d)(2), by striking ''death or''.

(18) MURDER FOR HIRE.—Section 1958(a) of title 18, United States Code, is amended by striking ''death or''.

(19) MURDER INVOLVED IN A RACKETEERING OFFENSE.—Section 1959(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(20) WILLFUL WRECKING OF A TRAIN RESULTING IN DEATH.—Section 1992(b) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(21) BANK ROBBERY-RELATED MURDER OR KIDNAPING.—Section 2113(e) of title 18, United States Code, is amended by striking ''death or''.

(22) MURDER RELATED TO A CARJACKING.—Section 2119(3) of title 18, United States Code, is amended by striking '', or sentenced to death''.

(23) MURDER RELATED TO AGGRAVATED CHILD SEXUAL ABUSE.—Section 2241(c) of title 18, United States Code, is amended by striking ''unless the death penalty is imposed,''.

(24) MURDER RELATED TO SEXUAL ABUSE.—Section 2245 of title 18, United States Code, is amended by striking ''punished by death or''.

(25) MURDER RELATED TO SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(d) of title 18, United States Code, is amended by striking ''punished by death or''.

(26) MURDER COMMITTED DURING AN OFFENSE AGAINST MARITIME NAVIGATION.—Section 2280(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(27) MURDER COMMITTED DURING AN OFFENSE AGAINST A MARITIME FIXED PLATFORM.—Section 2281(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(28) TERRORIST MURDER OF A UNITED STATES NATIONAL IN ANOTHER COUNTRY.—Section 2332(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(29) MURDER BY THE USE OF A WEAPON OF MASS DESTRUCTION.—Section 2332a of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''punished by death or''; and

(B) in subsection (b), by striking ''by death, or''.

(30) MURDER BY ACT OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.—Section 2332b(c)(1)(A) of title 18, United States Code, is amended by striking ''by death, or''.

(31) MURDER INVOLVING TORTURE.—Section 2340A(a) of title 18, United States Code, is amended by striking ''punished by death or''.

(32) MURDER RELATED TO A CONTINUING CRIMINAL ENTERPRISE OR RELATED MURDER OF A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(A) in each of subparagraphs (A) and (B) of subsection (e)(1), by striking '', or may be sentenced to death'';

(B) by striking subsections (g) and (h) and inserting the following:

''(g) [Reserved.]

''(h) [Reserved.]'';

(C) in subsection (j), by striking ''and as to appropriateness in that case of imposing a sentence of death'';

(D) in subsection (k), by striking '', other than death,'' and all that follows before the period at the end and inserting ''authorized by law''; and

(E) by striking subsections (l) and (m) and inserting the following:

''(l) [Reserved.]

''(m) [Reserved.]''.

(33) DEATH RESULTING FROM AIRCRAFT HIJACKING.—Section 46502 of title 49, United States Code, is amended—

(A) in subsection (a)(2), by striking ''put to death or''; and

(B) in subsection (b)(1)(B), by striking ''put to death or''.

(b) NON-HOMICIDE RELATED OFFENSES.—

(1) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking ''punished by death or'' and all that follows before the period and inserting ''imprisoned for any term of years or for life''.

(2) TREASON.—Section 2381 of title 18, United States Code, is amended by striking ''shall suffer death, or''.

(c) REPEAL OF CRIMINAL PROCEDURES RELATING TO IMPOSITION OF DEATH SENTENCE.—

(1) IN GENERAL.—Chapter 228 of title 18, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by striking the item relating to chapter 228.

**SEC. 3. PROHIBITION ON IMPOSITION OF DEATH SENTENCE.**

(a) IN GENERAL.—Notwithstanding any other provision of law, no person may be sentenced to death or put to death on or after the date of enactment of this Act for any violation of Federal law .

(b) PERSONS SENTENCED BEFORE DATE OF ENACTMENT.—Notwithstanding any other provision of law, any person sentenced to death before the date of enactment of this Act for any violation of Federal law shall serve a sentence of life imprisonment without the possibility of parole.

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By Mr. FEINGOLD:

S. 123. A bill to amend part D of title XVIII of the Social Security Act to provide for negotiation of fair prices for Medicare prescription drugs; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, today I am introducing a bill that will fix one of the fundamental flaws of the Medicare prescription drug benefit signed into law last Congress. The ''Efficiency in Government Health Care Spending Act'' will remove language included in the Medicare Modernization Act that prohibits the Medicare program from negotiating prescription drug prices with manufacturers. I believe that the Medicare prescription drug benefit does far too little to bring down the prices of prescription drugs, and that there are not enough measures to keep the skyrocketing cost of the program in check. In fact, it actually takes away one of the best tools the Medicare program could use in bringing down prescription drug prices by denying the government the ability to negotiate price discounts on behalf of Medicare beneficiaries.

My bill will allow the Federal Government to take advantage of the purchasing power of the Medicare program, saving taxpayers' dollars while reducing the costs of prescription drugs for Medicare beneficiaries. We need to act now to fix the flaws included in the Medicare prescription drug benefit, before the benefit begins next year.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 123

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Efficiency in Government Health Care Spending Act''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) Prohibiting the Federal Government from negotiating prescription drug prices with manufacturers fails to take advantage of the purchasing power of the Medicare program.

(2) Negotiating prescription drug prices can reduce the costs of prescription drugs for both the Medicare program and taxpayers.

(3) A 2002 study by the inspector general of the Department of Health and Human Services found that—

(A) both the Medicare program and the beneficiaries of the Medicare program continually pay too much for medical equipment and medical supplies; and

(B) if the Medicare program paid the same prices for 16 health care supplies as the Department of Veterans Affairs, which directly negotiates prices with manufacturers, pays for those supplies, the Federal Government could save $958,000,000 each year.

**SEC. 3. SENSE OF THE SENATE REGARDING THE USE OF AUTHORITY TO NEGOTIATE PRICES FOR MEDICARE PRESCRIPTION DRUGS.**

It is the sense of the Senate that the Secretary of Health and Human Services should exercise the authority under section 1860D–11(i)(1) of the Social Security Act (42 U.S.C. 1395w–111(i)(1)), as amended by section 4, so as to assure an affordable medicare drug benefit for medicare beneficiaries and taxpayers.

**SEC. 4. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.**

(a) NEGOTIATION.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–111) is amended by striking subsection (i) (relating to noninterference) and by inserting the following:

''(i) AUTHORITY TO NEGOTIATE; NO NATIONAL FORMULARY.—

''(1) AUTHORITY TO NEGOTIATE PRICES WITH MANUFACTURERS.—In order to ensure that beneficiaries enrolled under prescription drug plans and MA–PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.

''(2) NO NATIONAL FORMULARY.—In order to promote competition under this part and in carrying out this part, the Secretary may not require a particular formulary for covered part D drugs.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

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By Mr. FEINGOLD:

S. 124. A bill to amend title XVIII of the Social Security Act to repeal the MA Regional Plan Stabilization Fund; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, today I am introducing a bill that will remove the multi-billion dollar ''stabilization fund'' from the new Medicare prescription drug benefit. This stabilization fund is in essence a slush fund that gives billions of dollars to private insurance companies. This is not an efficient use of taxpayers' dollars. In fact, it's not clear why it's even necessary. If private managed care plans are successful in bringing costs down, as backers of the new Medicare bill expect, and if seniors supposedly want to choose private plans, as backers of the new Medicare bill believe, then why should American taxpayers pay private companies more money to get more people to enroll in them?

We should not be subsidizing private health insurance companies in the name of Medicare reform. It is fiscally irresponsible, in a time of record deficits, to use taxpayers' dollars as a giveaway to private insurance companies. By removing this multi-billion slush fund, my bill will save the American taxpayers $10 billion. Many analysts, including the Administration's analysts, predict that the new Medicare prescription drug benefit will far surpass the $400 billion budgeted for it. We need to look carefully at how we spend Medicare dollars, so that we can ensure that the program remains solvent for future generations.

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

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

S. 124

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.**

(a) PURPOSE OF SECTION.—The purpose of this section is to reduce the Federal budget deficit and to more efficiently use taxpayer dollars in health care spending.

(b) REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.—Section 1858 of the Social Security Act (42 U.S.C. 1395w–27a) is amended—

(1) by striking subsection (e);

(2) by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively; and

(3) in subsection (e), as so redesignated, by striking ''subject to subsection (e),''.

(c) CONFORMING AMENDMENT.—Section 1851(i)(2) of the Social Security Act (42 U.S.C. 1395w–21(i)(2)), as amended by section 221(d)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended by striking ''1858(h)'' and inserting ''1858(g)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173).

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By Mrs. BOXER (for herself, Mrs. FEINSTEIN and Mr. DURBIN):

S. 125. A bill to designate the United States courthouse located at 501 I Street in Sacramento, California, as the ''Robert T. Matsui United States Courthouse''; to the Committee on Environment and Public Works.

Mrs. BOXER. Mr. President, I am introducing legislation today to name the courthouse in Sacramento, California, as the ''Robert T. Matsui United States Courthouse.'' I am pleased to be joined in this effort by Senators FEINSTEIN and DURBIN.

Congressman Matsui's death on January 1, 2005 was shocking to all of us. Naming the Federal Courthouse in Sacramento in his honor would be a very appropriate memorial to his continual efforts toward a just and fair society.

After his childhood internment, Bob Matsui could have chosen to dwell on the sadness of his early years. Instead, he chose to give his life to public service, working to improve the lives of those in his congressional district and all Americans. He was a true patriot.

He was first elected to Congress in 1978, and spent the past 26 years representing the citizens of Sacramento with distinction and pride. He served as a senior member of the Committee on Ways and Means, and took a particular interest in complex public policy issues including tax, international trade, social security, healthcare, and welfare reform.

Congressman Matsui's dedication to the well-being of America's children earned him the Congressional Advocate of the Year award from The Child Welfare League of America in 1992 and 1994. The Congressman was also honored with the Anti Defamation League's Lifetime Achievement Award for his commitment to human rights.

Included in Congressman Matsui's long list of legislative achievements were his accomplishments to benefit the people of his district including flood control, transportation, and his success in obtaining $142 million in federal funding for the courthouse in Sacramento.

A graduate of the University of California at Berkeley and Hastings College of Law, he founded his own law practice in 1967, and was elected to the Sacramento City Council in 1971. After winning reelection in 1975 he became vice mayor of Sacramento in 1977. Congressman Matsui is survived by his wife, Doris Matsui, their son Brian and his wife Amy, and granddaughter, Anna.

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By Mr. INOUYE:

S. 127. A bill to amend chapter 81 of title 5, United States Code, to authorize the use of clinical social workers to conduct evaluations to determine work-related emotional and mental illnesses; to the Committee on Homeland Security and Governmental Affairs.

Mr. INOUYE. Mr. President, today I introduce the Clinical Social Workers' Recognition Act to correct a continuing problem in the Federal Employees Compensation Act. This bill will also provide clinical social workers the recognition they deserve as independent providers of quality mental health care services.

Clinical social workers are authorized to independently diagnose and treat mental illnesses through public and private health insurance plans across the nation. However, Title V of the United States Code, does not permit the use of mental health evaluations conducted by clinical social workers for use as evidence in determining workers' compensation claims brought by federal employees. The bill I am introducing corrects this problem.

It is a sad irony that Federal employees may select a clinical social worker through their health plans to provide mental health services, but may not go to this same professional for workers' compensation evaluations. The failure to recognize the validity of evaluations provided by clinical social workers unnecessarily limits federal employees' selection of a provider to conduct the workers' compensation mental health evaluations. Lack of this recognition may well impose an undue burden on federal employees where clinical social workers are the only available providers of mental health care.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 127

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Clinical Social Workers' Recognition Act of 2005''.

**SEC. 2. EXAMINATIONS BY CLINICAL SOCIAL WORKERS FOR FEDERAL WORKER COMPENSATION CLAIMS.**

Section 8101 of title 5, United States Code, is amended—

(1) in paragraph (2), by striking ''and osteopathic practitioners'' and inserting ''osteopathic practitioners, and clinical social workers''; and

(2) in paragraph (3), by striking ''osteopathic practitioners'' and inserting ''osteopathic practitioners, clinical social workers,''.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 128. A bill to designate certain public land in Humboldt, Del Norte, Mendocino, Lake, and Napa Counties in the State of California as wilderness, to designate certain segments of the Black Butte River in Mendocino County, California as a wild or scenic river, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am introducing a bill today that will protect hundreds of thousands of acres of wilderness in Northern California. The Northern California Coastal Wild Heritage Wilderness Act would designate over 300,000 acres in 14 areas as wilderness and would protect 21 miles of the Black Butte Creek as wild and scenic. The Senate passed this legislation during the 108th Congress, and I am hopeful this year that the bill will become law.

California's natural treasures have always been one of the things that make California unique, drawing millions of people to them over the years to revel in their wild beauty. But that beauty must not be taken for granted. It is important that we move now to designate these special places in California as wilderness to protect them for the enjoyment of future generations.

That is why I introduced the statewide California Wild Heritage Act during the 107th Congress and the 108th Congress, and I will soon be reintroducing it. The California Wild Heritage Act would protect more than 2.5 million acres of public land throughout the state of California, as well as the free-flowing portions of 23 rivers. Every acre of wild land is a treasure, but the areas protected in this bill are some of California's most precious.

I am pleased to join Representative Mike Thompson of California in introducing this legislation, which protect those portions of my statewide bill that are located in California's First Congressional District. The areas protected under this legislation are some of the most magnificent wild places in our state. For example, in southwestern Humboldt and northwestern Mendocino counties, over 42,000 acres of the King Range will be protected as wilderness. This is the wildest portion of the California coast, boasting the longest stretch of undeveloped coastline in the United States outside of Alaska.

This bill will protect watersheds that provide clean water to our cities and farms. This bill would also protect the precious plant and animal species that make their homes in these areas. Endangered and threatened species whose habitats will be protected by this bill include the bald eagle, California brown pelican, steelhead trout, coho salmon, bald eagle, peregrine falcon, northern spotted owl, and Roosevelt elk.

During the last 20 years, 675,000 acres of unprotected wilderness lost their wilderness character due to activities such as logging and mining. As our population increases, and California becomes home to almost 50 million people by the middle of the century, development pressures threaten our remaining wild places. We must protect our precious wild lands and wild rivers before they are lost forever.

Mr. President, those of us who live in the United States have a very special responsibility to protect our natural heritage. With this legislation, we are one step closer to protecting this legacy for our children's children, and their children.

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By Mr. TALENT:

S. 129. A bill to amend title 23, United States Code, to provide for HOV facilities; to the Committee on Environment and Public Works.

Mr. TALENT. Mr. President, I am pleased to be introducing this bill, which will allow more owners of hybrid electric vehicles, or HEVs, to have access to HOV lanes on Federal highways. For all of us who have a desire to lessen our dependence on foreign oil and encourage the use of renewable energy, this bill represents a step forward towards achieving those goals.

The language that is currently in the highway bills passed by the House and the Senate allows hybrid vehicles that achieve a 45 mile-per-gallon fuel economy highway rating to use HOV lanes. Any hybrid that achieves that kind of fuel economy certainly deserves to get that status, because it is a very impressive fuel economy rating and represents a substantial improvement over non-hybrid vehicles. What the 45 mile-per-gallon standard fails to take into account, however, is that many larger hybrid vehicles achieve a much larger fuel economy improvement over their internal combustion engine counterparts, and thus save more energy, than smaller vehicles which manage to meet the standard but are a less drastic improvement over their non-hybrid counterparts.

To illustrate this, take the 2005 model Honda Civic HEV, which gets just over 45 miles-per-gallon. This represents less than a 40 percent improvement over the comparable internal combustion model. The 2005 Ford Escape HEV, on the other hand, is a truck, so it gets fewer miles per gallon than a Civic, between 35 and 40. However, this is a 75 percent improvement over its internal combustion engine counterpart, and in addition, the Escape HEV emits 3–4 tons fewer greenhouse gases every year than the non-hybrid.

There is no reason to discriminate against these larger, American-made hybrids like the Ford Escape. They are truly engineering marvels and are so clearly beneficial for the environment. The bill that I have sponsored will give States the discretion to open up their HOV lanes to hybrid vehicles that achieve a substantial increase in fuel economy relative to comparable gasoline vehicles, or achieve a substantial increase in lifetime fuel savings relative to comparable gasoline vehicles. It creates a minimum standard of improvement necessary for hybrids, but gives States the option of increasing the requirements. This bill also allows States to open HOV lanes to single occupancy advanced lean burn vehicles that achieve at least a 25 percent increase in fuel economy relative to comparable gasoline vehicles and that are certified to Clean Air Act Tier 2 standards.

I am hopeful that my colleagues on both sides of the aisle can agree that we should do all we can to encourage the use of renewable energy in our country, and hybrid vehicles are an important part of that. The people who drive these vehicles are doing their part to help clean up the air and increase energy conservation, and we should give more people an incentive to buy these vehicles by giving them access to HOV lanes.

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

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

S. 129

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. HOV FACILITIES.**

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

**"§ 165. HOV facilities**

"(a) DEFINITIONS.—In this section:

"(1) DEDICATED ALTERNATIVE FUEL VEHICLE.—The term 'dedicated alternative fuel vehicle' means a vehicle that operates solely on—

"(A) methanol, denatured ethanol, or other alcohols;

"(B) a mixture containing at least 85 percent of methanol, denatured ethanol, or other alcohols by volume with gasoline or other fuels;

"(C) natural gas;

"(D) liquefied petroleum gas;

"(E) hydrogen;

"(F) coal derived liquid fuels;

"(G) fuels (except alcohol) derived from biological materials;

"(H) electricity, including electricity from solar energy; or

"(I) any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits.

"(2) HOV FACILITY.—The term 'HOV facility' means a high occupancy vehicle facility.

"(3) LOW-EMISSION AND ENERGY-EFFICIENT VEHICLE.—The term 'low-emission and energy-efficient vehicle' means a vehicle that—

"(A) has been certified by the Administrator of the Environmental Protection Agency as meeting the Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle; and

"(B)(i) has propulsion energy drawn from onboard hybrid sources of stored energy that are—

"(I) an internal combustion or heat engine using consumable fuel;

''(II) a rechargeable energy storage system; and

''(III) certified by the manufacturer to have achieved either a 10 percent or more increase in city fuel economy relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from such onboard hybrid sources), or a 10 percent or more vehicle increase in lifetime fuel savings relative to a comparable vehicle, determined in accordance with guidelines prescribed by the Administrator of the Environmental Protection Agency not later than 180 days after the date of enactment of this section, specifying procedures and methods for calculating either increase and making the comparison, except that the State agency referred to in this section may, subject to the guidelines, increase in combination the percentage under this subclause in furtherance of its responsibilities with respect to a HOV facility specified in subsection (e); or

''(ii) is a dedicated alternative fuel vehicle.

''(4) PUBLIC TRANSPORTATION VEHICLE.—The term 'public transportation vehicle' means a vehicle that provides public transportation (as defined in section 5302(a) of title 49).

''(5) STATE AGENCY.—The term 'State agency', as used with respect to a HOV facility, means an agency of a State or local government (including a State transportation department) having jurisdiction over the operation of the facility.

''(6) ADVANCED LEAN BURN TECHNOLOGY VEHICLE.—The term 'advanced lean burn technology vehicle' means a vehicle with an internal combustion engine that—

''(A) is designed to operate primarily using more air than is necessary for complete combustion of fuel;

''(B) incorporates direct injection;

''(C) achieves at least 125 percent of city fuel economy of a comparable vehicle; and

''(D) has received a certificate that the vehicle meets or exceeds—

''(i) in the case of a vehicle having a gross vehicle weight rating of 6000 pounds or less, the Bin 5 II emission standard established by regulations under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)); and

''(ii) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard established by regulations under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)).

''(b) IN GENERAL.—

''(1) AUTHORITY OF STATE AGENCIES.—A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

''(2) OCCUPANCY REQUIREMENT.—Except as otherwise provided by this section, not fewer than 2 occupants per vehicle may be required for use of a HOV facility.

''(c) EXCEPTIONS TO OCCUPANCY REQUIREMENT.—Notwithstanding the occupancy requirements of subsection (b)(2), the following exceptions shall apply with respect to a State agency operating a HOV facility:

''(1) MOTORCYCLES AND BICYCLES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

''(B) SAFETY EXCEPTION.—

''(i) IN GENERAL.—A State agency may restrict use of the HOV facility by motorcycles or bicycles if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

''(ii) NOTICE.—The Secretary may accept a certification under clause (i) only after the Secretary publishes notice of the certification in the Federal Register and provides an opportunity for public comment.

''(2) PUBLIC TRANSPORTATION VEHICLES.—The State agency may allow public transportation vehicles to use the HOV facility if the agency—

''(A) establishes requirements for clearly identifying the vehicles; and

''(B) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

''(3) HIGH OCCUPANCY TOLL VEHICLES.—The State agency may allow vehicles that are not otherwise exempt under this subsection to use the HOV facility if—

''(A) the operators of the vehicles pay a toll charged by the agency for use of the facility; and

''(B) the agency—

''(i) establishes a program that addresses how motorists can enroll and participate in the toll program;

''(ii) develops, manages, and maintains a system that will automatically collect the toll; and

''(iii) establishes policies and procedures to—

''(I) manage the demand to use the facility by varying the toll amount that is charged;

''(II) enforce violations of use of the facility; and

''(III) permit low-income individuals to pay reduced tolls.

''(4) LOW-EMISSION AND ENERGY-EFFICIENT VEHICLES.—

''(A) INHERENTLY LOW-EMISSION VEHICLES.—Before September 30, 2009, the State agency may allow vehicles that are certified and labeled as inherently low-emission vehicles under section 88.311-93 of title 40, Code of Federal Regulations, to use the HOV facility if the agency establishes procedures for enforcing restrictions on the use of the facility by the vehicles.

''(B) OTHER LOW-EMISSION AND ENERGY-EFFICIENT VEHICLES.—Before September 30, 2009, the State agency may allow vehicles that are certified as and labeled low-emission and energy-efficient vehicles under subsection (f) to use the HOV facility if the agency—

''(i) establishes a program that addresses how the vehicles are selected and certified;

''(ii) establishes requirements for labeling the vehicles and procedures for enforcing those requirements;

''(iii) continuously monitors, evaluates, and reports to the Secretary on the performance of the vehicles; and

''(iv) imposes on the use of the HOV facility by vehicles that do not satisfy established occupancy requirements any restrictions that are necessary to ensure that neither the performance of an individual HOV facility nor the HOV facility system are seriously degraded.

''(5) ADVANCED LEAN BURN TECHNOLOGY VEHICLES.—Before September 30, 2009, the State agency may allow vehicles that are certified and labeled as advanced lean burn technology vehicles under subsection (f) to use the HOV facility if the agency—

''(A) establishes a program that address how the vehicles are selected and certified;

''(B) establishes requirements for labeling the vehicles and procedures for enforcing those requirements;

''(C) continuously monitors, evaluates, and reports to the Secretary on the performance of the vehicles; and

''(D) imposes on the use of HOV facilities by vehicles that do not satisfy established occupancy requirements any restrictions that are necessary to ensure that neither the performance of individual HOV facilities nor the HOV facility system are seriously degraded.

''(d) REQUIREMENTS APPLICABLE TO TOLLS.—

''(1) IN GENERAL.—Notwithstanding section 301, tolls may be charged under paragraphs (3) and (4) of subsection (c), subject to the requirements of section 129.

''(2) HOV FACILITIES ON THE INTERSTATE SYSTEM.—Notwithstanding section 129, tolls may be charged under paragraphs (3) and (4) of subsection (c) on a HOV facility on the Interstate System.

''(3) EXCESS TOLL REVENUES.—If a State agency makes a certification under the last sentence of section 129(a)(3) concerning toll revenues collected under paragraphs (3) and (4) of subsection (c), the State shall give priority consideration to projects that develop alternatives to single occupancy vehicle travel or improve highway safety in the use of toll revenues under that sentence.

''(e) HOV FACILITY MANAGEMENT, OPERATION, MONITORING, AND ENFORCEMENT.—

''(1) IN GENERAL.—A State agency that allows low-emission and energy-efficient vehicles to use a HOV facility under subsection (c)(4) in a fiscal year shall certify to the Secretary that the agency will carry out the following responsibilities with respect to the facility in the fiscal year:

''(A) Establish, manage, and support a performance-monitoring, evaluation, and reporting program for the facility that provides for continuous monitoring, assessment, and reporting on the effects that low-emission and energy-efficient vehicles may have on the operation of the facility and adjacent highways.

''(B) Establish, manage, and support an enforcement program that ensures that the facility is operated in accordance with this section.

''(C) Limit or discontinue the use of the facility by low-emission and energy-efficient vehicles if the presence of the vehicles has degraded the operation of the facility.

''(2) MINIMUM AVERAGE OPERATING SPEED; DEGRADED FACILITY.—

''(A) MINIMUM AVERAGE OPERATING SPEED DEFINED.—In this paragraph, the term 'minimum average operating speed' means—

''(i) 45 miles per hour, in the case of a HOV facility with a speed limit of 50 miles per hour or greater; and

''(ii) not more than 10 miles per hour below the speed limit, in the case of a HOV facility with a speed limit of less than 50 miles per hour.

''(B) STANDARD FOR DETERMINING DEGRADATION.—For purposes of paragraph (1), the operation of a HOV facility shall be considered to be degraded if vehicles operating on the facility fail to maintain a minimum average operating speed 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods.

''(f) CERTIFICATION AND LABELING OF LOW-EMISSION AND ENERGY-EFFICIENT VEHICLES AND ADVANCED LEAN BURN TECHNOLOGY VEHICLES.—Not later than 180 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall promulgate a final rule establishing requirements for—

''(1) certification of vehicles—

''(A) as low-emission and energy-efficient vehicles; and

''(B) as advance lean burn technology vehicles; and

''(2) labeling of the vehicles certified under paragraph (1).''.

(b) TECHNICAL AMENDMENT.—Section 102(c) of title 23, United States Code, is amended by striking from ''10 years'' through ''after'' and inserting ''10 years (or any longer period that the State requests and the Secretary determines to be reasonable) after''.

(c) CONFORMING AMENDMENTS.—

(1) PROGRAM EFFICIENCIES.—Section 102 of title 23, United States Code, is amended by striking subsection (a) and redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(2) CHAPTER ANALYSIS.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''165. HOV facilities.''.

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By Mr. HAGEL (for himself and Mr. NELSON of Nebraska):

S. 130. A bill to authorize an additional district judgeship for the district of Nebraska; to the Committee on the Judiciary.

Mr. HAGEL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 130

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DISTRICT JUDGESHIP FOR THE DISTRICT OF NEBRASKA.**

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of Nebraska.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Nebraska and inserting the following:

''Nebraska ..... 4''.

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By Mr. INHOFE (for himself and Mr. VOINOVICH):

S. 131. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program; to the Committee on Environment and Public Works.

Mr. INHOFE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 131

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Clear Skies Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Emission reduction programs.
''TITLE IV—EMISSION REDUCTION PROGRAMS
''PART A—GENERAL PROVISIONS
''Sec. 401. (reserved)
''Sec. 402. Definitions.
''Sec. 403. Allowance system.
''Sec. 404. Permits and compliance plans.
''Sec. 405. Monitoring, reporting, and recordkeeping requirements.
''Sec. 406. Excess emissions penalty; general compliance with other provisions; enforcement.
''Sec. 407. Election for additional units.
''Sec. 408. Clean coal technology regulatory incentives.
''Sec. 409. Electricity reliability.
''PART B—SULFUR DIOXIDE EMISSION REDUCTIONS
''SUBPART 1—ACID RAIN PROGRAM
''Sec. 411. Definitions.
''Sec. 412. Allowance allocation.
''Sec. 413. Phase I sulfur dioxide requirements.
''Sec. 414. Phase II sulfur dioxide requirements.
''Sec. 415. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu.
''Sec. 416. Election for additional sources.
''Sec. 417. Auctions, reserve.
''Sec. 418. Industrial sulfur dioxide emissions.
''Sec. 419. Termination.
''SUBPART 2—CLEAR SKIES SULFUR DIOXIDE ALLOWANCE PROGRAM
''Sec. 421. Definitions.
''Sec. 422. Applicability.
''Sec. 423. Limitations on total emissions.
''Sec. 424. Egu allocations.
''Sec. 425. Disposition of sulfur dioxide allowances allocated under subpart 1.
''Sec. 426. Incentives for sulfur dioxide emission control technology.
''SUBPART 3—WESTERN REGIONAL AIR PARTNERSHIP
''Sec. 431. Definitions.
''Sec. 432. Applicability.
''Sec. 433. Limitations on total emissions.
''Sec. 434. EGU allocations.
''PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS
''SUBPART 1—ACID RAIN PROGRAM
''Sec. 441. Nitrogen oxides emission reduction program.
''Sec. 442. Termination.
''SUBPART 2—CLEAR SKIES NITROGEN OXIDES ALLOWANCE PROGRAM
''Sec. 451. Definitions.
''Sec. 452. Applicability.
''Sec. 453. Limitations on total emissions.
''Sec. 454. EGU allocations.
''Sec. 455. Nitrogen oxides early action reduction credits.
''SUBPART 3—OZONE SEASON NO**x** BUDGET PROGRAM
''Sec. 461. Definitions.
''Sec. 462. General provisions.
''Sec. 463. Applicable implementation plan.
''Sec. 464. Termination of Federal administration of NO**x** trading program for EGUs.
''Sec. 465. Carryforward of pre–2008 nitrogen oxides allowances.
''Sec. 466. Non-ozone season voluntary action credits.
''PART D—MERCURY EMISSIONS REDUCTIONS
''Sec. 471. Definitions.
''Sec. 472. Applicability.
''Sec. 473. Limitations on total emissions.
''Sec. 474. EGU allocations.
''Sec. 475. Mercury early action reduction credits.
''PART E—NATIONAL EMISSION STANDARDS; RESEARCH, ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS
''Sec. 481. National emission standards for affected units.
''Sec. 482. Research, environmental monitoring, and assessment.
''Sec. 483. Major source preconstruction review requirements and best available retrofit control technology requirements; applicability to affected units.
Sec. 3. Other amendments.

**SEC. 2. EMISSION REDUCTION PROGRAMS.**

Title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651, et seq.) is amended to read as follows:

**''TITLE IV—EMISSION REDUCTION PROGRAMS**

**''PART A—GENERAL PROVISIONS**

**''SEC. 401. (Reserved)**

**''SEC. 402. DEFINITIONS.**

''In this title:

''(1) AFFECTED EGU.—The term 'affected EGU' shall have the meaning set forth in section 421, 430, 451, or 471, as appropriate.

''(2) AFFECTED FACILITY.—The term 'affected facility' or 'affected source' means a facility or source that includes one or more affected units.

''(3) AFFECTED UNIT.—The term 'affected unit' means—

''(A) under this part, a unit that is subject to emission reduction requirements or limitations under part B, C, or D or, if applicable, under a specified part or subpart; or

''(B) under subpart 1 of part B or subpart 1 of part C, a unit that is subject to emission reduction requirements or limitations under that subpart.

''(4) ALLOWANCE.—The term 'allowance' means—

''(A) an authorization, by the Administrator under this title, to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury; or

''(B) under subpart 1 of part B, an authorization by the Administrator under this title, to emit one ton of sulfur dioxide.

''(5) BASELINE HEAT INPUT.—

''(A) IN GENERAL.—The term 'baseline heat input' means, except under subpart 1 of part B and section 407, the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period 1998 through 2002.

''(B) COMMENCEMENT OF OPERATION AFTER JANUARY 1, 2001.—Notwithstanding subparagraph (A), if a unit commenced or commences operation after January 1, 2001, then 'baseline heat input' means the manufacturer's design heat input capacity for the unit multiplied by 80 percent for coal-fired units, 50 percent for boilers that are not coal-fired, 80 percent for combustion turbine cogeneration units elected under section 407, 50 percent for combustion turbines other than simple cycle turbines, and 5 percent for simple cycle combustion turbines.

''(C) HEAT INPUT DETERMINATION.—A unit's heat input for a year shall be the heat input—

''(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

''(ii) reported to the Energy Information Administration for the unit, if the unit was not required to report heat input under section 405;

''(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

''(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

''(D) REGULATIONS.—Not later than three months after the enactment of the Clear Skies Act of 2005, the Administrator shall promulgate regulations, without notice and opportunity for comment, specifying the format in which the information under subparagraphs (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted. Not later than nine months after the enactment of the Clear Skies Act of 2005, the owner or operator of any unit under subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which allowances may be allocated under

section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

''(6) COAL.—The term 'coal' means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

''(7) COAL-DERIVED FUEL.—The term 'coal-derived fuel' means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

''(8) COAL-FIRED.—The term 'coal-fired' with regard to a unit means, except under subpart 1 of part B, subpart 1 of part C, and sections 424 and 434, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year.

''(9) COGENERATION UNIT.—The term 'cogeneration unit' means, except under subpart 1 of part B and subpart 1 of part C, a unit that produces through the sequential use of energy—

''(A) electricity; and

''(B) useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes.

''(10) COMBUSTION TURBINE.—

''(A) IN GENERAL.—The term 'combustion turbine' means any combustion turbine that is not self-propelled.

''(B) INCLUSION.—The term 'combustion turbine' includes a simple cycle combustion turbine, a combined cycle combustion turbine and any duct burner or heat recovery device used to extract heat from the combustion turbine exhaust, and a regenerative combustion turbine.

''(C) EXCLUSIONS.—The term 'combustion turbine' does not include a combined turbine in an integrated gasification combined cycle plant.

''(11) COMMENCE COMMERCIAL OPERATION.—The term 'commence commercial operation' with regard to a unit means the start up of the unit's combustion chamber and the commencement of the generation of electricity for sale.

''(12) COMPLIANCE PLAN.—The term 'compliance plan' means either—

''(A) a statement that the facility will comply with all applicable requirements under this title; or

''(B) under subpart 1 of part B or subpart 1 of part C, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the facility is in compliance with the requirements of that subpart.

''(13) CONTINUOUS EMISSION MONITORING SYSTEM.—The term 'continuous emission monitoring system' (CEMS) means the equipment as required by section 405, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 405.

''(14) DESIGNATED REPRESENTATIVE.—The term 'designated representative' means a responsible person or official authorized by the owner or operator of a unit and the facility that includes the unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances, and the submission of and compliance with permits, permit applications, and compliance plans.

''(15) DUCT BURNER.—The term 'duct burner' means a combustion device that uses the exhaust from a combustion turbine to burn fuel for heat recovery.

''(16) FACILITY.—The term 'facility' means all buildings, structures, or installations located on 1 or more contiguous or adjacent properties under common control of the same person or persons.

''(17) FOSSIL FUEL.—The term 'fossil fuel' means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

''(18) FOSSIL FUEL-FIRED.—The term 'fossil fuel-fired', with regard to a unit, means the combustion of fuel that is composed of at least 10 percent fossil fuel.

''(19) FUEL OIL.—The term 'fuel oil' means a petroleum-based fuel, including diesel fuel or petroleum derivatives.

''(20) GAS-FIRED.—The term 'gas-fired', with regard to a unit, means, except under subpart 1 of part B and subpart 1 of part C, combusting only natural gas or fuel oil, with natural gas comprising at least 90 percent, and fuel oil comprising no more than 10 percent, of the unit's total heat input in any year.

''(21) GASIFY.—The term 'gasify' means to convert carbon-containing material into a gas consisting primarily of carbon monoxide and hydrogen.

''(22) GENERATOR.—The term 'generator' means a device that produces electricity and, under subpart 1 of part B and subpart 1 of part C, that is reported as a generating unit pursuant to Department of Energy Form 860.

''(23) HEAT INPUT.—

''(A) IN GENERAL.—The term 'heat input', with regard to a specific period of time, means the product (in mmBtu/time) obtained by multiplying—

''(i) the gross calorific value of the fuel (in mmBtu/lb); and

''(ii) the fuel feed rate into a unit (in lb of fuel/time).

''(B) EXCLUSIONS.—The term 'heat input' does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

''(24) INTEGRATED GASIFICATION COMBINED CYCLE PLANT.—The term 'integrated gasification combined cycle plant' means any combination of equipment used to gasify fossil fuels (with or without other material) and then burn the gas in a combined cycle combustion turbine.

''(25) OIL-FIRED.—The term 'oil-fired', with regard to a unit, means, except under sections 424 and 434, combusting fuel oil for more than 10 percent the unit's total heat input, and combusting no coal or coal-derived fuel, in any year.

''(26) OWNER OR OPERATOR.—The term 'owner or operator' with regard to a unit or facility means, except for subpart 1 of part B and subpart 1 of part C, any person who owns, leases, operates, controls, or supervises the unit or the facility.

''(27) PERMITTING AUTHORITY.—The term 'permitting authority' means the Administrator, or the State or local air pollution control agency, with an approved permitting program under title V of the Act.

''(28) POTENTIAL ELECTRICAL OUTPUT.—The term 'potential electrical output' with regard to a generator means the nameplate capacity of the generator multiplied by 8,760 hours.

''(29) SIMPLE CYCLE COMBUSTION TURBINE.—The term 'simple cycle combustion turbine' means a combustion turbine that does not extract heat from the combustion turbine exhaust gases.

''(30) STATIONARY SOURCE.—The term 'stationary source' means any building, structure, facility, or installation located on one or more contiguous or adjacent properties under common control or ownership of the same person or persons which emits or may emit any air pollutant subject to regulations under the Clear Skies Act of 2005.

''(31) STATE.—The term 'State' means—

''(A) 1 of the 48 contiguous States, Alaska, Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

''(B) under subpart 1 of part B and subpart 1 of part C, 1 of the 48 contiguous States or the District of Columbia.

''(32) UNIT.—The term 'unit' means—

''(A) a fossil fuel-fired boiler, combustion turbine, or integrated gasification combined cycle plant;

''(B) under subpart 1 of part B and subpart 1 of part C, a fossil fuel-fired combustion device; and

''(C) a stationary source that—

''(i) emits nitrogen oxides, sulfur dioxide, mercury, or any combination of those substances; and

''(ii) is elected under section 407.

''(33) UTILITY UNIT.—The term 'utility unit' shall have the meaning set forth in section 411.

''(34) YEAR.—The term 'year' means a calendar year.

**''SEC. 403. ALLOWANCE SYSTEM.**

''(a) ALLOCATIONS.—

''(1) IN GENERAL.—For the emission limitation programs under this title, the Administrator shall allocate annual allowances for an affected unit, to be held or distributed by the designated representative of the owner or operator in accordance with this title as follows—

''(A) sulfur dioxide allowances in an amount equal to the annual tonnage emission limitation calculated under section 413, 414, 415, or 416, except as otherwise specifically provided elsewhere in subpart 1 of part B, or in an amount calculated under section 424 or 434;

''(B) nitrogen oxides allowances in an amount calculated under section 454; and

''(C) mercury allowances in an amount calculated under section 474.

''(2) NO JUDICIAL REVIEW.—Notwithstanding any other provision of law to the contrary, the calculation of the allocation for any unit or facility, and the determination of any values used in such calculation, under sections 424, 434, 454, and 474 shall not be subject to judicial review.

''(3) ALLOCATION WITHOUT COST.—Allowances shall be allocated by the Administrator without cost to the recipient, in accordance with this title.

''(b) ALLOWANCE TRANSFER SYSTEM.—Allowances allocated or sold by the Administrator under this title may be transferred among designated representatives of the owners or operators of affected facilities under this title and any other person, as provided by the allowance system regulations promulgated by the Administrator. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2005. The regulations under this subsection shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated and shall provide, consistent with the purposes of this title, for the identification of

unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years. Such regulations shall provide, or shall be amended to provide, that transfers of allowances shall not be effective until certification of the transfer, signed by a responsible official of the transferor, is received and recorded by the Administrator.

''(c) ALLOWANCE TRACKING SYSTEM.—The Administrator shall promulgate regulations establishing a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, by twenty-four months prior to the compliance year, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2005. All allowance allocations and transfers shall, upon recording by the Administrator, be deemed a part of each unit's or facility's permit requirements pursuant to section 404, without any further permit review and revision.

''(d) NATURE OF ALLOWANCES.—A sulfur dioxide allowance, nitrogen oxides allowance, or mercury allowance allocated or sold by the Administrator under this title is a limited authorization to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury, as the case may be, in accordance with the provisions of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated or sold to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V of the Clean Air Act or section 404 of the Clear Skies Act of 2005 with respect to the unit for which such allowance was originally allocated and recorded.

''(e) PROHIBITIONS.—

''(1) IN GENERAL.—It shall be unlawful for any person to hold, use, or transfer any allowance allocated or sold by the Administrator under this title, except in accordance with regulations promulgated by the Administrator.

''(2) EMISSIONS.—It shall be unlawful for any affected unit or for the affected units at a facility to emit sulfur dioxide, nitrogen oxides, and mercury, as the case may be, during a year in excess of the number of allowances held for that unit or facility for that year by the designated representative as provided in sections 412(c), 422, 432, 452, and 472.

''(3) PURCHASE OF ALLOWANCES.—The owner or operator of a facility may purchase allowances directly from the Administrator to be used only to meet the requirements of sections 422, 432, 452, and 472, as the case may be, for the year in which the purchase is made or the prior year. Not later than thirty-six months after the date of enactment of the Clear Skies Act of 2005, the Administrator shall promulgate regulations providing for direct sales of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances to an owner or operator of a facility. The regulations shall provide that—

''(A) such allowances may be used only to meet the requirements of section 422, 432, 452, and 472, as the case may be, for such facility and for the year in which the purchase is made or the prior year;

''(B) each such sulfur dioxide allowance shall be sold for $2,000, each such nitrogen oxides allowance shall be sold for $4,000, and each such mercury allowance shall be sold for $2,187.50, with such prices adjusted for inflation based on the Consumer Price Index on the date of enactment of the Clear Skies Act of 2005 and annually thereafter;

''(C) the proceeds from any sales of allowances under subparagraph (B) shall be, in accordance with paragraph (j), deposited in the Compliance Assistance Account;

''(D) except for allowances subject to (E), the allowances directly purchased for use for the year specified in subparagraph (A) shall be, on a pro rata basis, taken from, and reduce, the amount of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that would otherwise be allocated under section 423, 453, or 473 starting for the second year after the specified year and continuing for each subsequent year as necessary; and

''(E) if the designated representative does not use any such allowance in accordance with paragraph (A) the designated representative shall hold the allowance for deduction by the Administrator. The Administrator shall deduct the allowance without refund or other form of recompense.

''(4) USE OF ALLOWANCES.—Allowances may not be used prior to the calendar year for which they are allocated but may be used in succeeding years. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this Act, nor relieve affected facilities of their requirements and liabilities under the Act.

''(f) COMPETITIVE BIDDING FOR POWER SUPPLY.—Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

''(g) APPLICABILITY OF THE ANTITRUST LAWS.—

''(1) IN GENERAL.—Nothing in this section affects—

''(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances; or

''(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

''(2) DEFINITION OF ANTITRUST LAWS.—In this section, the term 'antitrust laws' means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12).

''(h) PUBLIC UTILITY HOLDING COMPANY ACT.—The acquisition or disposition of allowances pursuant to this title including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.

''(i) INTERPOLLUTANT TRADING.—Not later than July 1, 2009, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this title to permit trading sulfur dioxide allowances for nitrogen oxides allowances and nitrogen oxides allowances for sulfur dioxide allowances.

''(j) COMPLIANCE ASSISTANCE ACCOUNT.—An account shall be established by the Secretary of Energy in consultation with the Administrator:

''(1) USE OF AMOUNTS.—Payments or monies deposited in this account in accordance with this title shall be used for the purpose of developing emission control technologies through direct grants to affected units that demonstrate new control technologies regulated under this title.

''(2) REGULATIONS.—The Secretary of Energy in consultation with the Administrator shall promulgate regulations with notice and opportunity for comment to establish criteria for affected units to qualify for this subsection.

**"SEC. 404. PERMITS AND COMPLIANCE PLANS.**

''(a) PERMIT PROGRAM.—The provisions of this title shall be implemented, subject to section 403, by permits issued to units and facilities subject to this title and enforced in accordance with the provisions of title V, as modified by this title. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

''(1) annual emissions of sulfur dioxide, nitrogen oxides, and mercury in excess of the number of allowances required to be held in accordance with sections 412(c), 422, 432, 452, and 472;

''(2) exceeding applicable emissions rates under section 441;

''(3) the use of any allowance prior to the year for which it was allocated; and

''(4) contravention of any other provision of the permit.

No permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable.

''(b) COMPLIANCE PLAN.—

''(1) IN GENERAL.—Each initial permit application shall be accompanied by a compliance plan for the facility to comply with its requirements under this title. Where an affected facility consists of more than one affected unit, such plan shall cover all such units, and such facility shall be considered a 'facility' under section 502(c). Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances.

''(2) STATEMENTS.—

''(A) IN GENERAL.—Submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 412(c), 413, 414, and 441, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 412(c), 413, and 414, the owners and operators will hold sulfur dioxide allowances in the amount required by section 412(c), shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V, except that, for any unit that will meet the requirements of this title by means of an alternative method of compliance authorized

under section 413 (b), (c), (d), or (f), section 416, and section 441 (d) or (e), the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under subpart 1 of part B or subpart 1 of part C.

''(B) OTHER STATEMENTS.—Submission of a statement by the owner or operator, or the designated representative, of a facility that includes a unit subject to the emissions limitation requirements of sections 422, 432, 452, and 472 that the owner or operator will hold sulfur dioxide allowances, nitrogen oxide allowances, and mercury allowances, as the case may be, in the amount required by such sections shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V with regard to subparts A through D.

''(3) RECORDING OF TRANSFERS.—Recording by the Administrator of transfers of allowances shall amend automatically, and will not reopen or require reopening of, any or all applicable proposed or approved permit applications, compliance plans, and permits.

''(c) PERMITS.—The owner or operator of each facility under this title that includes an affected unit subject to title V shall submit a permit application and compliance plan with regard to the applicable requirements under sections 412(c), 422, 432, 441, 452, and 472 for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to such owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

''(d) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section.

''(e) PROHIBITION.—

''(1) IN GENERAL.—It shall be unlawful for any person to operate any facility subject to this title except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 504(f), with a permit issued under title V which complies with this title for facilities subject to this title shall be deemed compliance with this subsection as well as section 502(a).

''(2) NO TERMINATION OF OPERATIONS.—In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of a unit serving a generator for failure to have an approved permit or compliance plan under this section.

''(f) CERTIFICATE OF REPRESENTATION.—No permit shall be issued under this section to an affected unit or facility until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

''(g) MULTIPLE OWNERS.—

''(1) IN GENERAL.—No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state—

''(A) that allowances and the proceeds or transactions involving allowance will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or

''(B) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract.

''(2) PASSIVE LESSOR.—A passive lessor, of a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purposes of holding or distributing allowances as provided in this subsection, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

**"SEC. 405. MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS.**

''(a) REQUIREMENTS.—

''(1) APPLICABILITY.—

''(A) IN GENERAL.—The owner and operator of any facility subject to this title shall be required to install and operate CEMS on each affected unit subject to subpart 1 of part B or subpart 1 of part C at the facility, and to quality assure the data, for sulfur dioxide, nitrogen oxides, opacity, and volumetric flow at each such unit.

''(B) SPECIFICATION OF REQUIREMENTS.—The Administrator shall, by regulation, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and time lines as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

''(2) INSTALLATION AND OPERATION.—

''(A) IN GENERAL.—The owner and operator of any facility subject to this title shall be required to install and operate CEMS to monitor the emissions from each affected unit at the facility, and to quality assure the data for—

''(i) sulfur dioxide, opacity, and volumetric flow for all affected units subject to subpart 2 of part B at the facility,

''(ii) nitrogen oxides for all affected units subject to subpart 2 of part C at the facility, and

''(iii) mercury for all affected units subject to part D at the facility.

''(B) ALTERNATIVE MONITORING.—

''(i) IN GENERAL.—The Administrator may specify an alternative monitoring or compliance system for determining mercury emissions. In specifying such alternative monitoring or compliance systems, the lack of commercially available appropriate and reasonable vendor guarantees shall constitute a reasonable and permissible basis for specifying alternative monitoring or compliance systems for mercury.

''(ii) LIMITATIONS.—The regulations under clause (iv) may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure to a reasonable extent the emissions reductions contemplated by this title.

''(iii) NO SEPARATE MONITORING SYSTEM.—The regulations under clause (iv) shall not require a separate CEMS or other monitoring system for each unit where two or more units utilize a single stack and shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for such units.

''(iv) SPECIFICATION OF REQUIREMENTS.—The Administrator shall, by regulation, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring or compliance system that is demonstrated as providing information which is reasonably of the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure to a reasonable extent the emissions reductions contemplated by this title. Where two or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

''(b) DEADLINES.—

''(1) NEW UTILITY UNITS.—Upon commencement of commercial operation of each new utility unit under subpart I of part B, the unit shall comply with the requirements of subsection (a)(1).

''(2) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the commencement date of the sulfur dioxide allowance requirement of section 422, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide, opacity, and volumetric flow.

''(3) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 3 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the first covered year, or the date on which the unit commences commercial operation, the owner or operator of each affected unit under subpart 3 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide and volumetric flow.

''(4) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART C FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the commencement date of the nitrogen oxides allowance requirement under section 452, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part C shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to nitrogen oxides.

''(5) DEADLINE FOR AFFECTED UNITS UNDER PART D FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date that is 1 year before the commencement date of the mercury allowance requirement of section 472 applies to such unit and commences commercial operation, or the date on which the unit commences operation, the owner or operator of each affected unit under part D shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to mercury.

''(c) UNAVAILABILITY OF EMISSIONS DATA.—

''(1) SULFUR DIOXIDE AND NITROGEN OXIDES.—With respect to sulfur dioxide and nitrogen oxides, if CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, reasonably satisfactory to the Administrator, on emissions during that period, the Administrator, in coordination with the owner, shall calculate emissions for that period pursuant to regulations promulgated for such purpose. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee, or assessment against the unit for the same violation under any other section of this Act.

''(2) MERCURY.—With respect to mercury, if CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, reasonably satisfactory to the Administrator, on emissions during that period, the Administrator in coordination with the owner, shall calculate emissions for that period pursuant to regulations promulgated for such purpose. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee, or assessment against the unit for the same violation under any other section of this Act.

''(d) IMPLEMENTATION.—With regard to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 CFR part 75 (2002), amended, as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing proposed regulations not later than 36 months before the commencement date of the mercury allowance requirement under section 472 and final regulations not later than 24 months before that commencement date.

''(e) PROHIBITION.—It shall be unlawful for the owner or operator of any facility subject to this title to operate a facility without complying with the requirements of this section, and any regulations implementing this section.

**''SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLIANCE WITH OTHER PROVISIONS; ENFORCEMENT.**

''(a) EXCESS EMISSIONS PENALTY.—

''(1) AMOUNT FOR OXIDES OF NITROGEN.—The owner or operator of any unit subject to the requirements of section 441 that emits nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement multiplied by $2,000.

''(2) AMOUNT FOR SULFUR DIOXIDE BEFORE 2008.—The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide for any calendar year before 2008 in excess of the sulfur dioxide allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f) or (g). That penalty shall be calculated as follows:

''(A) The product of the unit's excess emissions (in tons) multiplied by $2,000, if within 30 days after the date on which the owner or operator was required to hold sulfur dioxide allowances—

''(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

''(ii) the Administrator receives the penalty payment required under this subparagraph.

''(B) If the requirements of clause (A)(i) or (A)(ii) are not met, the product of the unit's excess emissions (in tons) multiplied by $3,000.

''(3) AMOUNT FOR SULFUR DIOXIDE AFTER 2007.—If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

''(4) UNITS SUBJECT TO SECTIONS 422, 432, 452, OR 472.—If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility or units for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be equal to—

''(A) the quantity of the units' excess emissions in tons (or, for mercury emissions, in ounces) multiplied by $2,000 (in the case of sulfur dioxide), $4,000 (in the case of nitrogen oxides), or $2187.50 (in the case of mercury) if, on or before the date that is 30 days after the date on which the owner or operator was required to hold sulfur dioxide, nitrogen oxides allowance, or mercury allowances, as the case may be—

''(i) the owner or operator offsets the excess emissions in accordance with paragraph (2) or (3) of subsection (b), as applicable; and

''(ii) the Administrator receives the penalty required under this subparagraph; or

''(B) if a requirement under subparagraph (A) is not met, the quantity of the units' excess emissions in tons (or, for mercury emissions, in ounces) multiplied by the product obtained by multiplying—

''(i) 1.5; and

''(ii) the respective amount for sulfur dioxide, nitrogen oxides, or mercury specified in subparagraph (A).

''(5) PAYMENT.—Any penalty under paragraph (1), (2), (3), or (4) shall be due and payable without demand to the Administrator as provided in regulations issued by the Administrator. With regard to the penalty under paragraph 1, the Administrator shall implement this paragraph under 40 CFR part 77 (2002), amended as appropriate by the Administrator. With regard to the penalty under paragraphs 2, 3, and 4, the Administrator shall implement this paragraph by issuing regulations no later than 24 months after the date of enactment of the Clear Skies Act of 2005. Any such payment shall be deposited in the Compliance Assistance Account.

''(b) EXCESS EMISSIONS OFFSET.—

''(1) IN GENERAL.—The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide during any calendar year before 2008 in excess of the sulfur dioxide allowances held for the unit for the calendar year shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess tonnage from those held for the facility for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(2) EXCESS EMISSIONS OF SULFUR DIOXIDE.—If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for a year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess emissions in tons from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(3) EXCESS EMISSIONS OF SULFUR DIOXIDE, NITROGEN OXIDES, OR MERCURY.—If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons or, for mercury, ounces in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances, nitrogen oxide allowances, or mercury allowances, as the case may be, equal to the excess emissions in tons or, for mercury, ounces from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(c) PENALTY ADJUSTMENT.—The Administrator shall, by regulation, adjust the penalty specified in subsection (a)(1) and (a)(2) for inflation, based on the Consumer Price

Index, on November 15, 1990, and annually thereafter.

''(d) PROHIBITION.—It shall be unlawful for the owner or operator of any unit or facility liable for a penalty and offset under this section to fail—

''(1) to pay the penalty under subsection (a); or

''(2) to offset excess emissions as required by subsection (b).

''(e) SAVINGS PROVISION.—Nothing in this title shall limit or otherwise affect the application of section 113, 114, 120, or 304 except as otherwise explicitly provided in this title.

''(f) OTHER REQUIREMENTS.—Except as expressly provided, compliance with the requirements of this title shall not exempt or exclude the owner or operator of any facility subject to this title from compliance with any other applicable requirements of this Act. Notwithstanding any other provision of this Act, no State or political subdivision thereof shall restrict or interfere with the transfer, sale, or purchase of allowances under this title.

''(g) VIOLATIONS.—Violation by any person subject to this title of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this title, the operation of any affected unit or the affected units at a facility to emit sulfur dioxide, nitrogen oxides, or mercury in violation of section 412(c), 422, 432, 452, and 472, as the case may be, shall be deemed a violation, with each ton or, in the case of mercury, each ounce emitted in excess of allowances held constituting a separate violation.

**''SEC. 407. ELECTION FOR ADDITIONAL UNITS.**

''(a) APPLICABILITY.—

''(1) IN GENERAL.—The owner or operator of any unit that is not an affected EGU under subpart 2 of part B and subpart 2 of part C and whose emissions of sulfur dioxide and nitrogen oxides are vented only through a stack or duct may elect to designate the unit as an affected unit under subpart 2 of part B and subpart 2 of part C.

''(2) EFFECT OF DESIGNATION.—If the owner or operator elects to designate a unit that is solid fuel-fired and emits mercury vented only through a stack or duct, the owner or operator shall also designate the unit as an affected unit under part D. If an elected unit fires only gaseous fuels, the unit may be designated under subpart 2 of part C only.

''(b) APPLICATION.—An owner or operator making an election under subsection (a) shall submit an application for the election to the Administrator for approval.

''(c) APPROVAL.—Subject to subsections (d) through (m), if the Administrator determines that an application for an election under subsection (b) meets the requirements of subsection (a), the Administrator shall approve the designation as an affected unit under subpart 2 of part B and subpart 2 of part C and, if applicable, under part D.

''(d) ESTABLISHMENT OF BASELINE.—

''(1) IN GENERAL.—After approval of a designation under subsection (c), an owner or operator shall install and operate monitoring on the designated unit required under paragraph (5), except that, in a case in which 2 or more units use a single stack, separate monitoring shall be required for each unit unless all units using the same stack are designated as affected units.

''(2) BASELINES.—

''(A) IN GENERAL.—Units shall have baselines established using heat input unless the unit qualifies for a product output baseline under paragraph (4).

''(B) HEAT INPUT OR PRODUCT OUTPUT.—The baselines for heat input or product output and sulfur dioxide and nitrogen oxides emission rates, as the case may be, for the unit shall be the unit's heat input or product output and the emission rates of sulfur dioxide and nitrogen oxides in accordance with paragraphs (3) and (4).

''(C) REGULATIONS.—The Administrator shall promulgate regulations requiring the unit's baselines for heat input or product output and for sulfur dioxide and nitrogen oxides emission rates to be based on the same year and specifying minimum data requirements consistent with paragraph (5) for baseline determination.

''(3) HEAT INPUT AND EMISSIONS BASELINES.—For the purposes of this subsection, heat input and emissions baselines shall be calculated, at the election of the owner or operator of the relevant unit, as—

''(A)(i) for heat input, the average of the unit's highest heat input for 3 of the 5 years before the year for which the Administrator is determining the allocations; and

''(ii) for emissions baselines, the average of the relevant emissions during those same 3 years; or

''(B)(i) for heat input, the average of any period of 24 consecutive months during the 10-year period immediately prior to the date of submission of an application under subsection (b), on the condition that the heat input does not exceed 1.2 times the average of the 10-year period; and

''(ii) for emissions baselines, the average of the relevant emissions for the 4-year period prior to the date of enactment of the Clear Skies Act of 2005 (for units that submit an application on or before January 1, 2009), or the average of the relevant emissions for the 4 years before the date of submission of the application under that Act (for units that submit an application after January 1, 2009).

''(4) DESIGNATION FOR PRODUCT OUTPUT BASIS.—

''(A) IN GENERAL.—The owner or operator of a unit that is subject to new source performance standards or other measures imposed by this Act on a product output basis rather than a heat input basis may elect to designate the unit as an affected unit under subpart 2 of part B and subpart 2 of part C.

''(B) BASELINE PRODUCT OUTPUT AND EMISSIONS BASELINES.—For the purposes of this paragraph, for those units using a product output basis, the baseline product output and emissions baselines in this subparagraph shall be calculated, at the election of the owner or operator of the relevant unit, as—

''(i)(I) for product input, the average of the unit's highest product output for 3 of the 5 years preceding the year for which the Administrator is determining the allocations; and

''(II) for emissions baselines, the average of the relevant emissions for the same years used to determine product output; or

''(B)(i) for product input, the average of any period of 24 consecutive months during the 10-year period immediately prior to the date of submission of an application under subsection (b), on the condition that the product input does not exceed 1.2 times the average of the 10-year period; and

''(ii) for emissions baselines, the average of the relevant emissions for the 4-year period prior to the date of enactment of the Clear Skies Act of 2005 (for units that submit an application on or before January 1, 2009), or the average of the relevant emissions for the 4 years before the date of submission of the application under that Act (for units that submit an application after January 1, 2009).

''(5) BASELINE DETERMINATIONS.—

''(A) IN GENERAL.—In making baseline determinations under this section, the Administrator may accept any reliable data on emissions of sulfur dioxide and nitrogen oxides in addition to, and other than, data collected from CEMS.

''(B) TYPES OF DATA.—Reliable data described in subparagraph (A) includes—

''(i) alternative data that has been used to determine compliance with a regulatory or monitoring requirement under this Act or a comparable State law, if the data establishes a reliable measure of heat input or product output and sulfur dioxide and nitrogen oxides emissions over a simultaneous period of time; or

''(ii) if that data is not available, such other alternative reliable data as the Administrator may prescribe.

''(C) USE OF CEMS FOR COMPLIANCE MONITORING.—The Administrator—

''(i) shall not require the use of CEMS for compliance monitoring by units of less than 250 mmBtu heat input or equivalent product output capacity subject to this section unless the Administrator concludes that a CEMS requirement is necessary to generate reliable data for compliance determinations;

''(ii) shall require the use of CEMS for compliance monitoring by units of between 250 mmBtu and 750 mmBtu heat input or equivalent product output capacity unless the Administrator determines that a CEMS requirement is not necessary to generate reliable data for compliance determinations; and

''(iii) shall require the use of CEMS for compliance monitoring for all units greater than 750 mmBtu heat input or equivalent product output capacity.

''(D) RELIABILITY.—In determining the reliability of data for purposes of this subsection, the Administrator shall consider the cost of generating more reliable data compared to the quantitative importance of the resulting gain in quantifying emissions.

''(e) EMISSION LIMITATIONS.—After approval of the designation of the unit under subsection (c), the unit shall become—

''(1) an affected unit under subpart 2 of part B, and shall be allocated sulfur dioxide allowances under subsection (f), beginning on the later of January 1, 2010, or January 1 of the year after approval of the designation;

''(2) an affected unit under subpart 2 of part C, and shall be allocated nitrogen oxides allowances under subsection (f), beginning on the later of January 1, 2010, or January 1 of the year after approval of the designation; and

''(3) if applicable, an affected unit under part D, and shall be allocated mercury allowances, beginning on the later of January 1, 2010, or January 1 of the year after approval of designation.

''(f) ALLOCATIONS.—

''(1) SULFUR DIOXIDE AND NITROGEN OXIDES.—

''(A) IN GENERAL.—The Administrator shall promulgate regulations determining the allocations of sulfur dioxide allowances and nitrogen oxides allowances for each year during which a unit is an affected unit under subsection (e).

''(B) ALLOCATIONS.—The regulations shall provide for allocations equal to 70 percent (beginning January 1, 2010) and 50 percent (beginning January 1, 2018) of the unit's baseline heat input or product output under subsection (d) multiplied by the lesser of—

''(i) the unit's baseline sulfur dioxide emission rate or nitrogen oxides emission rate, as the case may be; or

''(ii) the unit's most stringent Federal or State emission limitation for sulfur dioxide or nitrogen oxides applicable to the year on which the unit's baseline heat input or product output is based under subsection (d).

''(2) MERCURY.—

''(A) IN GENERAL.—The Administrator shall promulgate regulations providing for the allocation of mercury allowances to solid fuel-fired units designated under this section for each year after January 1, 2010, during which

a unit is a designated unit under this section.

''(B) ALLOCATIONS.—The regulations shall provide for allocations equal to the lesser of—

''(i) the product obtained by multiplying—

''(I) the unit's allowable emissions rate for mercury under the national emissions standards for hazardous air pollutants for boilers and process heaters, industrial furnaces, kilns, or other stationary source; by

''(II) the unit's baseline heat input or product output; and

''(i) the product obtained by multiplying—

''(I) the unit's most stringent Federal or State emission limitation for mercury emissions rate; by

''(II) the unit's baseline heat input or product output.

''(3) LIMITATION.—Allowances allocated to electing units under paragraphs (1) and (2) shall comprise a separate limitation on emissions from sections 423, 433, 453, 473, and other provisions of this Act. These allowances for sulfur dioxide, nitrogen oxides, or mercury, as the case may be, shall be tradable with allowances allocated under sections 414, 424, 454, 474, as applicable, on the conditions that—

''(A) electing units may only trade nitrogen oxides within the respective zones established under section 452 within which the electing unit is located; and

''(B) affected units within the WRAP States may only purchase sulfur dioxide allowances allocated or otherwise distributed by the Administrator to electing units within the WRAP States, and will not be counted for purposes of the affected unit's emissions within the meaning of the WRAP Annex.

''(4) INCENTIVES FOR EARLY REDUCTIONS.—

''(A) IN GENERAL.—Not later than 180 months after the date of enactment of this section, the Administrator shall promulgate regulations authorizing the allocation of sulfur dioxide, nitrogen oxides, and mercury allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

''(B) PROHIBITION ON CERTAIN ALLOCATIONS.—No allowances shall be allocated under this paragraph for emissions reductions attributable to—

''(i) pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section;

''(ii) fuel switching; or

''(iii) compliance with any Federal regulation.

''(C) ALLOWANCES.—The allowances allocated to any unit under this paragraph shall—

''(i) be in addition to the allowances allocated under paragraphs (1) and (2) and sections 414, 424, 434, 454, and 474; and

''(ii) be allocated in an amount equal to 1 allowance of sulfur dioxide and nitrogen oxides for each 1.05 tons of reduction in emissions of sulfur dioxide and nitrogen oxides, respectively, and 1.05 ounces of reduction in the emissions of mercury, achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented.

''(g) WITHDRAWAL.—The Administrator shall promulgate regulations withdrawing from the approved designation under subsection (c) any unit that qualifies as an affected EGU under subpart 2 of part B or subpart 2 of part C, or part D after the approval of the designation of the unit under subsection (c).

''(h) REGULATIONS.—Not later than 18 months after the date of enactment of the Clear Skies Act of 2005, the Administrator shall promulgate regulations implementing this section.

''(i) APPLICATION PERIOD.—

''(1) IN GENERAL.—Applications for designation of units under this section shall be accepted by the Administrator beginning not later than 180 days after the date of enactment of this section.

''(2) APPROVAL AND DISAPPROVAL.—Except as provided in paragraph (30, not later than 270 days after accepting an application under paragraph (1), the Administrator shall approve or disapprove the application.

''(3) DETERMINATION OF COMPLETION.—

''(A) IN GENERAL.—Not later than 90 days after accepting an application under paragraph (1), the Administrator shall determine whether the application is complete.

''(B) DETERMINATION OF COMPLETION.—Unless an application accepted under paragraph (1) is determined to be incomplete under subparagraph (A), the application shall be subject to paragraph (2).

''(4) STAY OF DEADLINES.—During the period beginning on the date of acceptance by the Administrator of an application under paragraph (1) and ending on the date on which the Administrator acts on the petition, the applicable compliance deadlines for NESHAPs under subsection (j) shall not apply to the applicable unit that is the subject of the application.

''(j) NESHAP APPLICABILITY.—

''(1) APPLICABILITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a unit that is designated as an affected unit under this section shall not be subject to the national emissions standards for hazardous air pollutants (NESHAP) promulgated under section 112(d) for—

''(i) Industrial, Commercial, and Institutional Boilers and Process Heaters (Fed. Reg. 69–55217);

''(ii) Plywood and Composite Wood Panel (Fed. Reg. 69–45943);

''(iii) Reciprocating Internal Combustion Engines (Fed. Reg. 69–33473); or

''(iv) Stationary Combustion Turbines (Fed. Reg. 69–10511).

''(B) EXCEPTION.—Units that are boilers or process heaters, industrial furnaces, kilns, or other stationary sources shall be subject on and after January 1, 2010, to the emissions limitation for mercury or the equivalent mercury allocation under subsection (f)(2), along with associated monitoring and compliance requirements, that would be applicable to such units under the NESHAP for those sources promulgated pursuant to section 112(d).

''(2) REPORTS.—

''(A) PRELIMINARY REPORT.—Not later than 18 months after the date of enactment of this section, the Administrator shall publish and make available for public comment a peer reviewed preliminary report characterizing the emissions and public health effects that may reasonably be anticipated to occur from the implementation of subsection (j)(1) and subsection (f).

''(B) FINAL REPORT.—Not later than 30 months after the date on which the preliminary report is published under subparagraph (A), in accordance with section 112(n)(1)(A), the Administrator shall publish a final report, including responses to the comments received.

''(C) REQUIREMENTS.—The requirements of section 112(n)(1)(A), for purposes of this paragraph, shall be considered to be modified to ensure that the final report under subparagraph (B) includes—

''(i) an estimate of the numbers and types of sources that are expected to be designated under this section;

''(ii) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in subsection (j)(1) from such sources that may reasonably be expected to occur for each year from 2010 through 2018;

''(iii) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in subsection (j)(1) from such sources that might reasonably be expected to occur for each year from 2010 through 2018, if such sources estimated in clause (i) are not designated under this section; and

''(iv) a description of the public health and environmental impacts associated with the emissions increases and decreases described in clauses (ii) and (iii).

''(D) ADDITIONAL AUTHORITY.—

''(i) IN GENERAL.—Notwithstanding subsection (j)(1), the Administrator may regulate emissions of hazardous air pollutants listed under section 112(b), other than mercury compounds, from sources designated under this section in accordance with section 112(f)(2).

''(ii) DETERMINATION.—Not later than 2 years after the date on which the final report under subparagraph (B) is published, the Administrator shall make a determination based on the study and other information satisfying the criteria of the Data Quality Act whether to establish emissions limitations under section 112(f) for sources designated under this section.

''(iii) TREATMENT OF DETERMINATION.—The determination shall be a final agency action subject to judicial review under section 307 and the Administrative Procedures Act.

''(k) EXEMPTION FROM MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.—

''(1) MAJOR SOURCE EXEMPTION.—

''(A) IN GENERAL.—Subject to subparagraph (B), a unit designated as an affected unit under this section shall not be considered to be a major source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of parts C and D of title I, for the 20-year period beginning on the date of enactment of the Clear Skies Act of 2005.

''(B) APPLICABILITY.—Subparagraph (A) applies only if, beginning on the date that is 8 years after the date of enactment of this section or designation of a unit as an affected unit—

''(i)(I) the designated unit either achieves in fact, or is subject to a regulatory requirement to achieve, a limit on the emissions of particulate matter from the affected unit to the level not greater than the level applicable to the unit either pursuant to subpart D of part 60 of title 40, Code of Federal Regulations, or the national emissions standards for hazardous air pollutants for industrial boilers and process heaters issued pursuant to section 112; or

''(II) the owner or operator of the affected unit properly operates, maintains, and repairs pollution control equipment to limit emissions of particulate matter; and

''(ii) the owner or operator of the designated unit uses good combustion practices to minimize emissions of carbon monoxide.

''(2) CLASS I AREA PROTECTIONS.—Notwithstanding the exemption in paragraph (1), an affected unit located within 50 kilometers of a Class I area on which construction commences after the date of enactment of this

section is subject to those provisions under part C of title I to the review of a new or modified major stationary source's impact on a Class I area.

''(l) LIMITATION.—

''(1) IN GENERAL.—No unit designated under this section shall transfer or bank allowances produced as a result of reduced utilization or shutdown, except that such allowances may be transferred or carried forward for use in subsequent years to the extent that—

''(A) reduced utilization or shutdown results from the replacement of the unit designated under this section, with any other unit or units subject to the requirements of this subpart; and

''(B) the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units.

''(2) NO GREATER ALLOCATION.—In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act.

''(3) NO VIOLATION.—No allowances allocated under this Act shall authorize operation of a unit in violation of any other requirements of this Act.

''(m) DEFINITION OF PRODUCT OUTPUT.—In this section, the term 'product output' means the output of a stationary source that produces a commercial product other than electricity, heat, or steam which may be used to determine a baseline for units for which heat input is not an appropriate baseline.''.

**''SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.**

''(a) DEFINITION.—For purposes of this section, the term 'clean coal technology' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of November 15, 1990.

''(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

''(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading 'Department of Energy—Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for qualifying project shall be at least twenty percent of the total cost of the demonstration project.

''(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

''(3) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering as defined in section 411, any qualifying project shall not be subject to standards of performance under section 111 or to the review and permitting requirements of part C for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

''(4) EPA REGULATIONS.—Not later than twelve months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 111 and parts C and D, as appropriate, to facilitate projects consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

''(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 111 or part C of the Act where the unit—

''(1) has not been in operation for the two-year period prior to November 15, 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory on November 15, 1990;

''(2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

''(3) is equipped with low-$NO_X$ burners prior to the time of commencement; and

''(4) is otherwise in compliance with the requirements of this Act.

**''SEC. 409. ELECTRICITY RELIABILITY.**

''(a) RELIABILITY.—

''(1) APPLICABILITY.—At any time prior the applicability of this Act under sections 422, 432, 452, and 472, in order to ensure the reliability of an electric utility company or system, including a system cooperatively or municipally owned, for a specified geographic area or service territory, as determined by the Department of Energy in consultation with the Administrator, during the installation of sulfur dioxide pollution control technology or scrubbers, nitrogen oxides, mercury or particulate matter control technology, or any combination thereof, the owner or operator of an affected unit may meet the requirements of sections 422, 432, 452, and 472 by means of the compliance procedures of this subsection (a).

''(2) PETITION.—The owner or operator of an affected unit that believes it may experience an adverse impact on the reliability of the company or system as a result, in substantial part, of the need to construct sulfur dioxide pollution control equipment or scrubbers, nitrogen oxides, mercury or particulate matter control technology, or any combination thereof, may petition the Secretary of Energy, in consultation with the Administrator, for a determination that, to a reasonable degree of certainty, reliability will likely be threatened. Upon such a determination, the owner or operator may elect to adopt a compliance method meeting the requirements of this subsection, as follows:

''(A) REGULATIONS.—Within 12 months of enactment the Secretary of Energy shall promulgate regulations describing the requirements for a petition and the petition process, which will include notice and public comment. The Secretary of Energy, in consultation with the Administrator, shall make a final determination on a petition within 180 days of the submittal of a reasonably complete petition. Failure to act within the 180-day period will extend the applicability by 12 months for all units subject to the petition.

''(B) CONTENTS OF PETITION.—The petition must contain—

''(i) a description of each affected unit, the estimated outage time and a construction schedule;

''(ii) an estimate of demand from date of applicability until 2018;

''(iii) the impacts on reliability associated with constructing all of the pollution control projects, including those for sulfur dioxide, nitrogen oxides, mercury, or particulate matter, by the respective deadlines; and

''(iv) how the proposed compliance schedule would alleviate detrimental impacts.

''(C) FAILURE TO PROMULGATE REGULATIONS.—If the Secretary of Energy fails to promulgate final regulations or such regulations are not effective for any reason, within the prescribed time, petitions containing reasonably sufficient information for a final determination may be submitted to the Secretary of Energy and will be deemed complete.

''(3) FINAL DETERMINATION.—In making a final determination the Secretary of Energy, in consultation with the Administrator, shall consider the following factors, provided that not all factors need be present to make a determination that, to a reasonable degree, reliability will be threatened:

''(A) SUPPLY.—The ability of vendors to supply scrubbers; scrubber system equipment, materials and scrubber affected balance of plant equipment including fans, pumps, electric motors, motor drives, dampers, electrical power supply equipment; at fair prices with meaningful guarantees or warranties as to availability, delivery dates and meeting contracted pollution control reduction requirements or emissions limitations; with similar considerations for nitrogen oxides, mercury or particulate matter control technology, or any combination thereof.

''(B) DESIGN AND CONSTRUCTION RESOURCES.—The availability and limitations of key sulfur dioxide, nitrogen oxides or mercury controls design resources and North American construction resources. The design resources shall include Architect Engineering companies experienced in the design of sulfur dioxide, nitrogen oxides, mercury or particulate matter control technology. The construction resources shall include construction companies with experience in the construction of sulfur dioxide, nitrogen oxides, mercury, or particulate matter control technology and trained and experienced labor resources including but not limited to boilermakers, iron workers, electricians, mechanics;

''(C) FEASIBILITY OF CONSTRUCTION.—The feasibility to complete the construction of all pollution control technology projects by the relevant applicability compliance deadline;

''(D) IMPACT.—The impact in terms of unit outages and construction schedules on a company or systems reliability and whether such impact is unreasonable, which term shall be presumed to be—

''(i) an increase in the price of purchase power of (10) percent over the estimated cost in cents per kilowatt for the company, system or State, utilized in the latest submissions to a relevant State or Federal agency;

''(ii) a projected reduction in available generating capacity such that adequate reserve margins for a company, system or State do not exist, as determined by the Secretary of Energy in coordination with the relevant

Federal or State utility agency or reliability council; or

''(iii) a supply shortage of coal needed to meet emissions control expectations for any proposed emissions control device.

''(E) POSITIVE DETERMINATION.—A company or system which submits a petition to install sulfur dioxide, nitrogen oxides, mercury, or particulate matter control technology, or any combination thereof, on affected units equaling 25 percent or more of its coal-fired capacity shall be presumed to meet the requirements of a positive determination from the Secretary of Energy.

''(4) COMPLIANCE.—Upon a positive determination by the Secretary of Energy in accordance with paragraph (3)(E), such affected units will be granted a 1-year extension from the relevant applicability date under this title.

''(b) SUBMISSION OF PETITION.—During any year covered by this title, an affected unit may submit a petition in accordance with paragraph (a)(2) to allow use of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, allocated for the immediate next year to meet the applicable requirement to hold such allowances equal to the petitioned year's emissions.

''(c) PRESIDENTIAL WAIVER.—Notwithstanding subsection (a) or any other provision of this Act, The President of the United States shall have authority to temporarily grant waivers from emission limitations under sections 412, 422, 432, 452, and 472, as the case may be, if the President determines that the reliability of any portion of national electricity supply or national security is imperiled.

**"PART B—SULFUR DIOXIDE EMISSION REDUCTIONS**

**"Subpart 1—Acid Rain Program**

**"SEC. 411. DEFINITIONS.**

''For purposes of this subpart and subpart 1 of part B:

''(1) ACTUAL 1985 EMISSION RATE.—The term 'actual 1985 emission rate', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF). For nonutility units, the term 'actual 1985 emission rate' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

''(2) ALLOWABLE 1985 EMISSIONS RATE.—The term 'allowable 1985 emissions rate' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation.

''(3) ALTERNATIVE METHOD OF COMPLIANCE.—The term 'alternative method of compliance' means a method of compliance in accordance with one or more of the following authorities—

''(A) a substitution plan submitted and approved in accordance with subsections 413(b) and (c); or

''(B) a phase I extension plan approved by the Administrator under section 413(d), using qualifying phase I technology as determined by the Administrator in accordance with that section.

''(4) BASELINE.—The term 'baseline' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ('mmBtu's'), calculated as follows:

''(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 (NAPAP) Emissions Inventory, Version 2 (NURF), or in a corrected data base as established by the Administrator pursuant to paragraph (3). For nonutility units, the baseline in the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of 4 calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents, strikes, disruptions of fuel supplies, failure of equipment, other causes beyond the reasonable control of the owner or operator of the unit that caused prolonged outages.

''(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the Administrator shall prescribe by regulation to be promulgated not later than 18 months after November 15, 1990.

''(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subpart and correct any factual errors in data from which affected phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under this subpart. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

''(5) BASIC PHASE II ALLOWANCE ALLOCATIONS.—The term 'basic phase II allowance allocations' means:

''(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) of section 414.

''(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) of section 414.

''(6) CAPACITY FACTOR.—The term 'capacity factor' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

''(7) COMMENCED.—The term 'commenced' as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

''(8) COMMENCED COMMERCIAL OPERATION.—The term 'commenced commercial operation' with regard to a unit means the start up of the unit's combustion chamber and commencement of the generation of electricity for sale.

''(9) CONSTRUCTION.—The term 'construction' means fabrication, erection, or installation of an affected unit.

''(10) EXISTING UNIT.—The term 'existing unit' means a unit (including units subject to section 111) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990, which is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit for the purposes of this subpart. For the purposes of this subpart, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25 MWe or less.

''(11) INDEPENDENT POWER PRODUCER.—The term 'independent power producer' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

''(12) NEW INDEPENDENT POWER PRODUCTION FACILITY.—The term 'new independent power production facility' means a facility that—

''(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

''(B) in nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990); and

''(C) is a new unit required to hold allowances under this subpart.

''(13) INDUSTRIAL SOURCE.—The term 'industrial source' means a unit that does not serve a generator that produces electricity, a 'nonutility unit' as defined in this section, or a process source.

''(14) LIFE-OF-THE-UNIT, FIRM POWER CONTRACTUAL ARRANGEMENT.—The term 'life-of-the-unit, firm power contractual arrangement' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

''(A) for the life of the unit;

''(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

''(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

''(15) NEW UNIT.—The term 'new unit' means a unit that commences commercial operation on or after November 15, 1990.

''(16) NONUTILITY UNIT.—The term 'nonutility unit' means a unit other than a utility unit.

''(17) PHASE II BONUS ALLOWANCE ALLOCATIONS.—The term 'phase II bonus allowance allocations' means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 412, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 414, and section 415.

''(18) QUALIFYING PHASE I TECHNOLOGY.—The term 'qualifying phase I technology' means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

''(19) REPOWERING.—The term 'repowering' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

''(20) RESERVE.—The term 'reserve' means any bank of allowances established by the Administrator under this subpart.

''(21) UTILITY UNIT.—

''(A) IN GENERAL.—The term 'utility unit' means—

''(i) a unit that serves a generator located in any State and that produces electricity for sale; or

''(ii) a unit that, during 1985, served a generator located in any State and that produced electricity for sale.

''(B) EXCLUSIONS.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

''(I) was in commercial operation during 1985; but

''(II) did not during 1985, serve a generator in any State that produced electricity for sale

shall not be a utility unit for purposes of this subpart.

''(i) UNITS THAT COGENERATE STEAM AND ELECTRICITY.—A unit that cogenerates steam and electricity is not a 'utility unit' for purposes of this subpart unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one-third of its potential electric output capacity of more than 25 megawatts electrical output to any utility power distribution system for sale.

**"SEC. 412. ALLOWANCE ALLOCATION.**

''(a) IN GENERAL.—Except as provided in sections 414(a)(2), 415(a)(3), and 416, beginning January 1, 2000, the Administrator shall not allocate annual emission allowances for sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic phase II allowance allocations for each unit subject to the requirements of section 414. Subject to the provisions of section 417, the Administrator shall allocate allowances for each affected until at an affected source annually, as provided in paragraphs (2) and (3) and section 404. Except as provided in sections 416, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000), shall not terminate or otherwise affect the allocation of allowances pursuant to section 413 or 414 to which the unit is entitled. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 414(a)(2).

''(b) NEW UTILITY UNITS.—

''(1) PROHIBITION OF EXCEEDING UNIT ALLOWANCES.—After January 1, 2000 and through December 31, 2007, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator.

''(2) PROHIBITION OF EXCEEDING SOURCE ALLOWANCES.—Starting January 1, 2008, a new utility unit shall be subject to the prohibition in subsection (c)(3).

''(3) ELIGIBILITY FOR ALLOCATION OF SULFUR DIOXIDE ALLOWANCES.—New utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 414. New utility units may obtain allowances from any person, in accordance with this title. The owner or operator of any new utility unit in violation of subsection (b)(1) or subsection(c)(3) shall be liable for fulfilling the obligations specified in section 406.

''(c) PROHIBITIONS.—

''(1) IN GENERAL.—It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subpart, except in accordance with regulations promulgated by the Administrator.

''(2) PROHIBITION OF EXCEEDING UNIT ALLOWANCES.—For any year 1995 through 2007, it shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit.

''(3) PROHIBITION OF EXCEEDING SOURCE ALLOWANCES.—Starting January 1, 2008, it shall be unlawful for the affected units at a source to emit a total amount of sulfur dioxide during the year in excess of the number of allowances held for the source for that year by the owner or operator of the source.

''(4) EFFECT ON OTHER EMISSION LIMITATIONS.—Upon the allocation of allowances under this subpart, the prohibition in paragraphs (2) and (3) shall supersede any other emission limitation applicable under this subpart to the units for which such allowances are allocated.

''(d) LIMITATION ON REGULATIONS.—In order to ensure electricity reliability, regulations establishing a system for issuing, recording, and tracking allowances under section 403(b) and this subpart shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recording. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned, including for calendar years after 2007, allowances held for such units by the owner or operator of the sources where the units are located.

''(e) INTEREST IN AFFECTED UNITS.—Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate of representation required under section 404(f) shall state—

''(1) that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement; or

''(2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in accordance with the contract.

A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances under this subpart received by the unit are deemed to be held for that person.

**"SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.**

''(a) EMISSION LIMITATIONS.—

''(1) ALLOCATION.—After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under section 413(d)(2)) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase 1; unless—

''(A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d); or

''(B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 414. The owner or operator of any unit in violation of this section be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 406.

''(2) DETERMINATION.—Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between—

''(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000; and

''(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000, and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subpart that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d), the Administrator shall allocate allowances from the reserve established hereunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

''(3) ADDITIONAL ALLOCATIONS.—In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

''(b) SUBSTITUTIONS.—The owner or operator of an affected unit under subsection (a) may include in its section 404 permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

''(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

''(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

''(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 411(4), multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

''(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

''(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

''(6) such other information as the Administrator may require.

''(c) ADMINISTRATOR'S ACTION ON SUBSTITUTION PROPOSALS.—

''(1) IN GENERAL.—The Administrator shall take final action on such substitution proposal in accordance with section 404(c) if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

''(2) ISSUANCE OF PERMITS.—Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this title, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 404. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 412. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the unit's total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 406. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

''(d) ELIGIBLE PHASE I EXTENSION UNITS.—

''(1) IN GENERAL.—The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 404 for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 404, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this title.

''(2) REQUIREMENTS FOR EXTENSION PROPOSALS.—Such extension proposal shall—

''(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

''(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

''(C) specify the unit's or units' baselines, actual 1985 emissions rates, allowable 1985 emissions rates, and projected utilizations for calendar years 1995 through 1999;

''(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

''(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

''(3) APPROVAL OR DISAPPROVAL.—The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 404, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the subpart.

''(4) DETERMINING THE AVAILABILITY OF ALLOCATIONS.—In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of the allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraph (A), (B), and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

''(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

''(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

''(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

''(5) ALLOCATION OF INITIAL ALLOWANCES.—Each eligible phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emission tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

''(6) ALLOCATION OF ADDITIONAL ALLOWANCES.—In addition to allowances specified in paragraph (4), the Administrator shall allocate for each eligible phase I extension unit employing qualifying phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000 exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

''(7) DEDUCTION FROM ANNUAL ALLOWANCE ALLOCATIONS.—After January 1, 1997, in addition to any liability under this Act, including under section 406, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (2) of this subsection, the Administrator

shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

''(e) EARLY REDUCTIONS.—

''(1) IN GENERAL.—In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements—

''(A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and

''(B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 414 (but is not also an affected unit under this section) and part of a utility system that includes one or more affected units under section 414 for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

''(2) LIMITATIONS.—In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs per mmBtu), divided by 2,000 exceeds (B) the allowances specified for such unit in table A. In the case of an affected unit under section 414, the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which—

''(A) the product of—

''(i) the quantity of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by—

''(ii) the lesser of—

''(I) 2.50, or

''(II) the most stringent emission rate (in lbs per mmBtu) applicable to the unit under the applicable implementation plan—

divided by 2,000 exceeds

''(B) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quantity of fossil fuel consumed.

''(3) NO BASIS FOR EXCUSED NONPERFORMANCE.—In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impracticability or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

''TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

| State | Plant name | Generator | Phase I allowances |
|---|---|---|---|
| Alabama | Colbert | 1 | 13,570 |
| | | 2 | 15,310 |
| | | 3 | 15,400 |
| | | 4 | 15,410 |
| | | 5 | 37,180 |
| | E.C. Gaston | 1 | 18,100 |
| | | 2 | 18,540 |
| | | 3 | 18,310 |
| | | 4 | 19,280 |
| | | 5 | 59,840 |
| Florida | Big Bend | 1 | 28,410 |
| | | 2 | 27,100 |
| | | 3 | 26,740 |
| | Crist | 6 | 19,200 |
| | | 7 | 31,680 |
| Georgia | Bowen | 1 | 56,320 |
| | | 2 | 54,770 |
| | | 3 | 71,750 |
| | | 4 | 71,740 |
| | Hammond | 1 | 8,780 |
| | | 2 | 9,220 |
| | | 3 | 8,910 |
| | | 4 | 37,640 |
| | J. McDonough | 1 | 19,910 |
| | | 2 | 20,600 |
| | Wansley | 1 | 70,770 |
| | | 2 | 65,430 |
| | Yates | 1 | 7,210 |
| | | 2 | 7,040 |
| | | 3 | 6,950 |
| | | 4 | 8,910 |
| | | 5 | 9,410 |
| | | 6 | 24,760 |
| | | 7 | 21,480 |
| Illinois | Baldwin | 1 | 42,010 |
| | | 2 | 44,420 |
| | | 3 | 42,550 |
| | Coffeen | 1 | 11,790 |
| | | 2 | 35,670 |
| | Grand Tower | 4 | 5,910 |
| | Hennepin | 2 | 18,410 |
| | Joppa Steam | 1 | 12,590 |
| | | 2 | 10,770 |
| | | 3 | 12,270 |
| | | 4 | 11,360 |
| | | 5 | 11,420 |
| | | 6 | 10,620 |
| | Kincaid | 1 | 31,530 |
| | | 2 | 33,810 |
| | Meredosia | 3 | 13,890 |
| | Vermilion | 2 | 8,880 |
| Indiana | Bailly | 7 | 11,180 |
| | | 8 | 15,630 |
| | Breed | 1 | 18,500 |
| | Cayuga | 1 | 33,370 |
| | | 2 | 34,130 |
| | Clifty Creek | 1 | 20,150 |
| | | 2 | 19,810 |
| | | 3 | 20,410 |
| | | 4 | 20,080 |
| | | 5 | 19,360 |
| | | 6 | 20,380 |
| | E.W. Stout | 5 | 3,880 |
| | | 6 | 4,770 |
| | | 7 | 23,610 |
| | F.B. Culley | 2 | 4,290 |
| | | 3 | 16,970 |
| | F.E. Ratts | 1 | 8,330 |
| | | 2 | 8,480 |
| | Gibson | 1 | 40,400 |
| | | 2 | 41,010 |
| | | 3 | 41,080 |
| | | 4 | 40,320 |
| | H.T. Pritchard | 6 | 5,770 |

''TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

| State | Plant name | Generator | Phase I allowances |
|---|---|---|---|
| | Michigan City | 12 | 23,310 |
| | Petersburg | 1 | 16,430 |
| | | 2 | 32,380 |
| | R. Gallagher | 1 | 6,490 |
| | | 2 | 7,280 |
| | | 3 | 6,530 |
| | | 4 | 7,650 |
| | Tanners Creek | 4 | 24,820 |
| | Wabash River | 1 | 4,000 |
| | | 2 | 2,860 |
| | | 3 | 3,750 |
| | | 5 | 3,670 |
| | | 6 | 12,280 |
| | Warrick | 4 | 26,980 |
| Iowa | Burlington | 1 | 10,710 |
| | Des Moines | 7 | 2,320 |
| | George Neal | 1 | 1,290 |
| | M.L. Kapp | 2 | 13,800 |
| | Prairie Creek | 4 | 8,180 |
| | Riverside | 5 | 3,990 |
| Kansas | Quindaro | 2 | 4,220 |
| Kentucky | Coleman | 1 | 11,250 |
| | | 2 | 12,840 |
| | | 3 | 12,340 |
| | Cooper | 1 | 7,450 |
| | | 2 | 15,320 |
| | E.W. Brown | 1 | 7,110 |
| | | 2 | 10,910 |
| | | 3 | 26,100 |
| | Elmer Smith | 1 | 6,520 |
| | | 2 | 14,410 |
| | Ghent | 1 | 28,410 |
| | Green River | 4 | 7,820 |
| | H.L. Spurlock | 1 | 22,780 |
| | Henderson II | 1 | 13,340 |
| | | 2 | 12,310 |
| | Paradise | 3 | 59,170 |
| | Shawnee | 10 | 10,170 |
| Maryland | Chalk Point | 1 | 21,910 |
| | | 2 | 24,330 |
| | C.P. Crane | 1 | 10,330 |
| | | 2 | 9,230 |
| | Morgantown | 1 | 35,260 |
| | | 2 | 38,480 |
| Michigan | J.H. Campbell | 1 | 19,280 |
| | | 2 | 23,060 |
| Minnesota | High Bridge | 6 | 4,270 |
| Mississippi | Jack Watson | 4 | 17,910 |
| | | 5 | 36,700 |
| Missouri | Asbury | 1 | 16,190 |
| | James River | 5 | 4,850 |
| | Labadie | 1 | 40,110 |
| | | 2 | 37,710 |
| | | 3 | 40,310 |
| | | 4 | 35,940 |
| | Montrose | 1 | 7,390 |
| | | 2 | 8,200 |
| | | 3 | 10,090 |
| | New Madrid | 1 | 28,240 |
| | | 2 | 32,480 |
| | Sibley | 3 | 15,580 |
| | Sioux | 1 | 22,570 |
| | | 2 | 23,690 |
| | Thomas Hill | 1 | 10,250 |
| | | 2 | 19,390 |
| New Hampshire | Merrimack | 1 | 10,190 |
| | | 2 | 22,000 |
| New Jersey | B.L. England | 1 | 9,060 |
| | | 2 | 11,720 |
| New York | Dunkirk | 3 | 12,600 |
| | | 4 | 14,060 |
| | Greenidge | 4 | 7,540 |
| | Milliken | 1 | 11,170 |
| | | 2 | 12,410 |
| | Northport | 1 | 19,810 |
| | | 2 | 24,110 |
| | | 3 | 26,480 |
| | Port Jefferson | 3 | 10,470 |
| | | 4 | 12,330 |
| Ohio | Ashtabula | 5 | 16,740 |
| | Avon Lake | 8 | 11,650 |
| | | 9 | 30,480 |
| | Cardinal | 1 | 34,270 |
| | | 2 | 38,320 |
| | Conesville | 1 | 4,210 |
| | | 2 | 4,890 |
| | | 3 | 5,500 |
| | | 4 | 48,770 |
| | Eastlake | 1 | 7,800 |
| | | 2 | 8,640 |
| | | 3 | 10,020 |
| | | 4 | 14,510 |
| | | 5 | 34,070 |
| | Edgewater | 4 | 5,050 |
| | Gen. J.M. Gavin | 1 | 79,080 |
| | | 2 | 80,560 |
| | Kyger Creek | 1 | 19,280 |
| | | 2 | 18,560 |
| | | 3 | 17,910 |
| | | 4 | 18,710 |
| | | 5 | 18,740 |
| | Miami Fort | 5 | 760 |
| | | 6 | 11,380 |
| | | 7 | 38,510 |
| | Muskingum River | 1 | 14,880 |
| | | 2 | 14,170 |
| | | 3 | 13,950 |
| | | 4 | 11,780 |
| | | 5 | 40,470 |
| | Niles | 1 | 6,940 |
| | | 2 | 9,100 |

''TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

| State | Plant name | Generator | Phase I allowances |
|---|---|---|---|
| | Picway | 5 | 4,930 |
| | R.E. Burger | 3 | 6,150 |
| | | 4 | 10,780 |
| | | 5 | 12,430 |
| | W.H. Sammis | 5 | 24,170 |
| | | 6 | 39,930 |
| | | 7 | 43,220 |
| | W.C. Beckjord | 5 | 8,950 |
| | | 6 | 23,020 |
| Pennsylvania | Armstrong | 1 | 14,410 |
| | | 2 | 15,430 |
| | Brunner Island | 1 | 27,760 |
| | | 2 | 31,100 |
| | | 3 | 53,820 |
| | Cheswick | 1 | 39,170 |
| | Conemaugh | 1 | 59,790 |
| | | 2 | 66,450 |
| | Hatfield's Ferry | 1 | 37,830 |
| | | 2 | 37,320 |
| | | 3 | 40,270 |
| | Martins Creek | 1 | 12,660 |
| | | 2 | 12,820 |
| | Portland | 1 | 5,940 |
| | | 2 | 10,230 |
| | Shawville | 1 | 10,320 |
| | | 2 | 10,320 |
| | | 3 | 14,220 |
| | | 4 | 14,070 |
| | Sunbury | 3 | 8,760 |
| | | 4 | 11,450 |
| Tennessee | Allen | 1 | 15,320 |
| | | 2 | 16,770 |
| | | 3 | 15,670 |
| | Cumberland | 1 | 86,700 |
| | | 2 | 94,840 |
| | Gallatin | 1 | 17,870 |
| | | 2 | 17,310 |
| | | 3 | 20,020 |
| | | 4 | 21,260 |
| | Johnsonville | 1 | 7,790 |
| | | 2 | 8,040 |
| | | 3 | 8,410 |
| | | 4 | 7,990 |
| | | 5 | 8,240 |
| | | 6 | 7,890 |
| | | 7 | 8,980 |
| | | 8 | 8,700 |
| | | 9 | 7,080 |
| | | 10 | 7,550 |
| West Virginia | Albright | 3 | 12,000 |
| | Fort Martin | 1 | 41,590 |
| | | 2 | 41,200 |
| | Harrison | 1 | 48,620 |
| | | 2 | 46,150 |
| | | 3 | 41,500 |
| | Kammer | 1 | 18,740 |
| | | 2 | 19,460 |
| | | 3 | 17,390 |
| | Mitchell | 1 | 43,980 |
| | | 2 | 45,510 |
| | Mount Storm | 1 | 43,720 |
| | | 2 | 35,580 |
| | | 3 | 42,430 |
| Wisconsin | Edgewater | 4 | 24,750 |
| | La Crosse/Genoa | 3 | 22,700 |
| | Nelson Dewey | 1 | 6,010 |
| | | 2 | 6,680 |
| | N. Oak Creek | 1 | 5,220 |
| | | 2 | 5,140 |
| | | 3 | 5,370 |
| | | 4 | 6,320 |
| | Pulliam | 8 | 7,510 |
| | S. Oak Creek | 5 | 9,670 |
| | | 6 | 12,040 |
| | | 7 | 16,180 |
| | | 8 | 15,790 |

''(f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

''(1) DEFINITIONS.—As used in this subsection:

''(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term 'qualified energy conservation measure' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

''(B) QUALIFIED RENEWABLE ENERGY.—The term 'qualified renewable energy' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

''(C) ELECTRIC UTILITY.—The term 'electric utility' means any person, State agency, or Federal agency, which sells electric energy.

''(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

''(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

''(B) REQUIREMENTS FOR ISSUANCE.—The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

''(i) Such electric utility is paying for or participating in the qualified energy conservation measures or qualified renewable energy.

''(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

''(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

''(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

''(III) In the case of electric utilities subject to the jurisdiction of a State regulatory authority such plan shall have been approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall have been approved by the Administrator.

''(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of

Energy has certified that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (B) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

''(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

''(C) PERIOD OF APPLICABILITY.—Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992, and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subpart (including those sources that elect to become affected by this title, pursuant to section 417).

''(D) DETERMINATION OF AVOIDED EMISSIONS.—

''(i) APPLICATION.—In order to receive allowances under this subsection, an electric utility shall make an application which—

''(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions;

''(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

''(III) demonstrates that the requirements of subparagraph (B) have been met.

''(ii) APPROVAL.—Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

''(E) AVOIDED EMISSIONS FROM QUALIFIED ENERGY CONSERVATION MEASURES.—For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

''(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures; by

''(ii) 0.004, and dividing the product so derived by 2,000.

''(F) AVOIDED EMISSIONS FROM THE USE OF QUALIFIED RENEWABLE ENERGY.—The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—

''(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy; by

''(ii) 0.004, and dividing the product so derived by 2,000.

''(G) PROHIBITIONS.—

''(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

''(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

''(3) SAVINGS PROVISION.—Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

''(4) REGULATIONS.—The Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility and from State-to-State in accordance with the Administrator's rules. The Administrator shall publish and make available to the public the findings of this review no less than annually.

''(g) CONSERVATION AND RENEWABLE ENERGY RESERVE.—The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 411. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. Notwithstanding the prior sentence, if allowances remain in the reserve on January 1, 2010, the Administrator shall allocate such allowances for affected units under section 414 on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 414, the term 'pro rata basis' refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

''(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

''(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

''(A) has an emission rate below 1.0 lbs/mmBtu,

''(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

''(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu, at the election to the owner or operator of such unit, the unit's baseline may be calculated—

''(i) as provided under section 411, or

''(ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

''(2) ALLOWANCE ALLOCATION.—Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 412(a), this section, and section 414 (as basic phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs/mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 414.

**''SEC. 414. PHASE II SULFUR DIOXIDE REQUIREMENTS.**

''(a) APPLICABILITY.—

''(1) BASIC PHASE II ALLOWANCE ALLOCATIONS.—After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subpart. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate.

''(2) BASIC PHASE II BONUS ALLOWANCE ALLOCATIONS.—In addition to basic phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3) (A) and (B), and (h)(2) of this section and section 415.

''(3) ADDITIONAL ALLOWANCE ALLOCATIONS FOR CERTAIN AFFECTED SOURCES AND UNITS.—In addition to basic phase II allowances allocations and phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on table A in section 413 (other than units at Kyger Creek, Clifty Creek, and Joppa Stream) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on table A (other than units at Kyger Creek, Clifty Creek, and Joppa Stream). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 412(a).

''(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND 1.20 LBS/MMBTU.—

''(1) BASIC PHASE II ALLOWANCE ALLOCATIONS.—Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) RESERVE ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances

from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

''(3) PROHIBITION.—After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of this Act for any pollutant subject to the requirements of section 109 of this Act to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(4) ANNUAL ALLOWANCE ALLOCATIONS.—After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980, and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

''(c) COAL OR OIL-FIRED UNITS BELOW 75 MWE AND ABOVE 1.20 LBS/MMBTU.—

''(1) STEAM-ELECTRIC CAPACITY EQUAL TO OR GREATER THAN 250MWE.—Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) STEAM-ELECTRIC CAPACITY LESS THAN 250MWE.—After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(3) STEAM-ELECTRIC CAPACITY BETWEEN 250 AND 450 MWE.—After January 1, 2000 it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(4) RESERVE ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

''(5) CERTAIN ELECTRIC UTILITY SYSTEMS.—After January 1, 2000, it shall be unlawful for any existing unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990—

''(A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices;

''(B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe; and

''(C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the project of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(d) COAL-FIRED UNITS BELOW 1.20 LBS/MMBTU.—

''(1) RATE LESS THAN 0.60 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by—

''(A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate; and

''(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) RATE BETWEEN 0.60 AND 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(3) RESERVE ALLOWANCE.—

''(A) IN GENERAL.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

''(i) the product of the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline

adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds

''(ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 403(a)(1) as basic phase II allowance allocations.

''(B) UNITS SUBJECT TO CERTAIN LIMITATIONS.—In addition to allowances allocated pursuant to paragraph (2) and section 412(a) as basic phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

''(i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000; exceeds

''(ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 412(a) as basic phase II allowance allocations.

''(C) ELECTION BY OPERATING COMPANY.—An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

''(4) ALTERNATIVE ALLOCATION.—Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 111 of the Act in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65-percent-capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

''(5) CLEAN COAL TECHNOLOGY DEMONSTRATION GRANT.—For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2002, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

''(e) OIL AND GAS-FIRED UNITS EQUAL TO OR GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(f) OIL AND GAS-FIRED UNITS LESS THAN 0.60 LBS/MMBTU.—

''(1) IN GENERAL.—After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowance 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by—

''(A) the lesser of 0.60 lbs/mmBtu or the unit's allowance 1985 emissions, and

''(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) ADDITIONAL ALLOCATION.—In addition to allowances allocated pursuant to paragraph (1) as basic phase II allowance allocations and section 412(a), beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

''(g) UNITS THAT COMMENCE COMMERCIAL OPERATION BETWEEN 1986 AND DECEMBER 31, 1995.—

''(1) IN GENERAL.—After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65-percent-capacity factor multiplied by the unit's allowance 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) UNIT ALLOWANCES.—After January 1, 2000, the Administrator shall allocate allowances pursuant to section 411 to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

''TABLE B

| Unit | Allowances |
|---|---|
| Brandon Shores | 8,907 |
| Miller 4 | 9,197 |
| TNP One 2 | 4,000 |
| Zimmer 1 | 18,458 |
| Spruce 1 | 7,647 |
| Clover 1 | 2,796 |
| Clover 2 | 2,796 |
| Twin Oak 2 | 1,760 |
| Twin Oak 1 | 9,158 |
| Cross 1 | 6,401 |
| Malakoff 1 | 1,759 |

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, provided that the owner or operator of a unit listed on table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

''(3) UNITS THAT COMMENCED COMMERCIAL OPERATION BETWEEN OCTOBER 1, 1990, AND DECEMBER 31, 1992.—Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

''(4) UNITS THAT COMMENCED COMMERCIAL OPERATION BETWEEN JANUARY 1, 1993, AND DECEMBER 31, 1995.—Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993, and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

''(5) UNITS THAT CONVERTED TO COAL FIRED OPERATION BETWEEN JANUARY 1, 1985, AND DECEMBER 31, 1987.—After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985, and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq., repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(6) APPLICABILITY TO QUALIFYING SMALL POWER PRODUCTION FACILITIES, QUALIFYING COGENERATION FACILITIES, AND NEW INDEPENDENT POWER PRODUCTION FACILITIES.—Unless the Administrator has approved a designation of such facility under section 417, the provisions of this subpart shall not apply to a 'qualifying small power production facility' or 'qualifying cogeneration facility' (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a 'new independent power production facility' if, as of November 15, 1990—

''(A) an applicable power sales agreement has been executed;

''(B) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

''(C) an electric utility has issued a letter of intent or similar instrument committing

to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

''(D) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

''(h) OIL- AND GAS-FIRED UNITS LESS THAN 10 PERCENT OIL CONSUMED.—

''(1) IN GENERAL.—After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) RESERVE ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

''(3) ADDITIONAL ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a), beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

''(i) UNITS IN HIGH GROWTH STATES.—

''(1) ANNUAL ALLOCATIONS.—In addition to allowances allocated pursuant to this section and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

''(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

''(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988, in an amount equal to the difference between—

''(i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator; and

''(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section:

*Provided,* That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

''(2) ADDITIONAL ALLOCATIONS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1)—

''(A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990;

''(B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000;

''(C) which commenced operation after January 1, 1970;

''(D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990; and

''(E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 percent or more from 1980 to 1988, allowances in an amount equal to the difference between—

''(i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator; and

''(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1):

*Provided,* That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000 allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

''(j) CERTAIN MUNICIPALLY OWNED POWER PLANTS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 412(a) as basic phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

**"SEC. 415. ALLOWANCES FOR STATES WITH EMISSIONS RATES AT OR BELOW 0.80 LBS/MMBTU.**

''(a) ELECTION OF GOVERNOR.—In addition to basic phase II allowance allocations, upon the election of the Governor of any State, with a 1985 statewide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other phase 11 bonus allowance allocations, allowances from the reserve created pursuant to section 414(a)(2) to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

''(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 412(a), each Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 414.

''(c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 414.

**"SEC. 416. ELECTION FOR ADDITIONAL SOURCES.**

''(a) APPLICABILITY.—The owner or operator of any unit that is not, nor will become, an affected unit under section 412(b), 413, or 414, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subpart. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 404. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit shall be allocated allowances, and be an affected unit for purposes of this subpart.

''(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

''(c) EMISSION LIMITATIONS.—

''(1) ELECTIONS SUBMITTED BEFORE JANUARY 1, 2002.—For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) before January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator); divided by 2,000.

''(2) ELECTIONS SUBMITTED AFTER JANUARY 1, 2002.—For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator); divided by 4,000.

''(d) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c), in accordance with section 412. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 412. Affected sources under this section shall be subject to the requirements of sections 404, 405, 406, and 412.

''(e) LIMITATION.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subpart, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such

allowances shall authorize operation of a unit in violation of any other requirements of this Act.

''(f) IMPLEMENTATION.—The Administrator shall implement this section under 40 CFR part 74 (2002), amended as appropriate by the Administrator.

**"SEC. 417. AUCTIONS, RESERVE.**

''(a) SPECIAL RESERVE OF ALLOWANCES.—For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

''(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

''(2) 2.8 percent of the basic phase 11 allowance allocation of allowances for each year beginning in the year 2000;

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

''(b) AUCTION SALES.—

''(1) SUBACCOUNT FOR AUCTIONS.—The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year from 2000 through 2009, inclusive.

''(2) ANNUAL AUCTIONS.—Commencing in 1993 and in each year thereafter until 2010, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table C. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subpart and subpart 2.

TABLE C—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

| Year of sale | Spot auction (same year) | Advance auction |
|---|---|---|
| 1993 | 50,000 | 100,000 |
| 1994 | 50,000 | 100,000 |
| 1995 | 50,000 | 100,000 |
| 1996 | 150,000 | 100,000 |
| 1997 | 150,000 | 100,000 |
| 1998 | 150,000 | 100,000 |
| 1999 | 150,000 | 100,000 |
| 2000 | 125,000 | 125,000 |
| 2001 | 125,000 | 125,000 |
| 2002 | 125,000 | 125,000 |
| 2003 | 125,000 | 0 |
| 2004–2009 | 125,000 | 0 |

''(3) PROCEEDS.—

''(A) TRANSFER.—Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

''(B) RETURN.—At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld. With 170 days after the date of enactment of the Clear Skies Act of 2005, any allowance withheld under paragraph (a)(2) but not offered for sale at an auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

''(4) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subpart.

''(c) CHANGES IN AUCTIONS AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance auctions) and 2005 (in the case of spot auctions) decrease the number of allowances withheld and sold under this section.

''(d) TERMINATION OF AUCTIONS.—Not later than the commencement date of the sulfur dioxide allowance requirement under section 422, the Administrator shall terminate the withholding of allowances and the auction sales under this section. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

''(e) APPLICABLE LAW.—The Administrator shall implement this section under 40 CFR part 73 (2002), amended as appropriate by the Administrator.

**"SEC. 418. INDUSTRIAL SULFUR DIOXIDE EMISSIONS.**

''(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in section 411(11)), including units subject to section 414(g)(2), for all years for which data are available, as well as the likely trend in such emission over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214.

''(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 414(g)(2), and may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator shall take such actions under the Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 414(g)(2), under section 111(b), as well as promulgation of standards of performance for existing sources, including units subject to section 414(g)(2), under authority of this section. For an existing source regulated under this section, 'standard of performance' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

''(c) ELECTION.—Regulations promulgated under section 414(b) shall not prohibit a source from electing to become an affected unit under section 417.

**"SEC. 419. TERMINATION.**

''Starting January 1, 2010, the owners or operators of affected units and affected facilities under sections 412(b) and (c) and 416 and shall no longer be subject to the requirements of sections 412 through 417.

**"Subpart 2—Clear Skies Sulfur Dioxide Allowance Program**

**"SEC. 421. DEFINITIONS.**

''For purposes of this subpart—

''(1) AFFECTED EGU.—The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator with a nameplate capacity of greater than twenty-five megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that meets the criteria for qualifying cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002 during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a unit serving one or more generators with total nameplate capacity of twenty-five megawatts or less, or a cogeneration unit that meets the criteria for qualifying cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the year the unit commences services of a generator.

Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

''(2) COAL-FIRED.—The term 'coal-fired' with regard to a unit means, for purposes of section 424, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during 1998 through 2002 or, for a unit that commenced operation on or after January 1, 2003, a unit designed to combust coal or any coal derived fuel alone or in combination with any other fuel.

''(3) EASTERN BITUMINOUS.—The term 'Eastern bituminous' means bituminous that is from a mine located in a State east of the Mississippi River.

''(4) GENERAL ACCOUNT.—The term 'general account' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any person under 40 CFR part 73.31(c) (2002), amended as appropriate by the Administrator.

''(5) OIL-FIRED.—The term 'oil-fired' with regard to a unit means, for purposes of section 424, combusting fuel oil for more than 10

percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year during 1998 through 2002 or, for a unit that commenced operation on or after January 1, 2003, a unit designed to combust oil for more than 10 percent of the unit's total heat input and not to combust any coal or coal-derived fuel.

''(6) UNIT ACCOUNT.—The term 'unit account' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any unit under 40 CFR section 73.31 (a) and (b) (2002), amended as appropriate by the Administrator.

**"SEC. 422. APPLICABILITY.**

''(a) PROHIBITION.—Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 423 shall be held in order to meet the requirements of subsection (a).

**"SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.**

''For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate sulfur dioxide allowances under section 424.

''TABLE A—TOTAL $SO_2$ ALLOWANCES ALLOCATED FOR EGUs

| Year | $SO_2$ allowances allocated |
|---|---|
| 2010 | 4,416,666 |
| 2011–2012 | 4,416,667 |
| 2013–2017 | 4,500,000 |
| 2018 and thereafter | 3,000,000. |

**"SEC. 424. EGU ALLOCATIONS.**

''(a) IN GENERAL.—Not later than 3 years before the commencement date of the sulfur dioxide allowance requirement of section 422, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010 and thereafter. The regulations shall provide that:

''(1) 93 percent of the total amount of sulfur dioxide allowances shall be allocated to fossil-fuel-fired affected EGUs under section 424 shall be allocated by the Administrator to individual EGUs as follows:

''(A) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine the total amount of sulfur dioxide allowances allocated under subpart 1 for 2010 and thereafter that are recorded, as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2005. The Administrator shall determine this amount in accordance with 40 CFR part 73 (2002), amended as appropriate by the Administrator, except that the Administrator shall apply a discount rate of 7 percent for each year after 2010 to the amounts of sulfur dioxide allowances allocated for 2011 or later.

''(B) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine an amount of sulfur dioxide allowances equal to the allocation amount under subparagraph (A) multiplied by the ratio of the amount of sulfur dioxide allowances determined to be recorded in that account under clause (i) to the total amount of sulfur dioxide allowances determined to be recorded in all unit accounts and general accounts in the Allowance Tracking System under clause (i).

''(C) The Administrator shall allocate to each facility's account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and shall allocate to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account.

''(2)(A) 7 percent of the total amount of sulfur dioxide allowances allocated each year under section 423 shall be allocated for units at a facility that are affected EGUs, but did not receive sulfur dioxide allocations under subpart 1 of this title.

''(B) The Administrator shall allocate each year for the units under subparagraph (A) that commenced operation before January 1, 2001, an amount of sulfur dioxide allowances determined by:

''(i) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(ii) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iii) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iv) If the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i), (ii), and (iii) to the total of the amounts for all facilities under clause (i), (ii), and (iii).

''(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv).

''(C) The Administrator shall allocate each year for units under subparagraph (A) that commence commercial operation on or after January 1, 2001 and before January 1, 2005, an amount of sulfur dioxide allowances determined by:

''(i) For such units at the facility that are coal-fired or oil-fired, multiplying 0.19 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(ii) For all such other units at the facility that are not covered by clause (i), multiplying .005 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iii) If the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i) and (ii) to the total of the amounts for all facilities under clauses (i) and (ii).

''(iv) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i) and (ii) or, if the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall allocate to the facilities under paragraph (1) and this paragraph on a pro rata basis (based on the allocations under those paragraphs) any allowances not allocated under this paragraph.

''(D) The Administrator shall allocate each year for units under subparagraph (A) that commence commercial operation on or after January 1, 2005, an amount of sulfur dioxide allowances determined for each such unit at the facility by multiplying the applicable National Emissions Standard under section 481 by the applicable ''baseline heat input,'' considering fuel and combustion type, as defined in section 402(5)(B) and converting to tons.

''(E) In the event that allocation demand exceeds supply, the Administrator shall allocate allowances under subparagraph (A) giving first priority to units qualifying under subparagraph (B), second priority to units qualifying under subparagraph (C), and third priority to units qualifying under subparagraph (D). Allowances allocated under subparagraph (D) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under sub-paragraph (D) will not be reduced as a result of new units commencing commercial operation.

''(b) FAILURE TO PROMULGATE.—

''(1) ANNUAL NOTICE.—For each year 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under subsection (a), each affected EGU shall comply with section 422 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected EGU believes it has for the relevant year and the amount of sulfur dioxide emissions for such year. The amount of sulfur dioxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements.

''(2) RECONCILIATION.—Upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of sulfur dioxides and section 403(c) establishing an Allowance Transfer System for sulfur dioxide allowances, each unit's emissions shall be compared to and reconciled to its actual allocations under the promulgated regulations. Each unit will have nine (9) months to purchase any allowance shortfall through allowances purchased from other allowance holders or through direct sale.

**"SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES ALLOCATED UNDER SUBPART 1.**

''(a) REMOVAL FROM ACCOUNTS.—After allocating allowances under section 424(a)(1), the Administrator shall remove from the unit accounts and general accounts in the Allowance Tracking System under section 403(c) and from the Special Allowances Reserve under section 418 all sulfur dioxide allowances allocated or deposited under subpart 1 for 2010 or later.

''(b) REGULATIONS.—The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 422 may be met using sulfur dioxide allowances allocated under subpart 1 for 1995 through 2009. No part of this Act shall be construed to prevent use of unused pre-2010 allowances to meet the requirements of section 422.

**"SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION CONTROL TECHNOLOGY.**

''(a) RESERVE.—The Administrator shall establish a reserve of 250,000 sulfur dioxide allowances comprising 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur dioxide allowances for 2011, and 83,333 sulfur dioxide allowances for 2012.

''(b) APPLICATION.—Not later than 18 months after the enactment of the Clear Skies Act of 2005, an owner or operator of an affected EGU that commenced operation before 2001 and that during 2001 combusted Eastern bituminous may submit an application to the Administrator for sulfur dioxide allowances from the reserve under subsection (a). The application shall include each of the following:

''(1) A statement that the owner or operator will install and commence commercial operation of specified sulfur dioxide control technology at the unit within 24 months after approval of the application under subsection (c) if the unit is allocated the sulfur dioxide allowances requested under paragraph (4). The owner or operator shall provide description of the control technology.

''(2) A statement that, during the period starting with the commencement of operation of sulfur dioxide technology under paragraph (1) through 2009, the unit will combust Eastern bituminous at a percentage of the unit's total heat input equal to or exceeding the percentage of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

''(3) A demonstration that the unit will achieve, while combusting fuel in accordance with paragraph (2) and operating the sulfur dioxide control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide control technology under subparagraph (1) through 2009. The tonnage of emission reductions shall be the difference between emissions monitored at a location at the unit upstream of the control technology described in paragraph (1) and emissions monitored at a location at the unit downstream of such control technology, while the unit is combusting fuel in accordance with paragraph (2).

''(4) A request that the Administrator allocate for the unit a specified number of sulfur dioxide allowances from the reserve under subsection (a) for the period starting with the commencement of operation of the sulfur dioxide technology under paragraph (1) through 2009.

''(5) A statement of the ratio of the number of sulfur dioxide allowances requested under paragraph (4) to the tonnage of sulfur dioxide emissions reductions under paragraph (3).

''(c) APPROVAL OR DISAPPROVAL.—By order subject to notice and opportunity for comment, the Administrator shall—

''(1) determine whether each application meets the requirements of subsection (b);

''(2) list the applications meeting the requirements of subsection (b) and their respective allowance-to-emission-reduction ratios under paragraph (b)(5) in order, from lowest to highest, of such ratios;

''(3) for each application listed under paragraph (2), multiply the amount of sulfur dioxide emission reductions requested by each allowance-to-emission-reduction ratio on the list that equals or is less than the ratio for the application;

''(4) sum, for each allowance-to-emission-reduction ratio in the list under paragraph (2), the amounts of sulfur dioxide allowances determined under paragraph (3);

''(5) based on the calculations in paragraph (4), determine which allowance-to-emission-reduction ratio on the list under paragraph (2) results in the highest total amount of allowances that does not exceed 250,000 allowances; and

''(6) approve each application listed under paragraph (2) with a ratio equal to or less than the allowance-to-emission-reduction ratio determined under paragraph (5) and disapprove all the other applications.

''(d) MONITORING.—An owner or operator whose application is approved under subsection (c) shall install and operate a CEMS for monitoring sulfur dioxide and to quality assure the data. The installation of the CEMS and the quality assurance of data shall be in accordance with subparagraph (a)(2)(B) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stack, and one or more units are not subject to such standards, separate monitoring shall be required for each unit.

''(e) ALLOCATIONS.—Not later than 6 months after the commencement date of the sulfur dioxide allowance requirement of section 422, for the units for which applications are approved under subsection (c), the Administrator shall allocate sulfur dioxide allowances as follows:

''(1) For each unit, the Administrator shall multiply the allowance-to-emission-reduction ratio of the last application that the Administrator approved under subsection (c) by the lesser of—

''(A) the total tonnage of sulfur dioxide emissions reductions achieved by the unit, during the period starting with the commencement of operation of the sulfur dioxide control technology under subparagraph (b)(1) through 2009, through use of such control technology; or

''(B) the tonnage of sulfur dioxide emission reductions under paragraph (b)(3).

''(2) If the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall multiply 250,000 sulfur dioxide allowances by the ratio of the amount of sulfur dioxide allowances determined for each unit under paragraph (1) to the total amount of sulfur dioxide allowances determined for all units under paragraph (1).

''(3) The Administrator shall allocate to each unit the lesser of the amount determined for that unit under paragraph (1) or, if the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, under paragraph (2). The Administrator shall allocate to the facilities under section 424 paragraphs (1) and (2) on a pro rata basis (based on the allocations under those paragraphs) any unallocated allowances under this paragraph.

**"Subpart 3—Western Regional Air Partnership**

**"SEC. 431. DEFINITIONS.**

''For purposes of this subpart—

''(1) ADJUSTED BASELINE HEAT INPUT.—The term 'adjusted baseline heat input' means the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period from the eighth through the fourth year before the first covered year.

''(A) Notwithstanding paragraph (1), if a unit commences operation during such period and—

''(i) on or after January 1 of the fifth year before the first covered year, then 'adjusted baseline heat input' shall mean the average annual heat input used by the unit during the fifth and fourth years before the first covered year; and

''(ii) on or after January 1 of the fourth year before the first covered year, then 'adjusted baseline heat input' shall mean the annual heat input used by the unit during the fourth year before the first covered year.

''(B) A unit's heat input for a year shall be the heat input—

''(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

''(ii) reported to the Energy Information Administrator for the unit, if the unit was not required to report heat input under section 405;

''(iii) based on data for the unit reported to the WRAP State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

''(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the WRAP State.

''(2) AFFECTED EGU.—The term 'affected EGU' means an affected EGU under subpart 2 that is in a WRAP State and that—

''(A) in 2000, emitted 100 tons or more of sulfur dioxide and was used to produce electricity for sale; or

''(B) in any year after 2000, emits 100 tons or more of sulfur dioxide and is used to produce electricity for sale.

''(3) COAL-FIRED.—The term 'coal-fired' with regard to a unit means, for purposes of section 434, a unit combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during the period from the eighth through the fourth year before the first covered year.

''(4) COVERED YEAR.—The term 'covered year' means—

''(A)(i) the third year after the year 2018 or later when the total annual sulfur dioxide emissions of all affected EGUs in the WRAP States first exceed 271,000 tons; or

''(ii) the third year after the year 2013 or later when the Administrator determines by regulation that the total annual sulfur dioxide emissions of all affected EGUs in the WRAP States are reasonably projected to exceed 271,000 tons in 2018 or any year thereafter. The Administrator may make such determination only if all the WRAP States submit to the Administrator a petition requesting that the Administrator issue such determination and make all affected EGUs in the WRAP States subject to the requirements of sections 432 through 434; and

''(B) each year after the 'covered year' under subparagraph (A).

''(5) OIL-FIRED.—The term 'oil-fired' with regard to a unit means, for purposes of section 434, a unit combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, and any year during the period from the eighth through the fourth year before the first covered year.

''(6) WRAP STATE.—The term 'WRAP State' means Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

**"SEC. 432. APPLICABILITY.**

''(a) PROHIBITION.—Starting January 1 of the first covered year, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 433 shall be held in order to meet the requirements of subsection (a).

**"SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.**

For affected EGUs, the total amount of sulfur dioxide allowances that the Administrator shall allocate for each covered year under section 434 shall equal 271,000 tons.

**"SEC. 434. EGU ALLOCATIONS.**

''(a) IN GENERAL.—By January 1 of the year before the first covered year, the Administrator shall promulgate regulations determining, for each covered year, the allocations of sulfur dioxide allowances for the units at a facility that are affected EGUs as of December 31 of the fourth year before the covered year by—

''(1) for such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

''(2) for such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

''(3) for all such other units at the facility that are not covered by paragraph (1) or (2) multiplying 0.05 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons; and

''(4) multiplying by 0.95 the allocation amount under section 433 by the ratio of the total of the amounts for the facility under paragraphs (1), (2), and (3) to the total of the amounts for all facilities under paragraphs (1), (2), and (3); and

''(5)(A) 5 percent of the total amount of sulfur dioxide allowances allocated each year under section 433 shall be allocated for units at a facility that are affected EGUs, but did not receive sulfur dioxide allocations under paragraph (4). These units shall be allocated allowances in accordance with paragraphs (1), (2), and (3).

''(B) Allowances allocated under subparagraph (A) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under paragraph (A) will not be reduced as a result of new units commencing commercial operation.

''(C) Allowances not allocated under subparagraph (B) shall be allocated to units in paragraphs (A) and (B) on a pro rata basis.

''(b) FAILURE TO PROMULGATE.—

''(1) IN GENERAL.—For each year 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under paragraph (a), each affected EGU shall comply with section 422 by provided annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected EGU believes it has for the relevant year and the amount of sulfur dioxide emissions for such year. The amount of sulfur dioxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements.

''(2) RECONCILIATION.—Upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of sulfur dioxides and section 403(c) establishing an Allowance Transfer System for sulfur dioxide allowances, each unit's emissions shall be compared to and reconciled to its actual allocations under the promulgated regulations. Each unit will have nine (9) months to purchase any allowance shortfall through allowances purchased from other allowance holders or through direct sale.

## "PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS

### "Subpart 1—Acid Rain Program

**"SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.**

''(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 413 or 414, or on the date a unit subject to the provisions of section 413(d), must meet the $NO_X$ reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

''(b) EMISSION LIMITATIONS.—

(1) IN GENERAL.—The Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: *Provided*, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low $NO_X$ burner technology. The Administrator shall implement this paragraph under 40 CFR part 76.5 (2002). The maximum allowable emission rates are as follows:

''(A) for tangentially fired boilers, 0.45 lb/mmBtu; and

''(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu. After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

''(2) UTILITY BOILERS.—The Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

''(A) wet bottom wall-fired boilers;

''(B) cyclones;

''(C) units applying cell burner technology; and

''(D) all other types of utility boilers.

''(3) BASIS OF RATES.—The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). The Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low $NO_X$ burned technology is available: *Provided*, That, no unit that is an affected unit pursuant to section 413 and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any. The Administrator shall implement that paragraph under 40 CFR parts 76.6 and 76.7 (2002).

''(c) ALTERNATIVE EMISSION LIMITATIONS.—(1) The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

''(A) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low $NO_X$ burner technology; or

''(B) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

''(2) ELIGIBILITY FOR ALTERNATIVE EMISSION LIMITATIONS.—The permitting authority shall base such determination upon a reasonable showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator, that the owner or operator—

''(A) has properly installed appropriate control equipment designed to meet the applicable emission rate;

''(B) has properly operated such equipment for a period of 15 months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

''(C) has specified an emission rate that such unit can meet on an annual average basis. The permitting authority shall issue an operating permit for the unit in question, in accordance with section 404 and title V—

''(i) that permits the unit during the demonstration period referred to in subparagraph (B), to emit at a rate in excess of the applicable emission rate;

''(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in subparagraphs (B) and (C).

''(3) ADDITIONAL CONTROL TECHNOLOGY.—Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low $NO_X$ burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative $NO_X$ control technology capable of achieving the applicable emission limitation. The Administrator shall implement this subsection under 40 CFR part 76 (2002), amended as appropriate by the Administrator.

''(d) EMISSIONS AVERAGING.—

''(1) ALERNATIVE CONTEMPORANEOUS EMISSION LIMITATIONS.—In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (c), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that—

''(A) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than; or equal to

''(B) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2).

''(2) OPERATING PERMITS.—If the permitting authority determines, in accordance with regulations issued by the Administrator that the conditions in paragraph (1) can be met, the permitting authority shall issue operating permits for such units, in accordance with section 404 and title V, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits. The Administrator shall implement this subsection under 40 CFR part 76 (2002), amended as appropriate by the Administrator.

**"SEC. 442. TERMINATION.**

''Starting January 1, 2008, the owner or operator of affected units and affected facilities under section 441 shall no longer be subject to the requirements of that section.

### "Subpart 2—Clear Skies Nitrogen Oxides Allowance Program

**"SEC. 451. DEFINITIONS.**

''For purposes of this subpart:

''(1) AFFECTED EGU.—The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002 during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate

capacity of 25 megawatts or less, or a cogeneration unit that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the unit commences service of a generator.

''(C) EXCLUSION.—Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

''(2) ADJUSTED BASELINE HEAT INPUT.—The term 'adjusted baseline heat input' with regard to a unit means, for purposes of allocating nitrogen oxides allowances in a particular year under this subpart, the units baseline multiplied by—

''(A) 1.0 for affected coal-fired units for 2008 and each year thereafter;

''(B) 0.55 for affected oil- and gas-fired units located in a Zone 1 State for years 2008 through 2017 inclusive;

''(C) 0.8 for affected oil- and gas-fired units located in a Zone 1 State for 2018 and each year thereafter; and

''(D) 0.4 for affected oil- and gas-fired units located in a Zone 2 State for 2008 and each year thereafter.

''(3) ALLOWABLE NITROGEN OXIDES EMISSIONS RATE.—The term 'allowable nitrogen oxides emissions rate' means the most stringent Federal or State emissions limitation for nitrogen oxides that applies to the unit as of date of enactment of this subpart. If the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation to establish the allowable rate. Such limitation shall not include any requirement to hold nitrogen oxides allowances under the Federal $NO_X$ Budget Trading Program as codified at 40 CFR part 97 (2002), or any State program adopted to meet the requirements of the $NO_X$ SIP Call as codified at 40 CFR 51.121 (2002).

''(4) ZONE 1 STATE.—The term 'Zone 1 State' means Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, the fine grid portion (as defined in section 51.121 of title 40, Code of Federal Regulations (as in effect for 2002)) of Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas east of Interstate 35, Vermont, Virginia, West Virginia, and Wisconsin.

''(5) ZONE 2 STATE.—The term 'Zone 2 State' means Alaska, American Samoa, Arizona, California, Colorado, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, Hawaii, Idaho, Kansas, Minnesota, the coarse grid portion (as defined in section 51.121 of title 40, Code of Federal Regulations (as in effect for 2002)) of Missouri, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

**"SEC. 452. APPLICABILITY.**

''(a) ZONE 1 PROHIBITION.—

(1) IN GENERAL.—Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 1 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

''(2) LIMITATION.—Only nitrogen oxides allowances under section 453(a) shall be held in order to meet the requirements of paragraph (1), except as provided under section 465.

''(b) ZONE 2 PROHIBITION.—

(1) IN GENERAL.—Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 2 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

''(2) LIMITATION.—Only nitrogen oxides allowances under section 453(b) shall be held in order to meet the requirements of paragraph (1).

**"SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.**

''(a) ZONE 1 ALLOCATIONS.—For affected EGUs in the Zone 1 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(a) as specified in table A.

''TABLE A—TOTAL $NO_X$ ALLOWANCES ALLOCATED FOR EGUS IN ZONE 1

| Year | $NO_X$ allowances allocated |
|---|---|
| 2008–2017 | 1,473,603 |
| 2018 and thereafter | 1,073,603 |

''(b) ZONE 2 ALLOCATIONS.—For affected EGUs in the Zone 2 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(b) as specified in table B.

''TABLE B—TOTAL $NO_X$ ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2

| Year | $NO_X$ allowance allocated |
|---|---|
| 2008 and thereafter | 714,794 |

**"SEC. 454. EGU ALLOCATIONS.**

''(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—

''(1) EPA REGULATIONS.—Not later than 18 months before the date on which the nitrogen oxides allowance requirement under section 452 takes effect, the Administrator shall promulgate regulations determining the allocation of nitrogen oxide allowances for 2008 and each subsequent year for units at a facility in a Zone 1 State that are affected EGUs as of the date of enactment of this section.

''(2) FORMULA FOR ALLOCATION.—

''(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), the regulations shall specify that the allocation of nitrogen oxide allowances for each unit referred to in paragraph (1) for each year shall be the product obtained by multiplying—

''(i) the product of 0.95 and the allocation amount under section 453(a); and

''(ii) the ratio that—

''(I) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

''(II) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 1 States; and

''(B) MAXIMUM ALLOCATION.—Notwithstanding subparagraph (A) and paragraph (3), no unit shall receive an allocation in excess of the product obtained by multiplying—

''(i) the baseline heat input of the unit; and

''(ii) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

''(3) DISTRIBUTION OF REMAINING ALLOWANCES.—

''(A) IN GENERAL.—Subject to paragraph (2)(B), any nitrogen oxide allowances remaining after the allocation of allowances under paragraph (2) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that paragraph.

''(B) ADDITIONAL REMAINING ALLOWANCES.—Allowances remaining after each iteration of the calculation under subparagraph (A) as a result of the limitation under paragraph (2)(B) shall be allocated in accordance with subparagraph (A).

''(4) SET-ASIDE FOR NEW UNITS.—

''(A) IN GENERAL.—5 percent of the total amount of nitrogen oxide allowances allocated each year under section 453 shall be allocated for units at a facility that are affected EGUs, but did not receive nitrogen oxide allocations under paragraph (2).

''(B) FORMULA FOR ALLOCATION.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (E), the regulations promulgated under paragraph (1) shall specify that the allocation of nitrogen oxide allowances for each unit referred to in subparagraph (A) for each year shall be the product obtained by multiplying—

''(I) the product of 0.05 and the allocation amount under section 453(a); and

''(II) the ratio that—

''(aa) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

''(bb) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 1 States, including those affected EGUs that receive allowances under paragraph (2).

''(ii) ADDITIONAL ALLOWANCES.—Notwithstanding clause (i) and subparagraph (E), no unit shall receive an allocation under this paragraph in excess of the product obtained by multiplying—

''(I) the baseline heat input of the unit; and

''(II) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

''(C) METHOD OF ALLOCATION.—Allowances allocated under this paragraph shall be allocated to each unit on a first-come basis determined by the date on which the unit commences operation.

''(D) NO REDUCTION IN ALLOCATIONS.—Allocations to units under this paragraph shall not be reduced as a result of new units commencing commercial operation.

''(E) DISTRIBUTION OF REMAINING ALLOWANCES.—Any nitrogen oxide allowances remaining after the allocation of allowances under subparagraph (B) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that subparagraph and paragraphs (2) and (3).

''(5) FAILURE TO PROMULGATE REGULATIONS.—For calendar year 2008 and each calendar year thereafter, if the Administrator has not promulgated the regulations determining the allocations under this subsection—

''(A) each affected unit shall comply with section 452 by providing an annual notice to the permitting authority that indicates the amount of allowances the affected unit believes the affected unit has for the relevant year (including the quantity of nitrogen oxide emissions of the affected unit for that year);

''(B) the amount of nitrogen oxide emissions of an affected unit described in subparagraph (A) shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

''(C) upon promulgation of regulations under this subsection for Zone 1 determining the allocations for 2008 and each year thereafter, and promulgation of regulations under section 403(b) providing for the transfer of nitrogen oxides and regulations under section 403(c) establishing an Allowance Transfer System for nitrogen oxide allowances—

''(i) the emissions of each unit shall be compared to and reconciled with actual allocations to the unit under the regulations; and

''(ii) each unit shall have not more than 270 days to submit allowances to the Administrator, without recompense, for any allowance shortfall (including submitted allowances obtained and held by any mechanism

consistent with this Act, including direct sale).

''(b) EGU ALLOCATIONS IN THE ZONE 2 STATES.—

''(1) EPA REGULATIONS.—Not later than 18 months before the date on which the nitrogen oxides allowance requirement under section 452 takes effect, the Administrator shall promulgate regulations determining the allocation of nitrogen oxide allowances for 2008 and each subsequent year for units at a facility in a Zone 2 State that are affected EGUs as of the date of enactment of this section.

''(2) FORMULA FOR ALLOCATION.—

''(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), the regulations shall specify that the allocation of nitrogen oxide allowances for each unit referred to in paragraph (1) for each year shall be the product obtained by multiplying—

''(i) the product of 0.95 and the allocation amount under section 453(b); and

''(ii) the ratio that—

''(I) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

''(II) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 2 States.

''(B) MAXIMUM ALLOCATION.—Notwithstanding subparagraph (A) and paragraph (3), no unit shall receive an allocation in excess of the product obtained by multiplying—

''(i) the baseline heat input of the unit; and

''(ii) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

''(3) DISTRIBUTION OF REMAINING ALLOWANCES.—

''(A) IN GENERAL.—Subject to paragraph (2)(B), any nitrogen oxide allowances remaining after the allocation of allowances under paragraph (2) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that paragraph.

''(B) ADDITIONAL REMAINING ALLOWANCES.—Allowances remaining after each iteration of the calculation under subparagraph (A) as a result of the limitation under paragraph (2)(B) shall be allocated in accordance with subparagraph (A).

''(4) SET-ASIDE FOR NEW UNITS.—

''(A) IN GENERAL.—5 percent of the total amount of nitrogen oxide allowances allocated each year under section 453 shall be allocated for units at a facility that are affected EGUs, but did not receive nitrogen oxide allocations under paragraph (2).

''(B) FORMULA FOR ALLOCATION.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (E), the regulations promulgated under paragraph (1) shall specify that the allocation of nitrogen oxide allowances for each unit referred to in subparagraph (A) for each year shall be the product obtained by multiplying—

''(I) the product of 0.05 and the allocation amount under section 453(a); and

''(II) the ratio that—

''(aa) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

''(bb) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 2 States, including those affected EGUs that receive allowances under paragraph (2).

''(ii) ADDITIONAL ALLOWANCES.—Notwithstanding clause (i) and subparagraph (E), no unit shall receive an allocation under this paragraph in excess of the product obtained by multiplying—

''(I) the baseline heat input of the unit; and

''(II) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

''(C) METHOD OF ALLOCATION.—Allowances allocated under this paragraph shall be allocated to each unit on a first-come basis determined by the date on which the unit commences operation.

''(D) NO REDUCTION IN ALLOCATIONS.—Allocations to units under this paragraph shall not be reduced as a result of new units commencing commercial operation.

''(E) DISTRIBUTION OF REMAINING ALLOWANCES.—Any nitrogen oxide allowances remaining after the allocation of allowances under subparagraph (B) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that subparagraph and paragraphs (2) and (3).

''(5) FAILURE TO PROMULGATE REGULATIONS.—For calendar year 2008 and each calendar year thereafter, if the Administrator has not promulgated the regulations determining the allocations under this subsection—

''(A) each affected unit shall comply with section 452 by providing an annual notice to the permitting authority that indicates the amount of allowances the affected unit believes the affected unit has for the relevant year (including the quantity of nitrogen oxide emissions of the affected unit for that year);

''(B) the amount of nitrogen oxide emissions of an affected unit described in subparagraph (A) shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

''(C) upon promulgation of regulations under this subsection for Zone 2 determining the allocations for 2008 and each year thereafter, and promulgation of regulations under section 403(b) providing for the transfer of nitrogen oxides and regulations under section 403(c) establishing an Allowance Transfer System for nitrogen oxide allowances—

''(i) the emissions of each unit shall be compared to and reconciled with actual allocations to the unit under the regulations; and

''(ii) each unit shall have not more than 270 days to submit allowances to the Administrator, without recompense, for any allowance shortfall (including submitted allowances obtained and held by any mechanism consistent with this Act, including direct sale).

**''SEC. 455 NITROGEN OXIDES EARLY ACTION REDUCTION CREDITS.**

''(a) CREDITS.—Except as provided in subsection (e), the Administrator shall promulgate regulations within 18 months authorizing the allocation of nitrogen oxides allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2008.

''(b) EMISSIONS REDUCTIONS.—No allowances shall be allocated under this section for emissions reductions that are—

''(1) attributable to pollution control equipment or combustion technology improvements that were operational at any time prior to the date of enactment of this section;

''(2) attributable to fuel switching;

''(3) required under any Federal or State regulation for the applicable year; or

''(4) made by a unit, subject to—

''(A) subpart 1 of part C, that are necessary for compliance with the limitation on the Btu-weighted average annual emission rate of the unit and 1 or more other units under section 441(d); or

''(B) the requirements in the applicable implementation plan of a $NO_X$ SIP Call State (as defined in section 461(3)) that meet the requirements under sections 51.121 and 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004) during the period beginning on May 1 and ending on September 30.

''(c) ALLOCATION.—The allowances allocated to any unit under this section shall be in addition to the allowances allocated under section 454 and shall be allocated in an amount equal to one allowance of nitrogen oxides for each 1.05 tons of reduction in emissions of nitrogen oxides achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradable in the same manner as allowances under section 454.

''(d) EARLY COMPLIANCE ALLOWANCE CREDIT.—The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

''(e) EXCEPTION.—This section shall not apply to reductions that are—

''(1) made during the period beginning on May 1 and ending on September 30 of a year by units that are subject to an applicable implementation plan for a $NO_X$ SIP Call State (as defined in section 461(3)) required under section 51.121 of title 40, Code of Federal Regulations (as in effect for calendar year 2004); or

''(2) necessary to comply with subpart 1 of part C for the applicable year.

**''Subpart 3—Ozone Season $NO_X$ Budget Program**

**''SEC. 461. DEFINITIONS.**

''For purposes of this subpart:

''(1) OZONE SEASON.—The term 'ozone season' means—

''(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

''(B) with regard to all other States, the period May 1 through September 30, for each year starting in 2004 and thereafter.

''(2) NON-OZONE SEASON.—The term 'non-ozone season' means—

''(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period October 1 through April 30; and

''(B) with regard to all other States, the period October 1, 2003, through May 29, 2004 and the period October 1 through April 30 beginning in the year 2004 and for each year thereafter.

''(3) $NO_X$ sip call state.—The term '$NO_X$ SIP Call State' means Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia and the fine grid portions of Alabama, Georgia, Michigan, and Missouri.

''(4) FINE GRID PORTIONS OF ALABAMA, GEORGIA, MICHIGAN, AND MISSOURI.—The term 'fine grid portions of Alabama, Georgia, Michigan, and Missouri' means the areas in Alabama, Georgia, Michigan, and Missouri subject to 40 CFR part 51.121 (2001).

**''SEC. 462. GENERAL PROVISIONS.**

''The provisions of sections 402 through 406 shall not apply to this subpart.

**"SEC. 463. APPLICABLE IMPLEMENTATION PLAN.**

''(a) SIPS.—Except as provided in subsection (b), the applicable implementation plan for each $NO_X$ SIP Call State shall be consistent with the requirements, including the $NO_X$ SIP Call State's nitrogen oxides budget and compliance supplement pool, in sections 51.121 and 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004).

''(b) REQUIREMENTS.—Notwithstanding any provision to the contrary in section 51.121 or 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004):

''(1) IMPLEMENTATION PLAN.—The applicable implementation plan for each $NO_X$ SIP Call State shall require full implementation of the required emission control measures starting no later than the first ozone season.

''(2) EXEMPTION.—Starting January 1, 2008—

''(A) the owners and operators of a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D shall no longer be subject to the requirements in a $NO_X$ SIP Call State's applicable implementation plan that meet the requirements of subsection (a) and paragraph (1); and

''(B) notwithstanding subparagraph (A), if the Administrator determines, by December 31, 2007, that a $NO_X$ SIP Call State's applicable implementation plan meets the requirements of subsection (a) and paragraph (1), such applicable implementation plan shall be deemed to continue to meet such requirements.

''(c) SAVINGS PROVISION.—Nothing in this section or section 464 shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard, relating to a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

**"SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF $NO_X$ TRADING PROGRAM FOR EGUS.**

''Starting January 1, 2008, with regard to any boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, the Administrator shall not administer any nitrogen oxides trading program included in any $NO_X$ SIP Call State's applicable implementation plan and meeting the requirements of section 463(a) and (b)(1).

**"SEC. 465. CARRYFORWARD OF PRE–2008 NITROGEN OXIDES ALLOWANCES.**

''The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 452(a)(1) may be met using nitrogen oxides allowances allocated for an ozone season before 2008 under a nitrogen oxides trading program that the Administrator administers, is included in a $NO_X$ SIP Call State's applicable implementation plan, and meets the requirements of section 463 (a) and (b)(1).

**"SEC. 466. NON-OZONE SEASON VOLUNTARY ACTION CREDITS.**

''An affected facility that voluntarily elects to operate selective catalytic reduction (SCR) units, installed prior to enactment of this title, during the non-ozone season under section 461(2) shall be credited 0.5 allowances per ton of $NO_X$ emissions avoided as a result of operating these controls. The amount avoided will equal every ton of nitrogen oxides reduction below the allowable emission rate. The Administrator shall determine if any other existing $NO_X$ emission control devices are generally uneconomic to operate unless EGUs are provided incentives to control $NO_X$ emissions during the nonozone season. If the Administrator finds that incentives using different control equipment are necessary to make the operation of these devices economic, the Administrator shall specify these types of control devices and, for an affected facility with these specified devices, installed prior to enactment of this title, that voluntarily elects to operate these devices during the nonozone season under section 461(2) shall be credited 0.5 allowances per ton of emissions avoided as a result of operating these controls. The Administrator shall promulgate regulations as necessary to establish this $NO_X$ allowance credit program. Failure of the Administrator to promulgate implementing regulations prior to voluntary reductions being undertaken by affected facilities shall not in any manner reduce the number of allowances an otherwise qualifying facility shall be credited upon promulgation of the regulations.

## "PART D—MERCURY EMISSIONS REDUCTIONS

**"SEC. 471. DEFINITIONS.**

''For purposes of this part:

''(1) ADJUSTED BASELINE HEAT INPUT.—The term 'adjusted baseline heat input' with regard to a unit means the unit's baseline heat input multiplied by—

''(A) 1.0, for the portion of the baseline heat input that is the unit's average annual combustion of bituminous during the years on which the unit's baseline heat input is based;

''(B) 3.0, for the portion of the baseline heat input that is the unit's average annual combustion of lignite during the years on which the unit's baseline heat input is based;

''(C) 1.25, for the portion of the baseline heat input that is the unit's average annual combustion of subbituminous during the years on which the unit's baseline heat input is based; and

''(D) 1.0, for the portion of the baseline heat input that is not covered by subparagraph (A), (B), or (C) or for the entire baseline heat input if such baseline heat input is not based on the unit's heat input in specified years.

''(2) AFFECTED EGU.—The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2005, a coal-fired unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2005, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a cogeneration unit that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the year the unit commences service of a generator.

''(C) EXCLUSION.—Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include—

''(i) a solid waste incineration unit subject to section 129;

''(ii) a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act; or

''(iii) a unit with de minimis emissions equal to or less than 50 pounds on an average annual basis, as calculated by the Administrator for a 3-year period using—

''(I) for calendar year 2010, the emissions data for a facility for calendar years 2006 through 2009; and

''(II) for calendar year 2011 and subsequent calendar years, the 3 most recent calendar years for which emissions data are available.

**"SEC. 472. APPLICABILITY.**

''Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility in a State to emit a total amount of mercury during the year in excess of the number of mercury allowances held for such facility for that year by the owner or operator of the facility.

**"SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.**

''For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate mercury allowances pursuant to section 474.

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED FOR EGUS

| Year | Mercury allowances allocated |
|---|---|
| 2010–2017 | 1,088,000 |
| 2018 and thereafter | 480,000 |

**"SEC. 474. EGU ALLOCATIONS.**

''(a) IN GENERAL.—Not later than 24 months before the commencement date of the mercury allowance requirement of section 472, the Administrator shall promulgate regulations determining allocations of mercury allowances for 2010 and thereafter for units at a facility that commence commercial operation by and are affected EGUs as of date of enactment. The regulations shall provide that the Administrator shall allocate each year for such units an amount determined by multiplying by 0.95 the allocation amount in section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input of all affected EGUs.

''(b) NEW FACILITIES.—5 percent of the total amount of nitrogen oxides allowances allocated each year under section 473 shall be allocated for units at a facility that commence commercial operation and are affected EGUs after the date of enactment. These units shall be allocated allowances for each year by multiplying the allocation amount under section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input to all affected EGUs, including those covered in subsection (a). However, the regulations shall not allocate allowances to any affected unit in excess of the product of the unit's baseline heat input multiplied by the unit's allowable mercury emissions rate, divided by 2000.

''(c) ALLOCATION.—Allowances allocated under subsection (b) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences commercial operation. As such, allocations to units under subsection (b) will not be reduced as a result of new units commencing commercial operation.

''(d) UNALLOCATED ALLOWANCES.—Allowances not allocated under paragraph (2) shall be allocated to units in subsections (a) and (b) on a pro rata basis.

''(e) AMOUNT OF ALLOWANCES.—For each year 2010 and thereafter, if the Administrator has not promulgated the regulations

determining allocation under subsection (a)—

''(1) each affected unit shall comply with section 472 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected unit believes it has for the relevant year and the amount of mercury emissions for such year. The amount of mercury emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

''(2) upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing an Allowance Transfer System for mercury allowances, each unit's emissions shall be compared to and reconcile with its actual allocations under the promulgated regulation. Each unit will have nine (9) months to submit allowances to the Administrator, without recompense, for any allowances shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with the Act including, but not limited to, direct sale.

**''SEC. 475. MERCURY EARLY ACTION REDUCTION CREDITS.**

''(a) IN GENERAL.—The Administrator shall promulgate regulations within 18 months authorizing the allocation of mercury allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

''(b) NONALLOCATION OF ALLOWANCES.—No allowances shall be allocated under this paragraph for emissions reductions: attributable to pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section; attributable to fuel switching; or required under any Federal regulation.

''(c) AMOUNT OF ALLOWANCES.—The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 474 and shall be allocated in an amount equal to 1 allowance of mercury for each 1.05 ounces of reduction in emissions of mercury achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradable in the same manner as allowances under section 474.

''(d) EARLY COMPLIANCE ALLOWANCE CREDIT.—The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

**''PART E—NATIONAL EMISSION STANDARDS; RESEARCH, ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS**

**''SEC. 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS.**

''(a) DEFINITIONS.—For purposes of this section:

''(1) COMMENCED.—The term 'commenced', with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation.

''(2) CONSTRUCTION.—The term 'construction' means fabrication, erection, or installation of an affected unit.

''(3) AFFECTED UNIT.—The term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

''(4) EXISTING AFFECTED UNIT.—The term 'existing affected unit' means any affected unit that is not a new affected unit.

''(5) NEW AFFECTED UNIT.—The term 'new affected unit;' means any affected unit, the construction or reconstruction of which is commenced after the date of enactment of the Clear Skies Act of 2005, except that for the purpose of any revision of a standard pursuant to subsection (e), 'new affected unit' means any affected unit, the construction or reconstruction of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard under this section that will apply to such unit.

''(6) RECONSTRUCTION.—The term 'reconstruction' means the replacement of components of a unit to such an extent that—

''(A) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit; and

''(B) it is technologically and economically feasible to meet the applicable standards set forth in this section.

''(b) EMISSION STANDARDS.—

''(1) IN GENERAL.—No later than 12 months after the date of enactment of the Clear Skies Act of 2005, the Administrator shall promulgate regulations prescribing the standards in subsections (c) through (d) for the specified affected units and establishing requirements to ensure compliance with these standards, including monitoring, recordkeeping, and reporting requirements.

''(2) MONITORING.—

''(A) IN GENERAL.—The owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section shall meet the requirements of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each affected unit for the pollutants for which the unit is subject to such standards.

''(B) REQUIREMENTS.—The Administrator shall, by regulation, require—

''(i) the owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section to—

''(I) install and operate CEMS for monitoring output, including electricity and useful thermal energy, on the affected unit and to quality assure the data; and

''(II) comply with recordkeeping and reporting requirements, including provisions for reporting output data in megawatt hours.

''(ii) the owner or operator of any affected unit subject to the standards for particulate matter under this section to—

''(I) install and operate CEMS for monitoring particulate matter on the affected unit and to quality assure the data;

''(II) comply with recordkeeping and reporting requirements; and

''(III) comply with alternative monitoring, quality assurance, recordkeeping, and reporting requirements for any period of time for which the Administrator determines that CEMS with appropriate vendor guarantees are not commercially available for particulate matter.

''(3) COMPLIANCE.—For boilers, integrated gasification combined cycle plants, and coal fired or gas-fired combustion turbines the Administrator shall require that the owner or operator demonstrate compliance with the standards daily, using a 30-day rolling average, except that in the case of mercury, the compliance period shall be the calendar year. For combustion turbines that are oil-fired the Administrator shall require that the owner or operator demonstrate compliance with the standards hourly, using a 4-hour rolling average.

''(c) BOILERS AND INTEGRATED GASIFICATION COMBINED CYCLE PLANTS.—

''(1) IN GENERAL.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any boiler or integrated gasification combined cycle plant that is a new affected unit to discharge into the atmosphere any gases which contain—

''(A) sulfur dioxide in excess of 2.0 lb/MWh;

''(B) nitrogen oxides in excess of 1.0 lb/MWh;

''(C) particulate matter in excess of 0.20 lb/MWh; or

''(D) if the unit is coal-fired, mercury in excess of 0.015 lb/GWh, unless—

''(i) mercury emissions from the unit, determined assuming no use of on-site or off-site pre-combustion treatment of coal and no use of technology that captures mercury, are reduced by 80 percent;

''(ii) flue gas desulfurization (FGD) and selective catalytic reduction (SCR) are applied to the unit; or

''(iii) a technology is applied to the unit and the permitting authority determines that the technology is equivalent in terms of mercury capture to the application of FGD and SCR.

''(2) EXEMPTION.—Notwithstanding subparagraph (1)(D), integrated gasification combined cycle plants with a combined capacity of less than 5 GW are exempt from the mercury requirement under subparagraph (1)(D) if they are constructed as part of a demonstration project under the Secretary of Energy that will include a demonstration of removal of significant amounts of mercury as determined by the Secretary of Energy in conjunction with the Administrator as part of the solicitation process.

''(3) DISCHARGES.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any oil-fired boiler that is an existing affected unit to discharge into the atmosphere any gases which contain particulate matter in excess of 0.30 lb/MWh.

''(d) COMBUSTION TURBINES.—

''(1) GAS-FIRED COMBUSTION TURBINES.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any gas-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain nitrogen oxides in excess of—

''(A) 0.56 lb/MWh (15 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine;

''(B) 0.084 lb/MWh (3.5 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine and either uses add-on controls or is located within 50 km of a class I area; or

''(C) 0.21 lb/MWh (9 ppm at 15 percent oxygen), if the unit is not a simple cycle turbine

and neither uses add-on controls nor is located within 50 km of a class I area.

''(2) COAL-FIRED COMBUSTION TURBINES.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any coal-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain sulfur dioxide, nitrogen oxides, particulate matter, or mercury in excess of the emission limits under subparagraphs (c)(1)(A) through (D).

''(3) COMBUSTION TURBINES THAT ARE NOT GAS-FIRED OR COAL-FIRED.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any combustion turbine that is not gas-fired or coal-fired and that is a new affected unit to discharge into the atmosphere any gases which contain—

''(A) sulfur dioxide in excess of 2.0 lb/MWh;

''(B) nitrogen oxides in excess of—

''(i) 0.289 lb/MWh (12 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine, is dual-fuel capable, and uses add-on controls; or is not a simple cycle combustion turbine and is located within 50 km of a class I area; and

''(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine; is not a simple cycle combustion turbine and is not dual-fuel capable; or is not a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls.

''(C) particulate matter in excess of 0.20 lb/MWh.

''(e) PERIODIC REVIEW AND REVISION.—

''(1) IN GENERAL.—The Administrator shall, at least every eight years following the promulgation of standards under subsection (b), review and, if appropriate, revise such standards to reflect the degree of emission limitation demonstrated by substantial evidence to be achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impacts and energy requirements). When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

''(2) EXCEPTION.—Notwithstanding the requirements of paragraph (1) the Administrator need not review any standard promulgated under subsection (b) if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

''(f) EFFECTIVE DATE.—The standard promulgated pursuant to this section shall become effective upon promulgation.

''(g) DELEGATION.—

''(1) IN GENERAL.—Each State may develop and submit to the Administration a procedure for implementing and enforcing standards promulgated under this section for affected units located in such State. If the Administrator finds the State procedure is adequate, the Administrator shall delegate to such State any authority the Administrator has under this Act to implement and enforce such standards.

''(2) ENFORCEMENT.—Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard under this section.

''(h) VIOLATIONS.—After the effective date of standards promulgated under this section, it shall be unlawful for any owner or operator of any affected unit to operate such unit in violation of any standard, established by this section applicable to such unit.

''(i) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections III(e), 113, 114, 116, 120, 303, 304, 307, and other provisions for the enforcement of this Act, each standard established pursuant to this section shall be treated in the same manner as a standard of performance under section 111, and each affected unit subject to standards under this section shall be treated in the same manner as a stationary source under section 111.

''(j) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard relating to affected units, or other EGUs, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

''(k) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to affected units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no new affected unit subject to standards under this section shall be subject to standards under section 111 of this Act.

**''SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND ASSESSMENT.**

''(a) PURPOSES.—The Administrator, in collaboration with the Secretary of Energy and the Secretary of the Interior, shall conduct a comprehensive program of research, environmental monitoring, and assessment to enhance scientific understanding of the human health and environmental effects of particulate matter and mercury and to demonstrate the efficacy of emission reductions under this title for purposes of reporting to Congress under (e)(2). The purposes of such a program are to—

''(1) expand current research and knowledge of the contribution of emissions from electricity generation to exposure and health effects associated with particulate matter and mercury;

''(2) enhance current research and development of promising multi-pollutant control strategies and CEMS for mercury;

''(3) produce peer-reviewed scientific and technology information;

''(4) improve environmental monitoring and assessment of sulfur dioxide, nitrogen oxides and mercury, and their transformation products, to track changes in human health and the environment attributable to emission reductions under this title; and

''(5) periodically provide peer-reviewed reports on the costs, benefits, and effectiveness of emission reductions achieved under this title.

''(b) RESEARCH.—The Administrator shall enhance planned and ongoing laboratory and field research and modeling analyses, and conduct new research and analyses to produce peer-reviewed information concerning the human health and environmental effects of mercury and particulate matter and the contribution of United States electrical generating units to those effects. Such information shall be included in the report under subsection (d). In addition, such research and analyses shall—

''(1) improve understanding of the rates and processes governing chemical and physical transformations of mercury in the atmosphere, including speciation of emissions from electricity generation and the transport of these species;

''(2) improve understanding of the contribution of mercury emissions from electricity generation to mercury in fish and other biota, including—

''(A) the response of and contribution to mercury in the biota owing to atmospheric deposition of mercury from U.S. electricity generation on both local and regional scales;

''(B) long-term contributions of mercury from U.S. electricity generation on mercury accumulations in ecosystems, and the effects of mercury reductions in that sector on the environment and public health;

''(C) the role and contribution of mercury, from U.S. electricity generating facilities and anthropogenic and natural sources to fish contamination and to human exposure, particularly with respect to sensitive populations;

''(D) the contribution of U.S. electricity generation to population exposure to mercury in freshwater fish and seafood and quantification of linkages between U.S. mercury emissions and domestic mercury exposure and its health effects; and

''(E) the contribution of mercury from U.S. electricity generation in the context of other domestic and international sources of mercury, including transport of global anthropogenic and natural background levels;

''(3) improve understanding of the health effects of fine particulate matter components related to electricity generation emissions (as distinct from other fine particle fractions and indoor air exposures) and the contribution of U.S. electrical generating units to those effects including—

''(A) the chronic effects of fine particulate matter from electricity generation in sensitive population groups; and

''(B) personal exposure to fine particulate matter from electricity generation; and

''(4) improve understanding, by way of a review of the literature, of methods for valuing human health and environmental benefits associated with fine particulate matter and mercury.

''(c) INNOVATIVE CONTROL TECHNOLOGIES.—The Administrator shall collaborate with the Secretary of Energy to enhance research and development, and conduct new research that facilitates research into and development of innovative technologies to control sulfur dioxide, nitrogen oxides, mercury, and particulate matter at a lower cost than existing technologies. Such research and development shall provide updated information on the cost and feasibility of technologies. Such information shall be included in the report under subsection (d). In addition, the research and development shall—

''(1) upgrade cost and performance models to include results from ongoing and future electricity generation and pollution control demonstrations by the Administrator and the Secretary of Energy;

''(2) evaluate the overall environmental implications of the various technologies tested including the impact on the characteristics of coal combustion residues;

''(3) evaluate the impact of the use of selective catalytic reduction on mercury emissions from the combustion of all coal types;

''(4) evaluate the potential of integrated gasification combined cycle to adequately control mercury;

''(5) expand current programs by the Administrator to conduct research and promote, lower cost CEMS capable of providing real-time measurements of both speciated and total mercury and integrated compact CEMS that provide cost-effective real-time measurements of sulfur dioxide, nitrogen oxides, and mercury;

''(6) expand lab- and pilot-scale mercury and multi-pollutant control programs by the Secretary of Energy and the Administrator, including development of enhanced sorbents and scrubbers for use on all coal types;

''(7) characterize mercury emissions from low-rank coals, for a range of traditional control technologies, like scrubbers and selective catalytic reduction; and

''(8) improve low cost combustion modifications and controls for dry-bottom boilers.

''(d) ENVIRONMENTAL ACCOUNTABILITY.—

''(1) MONITORING AND ASSESSMENT.—The Administrator shall conduct a program of environmental monitoring and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall—

''(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

''(i) improve the ability to routinely measure mercury in dry deposition processes;

''(ii) improve understanding of the spatial and temporal distribution of mercury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

''(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

''(iv) improve understanding of the effectiveness and cost of mercury emissions controls;

''(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury to meet the assessment and reporting requirements of this section;

''(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota;

''(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implications and models that describe the response of ecosystems to atmospheric deposition; and

''(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects of episodic exposure to air pollutants and evaluation of recovery.

''(2) REPORTING REQUIREMENTS.—Not later than January 1, 2008, and not later than every 4 years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title.

''(A) The report under this subparagraph shall address the relative contribution of emission reductions from U.S. electricity generation under this title compared to the emission reductions achieved under other titles of the Clean Air Act with respect to—

''(i) actual and projected emissions of sulfur dioxide, nitrogen oxides, and mercury;

''(ii) average ambient concentrations of sulfur dioxide and nitrogen oxides transformation products, related air quality parameters, and indicators of reductions in human exposure;

''(iii) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury, including regional estimates of total atmospheric deposition;

''(iv) status and trends in visibility;

''(v) status of terrestrial and aquatic ecosystems (including forests and forested watersheds, streams, lakes, rivers, estuaries, and nearcoastal waters);

''(vi) status of mercury and its transformation products in fish;

''(vii) causes and effects of atmospheric deposition, including changes in surface water quality, forest and soil conditions;

''(viii) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

''(ix) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

''(B) The report under this subparagraph shall address the relative contribution of the United States to world-wide emissions as well as a comparison of the stringency of fossil fuel-fired requirements under the Act to other countries.

**''SEC. 483. MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS; APPLICABILITY TO AFFECTED UNITS.**

''(a) MAJOR SOURCE EXEMPTION.—An affected unit shall be considered neither a major emitting facility or major stationary source nor a part of a major emitting facility or major stationary source, for purposes of compliance with the requirements of parts C and part D of title I, and shall not otherwise be subject to the requirements of section 169A or 169B, for a period of 20 years after the date of enactment of this section. This applicability provision only applies to affected units that are either subject to the performance standards of section 481 or meet the following requirements within 3 years after the date of enactment of the Clear Skies Act of 2005:

''(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate matter, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an applicable implementation plan to limit the emissions of particulate matter from the affected unit to 0.03 lb/mmBtu within eight years after the date of enactment of the Clear Skies Act of 2005, and

''(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of carbon monoxide. Good combustion practices may be accomplished through control technology, combustion technology improvements, or workplace practices.

''(b) CLASS I AREA PROTECTIONS.—Notwithstanding the provisions of subsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clear Skies Act of 2005 is subject to those provisions under part C of title I pertaining to the review of a new or reconstructed major stationary source's impact on a Class I area.

''(c) PRECONSTRUCTION REQUIREMENTS.—Each State shall include in its plan under section 110, as program to provide for the regulation of the construction of an affected unit that ensures that the following requirements are met prior to the commencement of construction of an affected unit—

''(1) in an area designated as attainment or unclassifiable under section 107(d), the owner or operator of the affected unit must demonstrate to the State that the emissions increase from the construction or operation of such unit will not cause, or contribute to, air pollution in excess of any national ambient air quality standard;

''(2) in an area designated as nonattainment under section 107(d), the State must determine that the emissions increase from the construction or operation of such unit will not interfere with any program to assure that the national ambient air quality standards are achieved provided that interference with any program will be deemed not to occur, with respect to each nonattainment area located wholly or partially within the State, if on the date of submission of a complete permit application and throughout a continuous period of three years immediately preceding such date, the nonattainment area was in full compliance with all requirements of this Act, including but not limited to requirements for State Implementation Plans;

''(3) for a reconstructed unit, prior to beginning operation, the unit must comply with either the performance standards of section 481 or best available control technology as defined in part C of title I for the pollutants whose hourly emissions will increase at the unit's maximum capacity; and

''(4) the State must provide for an opportunity for interested persons to comment on the Class I area protections and preconstruction requirements as set forth in this section.

''(d) DEFINITIONS.—For purposes of this section:

''(1) AFFECTED UNIT.—The term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

''(2) CONSTRUCTION.—The term 'construction' includes the construction of a new affected unit and the modification of any affected unit.

''(3) MODIFICATION.—The term 'modification' means any physical change in, or change in the method of operation of, an affected unit that increases the maximum hourly emissions of any pollutant regulated under this Act above the maximum hourly emissions achievable at that unit during the five years prior to the change or that results in the emission of any pollutant regulated under this Act and not previously emitted.

''(e) SAVINGS CLAUSE.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt to enforce any regulation, requirement, limitation, or standard relating to affected units that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.''.

**SEC. 3. OTHER AMENDMENTS.**

(a) TITLE I.—Title I of the Clean Air Act is amended as follows:

(1) In section 103 by repealing subparagraphs (E) and (F).

(2) In section 107(d)(1)(A)—

(i) by striking ''or'' at the end of clause (ii);

(ii) by striking the period at the end of clause (iii) and inserting '', or''; and

(iii) by adding at the end the following:

''(iv) notwithstanding clauses (i) through (iii) and subsection (d)(3), if requested by a State, an area may be redesignated as transitional for the PM 2.5 national primary or secondary ambient air quality standards or the 8-hour ozone national primary or secondary ambient air quality standard if—

''(I) the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain the applicable standard or standards not later than December 31, 2015;

''(II) such modeling demonstration and all necessary local controls have been approved into the State implementation plan not later than 1 year after the date of enactment of the Clear Skies Act of 2005; and

''(III) the redesignation is made not later than 180 days after the date of that approval.''

(3) In section 110 as follows:

(A) By amending clause (i) of subsection (a)(2)(D) by inserting ''except as provided in subsection (q),'' before the word ''prohibiting''.

(B) By adding the following new subsections at the end thereof:

''(q) REVIEW OF CERTAIN PLANS.—

''(1) IN GENERAL.—The Administrator shall, in reviewing, under subsection (a)(2)(D)(i), any plan with respect to affected units, within the meaning of section 126(d)(l)—

''(A) consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the other State or States;

''(B) not require submission of plan provisions mandating emissions reductions from such affected units, unless the Administrator determines that—

''(i) emissions from such units may be reduced at least as cost-effectively as emissions reductions in the State or each other State from each other principal category of sources of the relevant pollutant, pollutants, or pre-cursors thereof, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify, and

''(ii) reductions in such emissions will improve air quality in the other State's or States' nonattainment areas at least as cost-effectively as reductions in emissions in the State or each other State from each other principal category of sources of the relevant pollutant, pollutants, or pre-cursors thereof, to the maximum extent that a methodology is reasonably available to make such a determination;

''(C) develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006; and

''(D) not require submission of plan provisions subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to December 31, 2014.

''(2) PROXIMITY.—In making the determination under clause (ii) of subparagraph (B) of paragraph (1), the Administrator will use the best available peer-reviewed models and methodology that consider the proximity of the source or sources to the other State or States and incorporate other source characteristics.

''(3) EFFECT ON REGULATIONS.—Nothing in paragraph (1) shall be interpreted to require revisions to the provisions of 40 CFR parts 51.121 and 51.122 (2001).

''(r) TRANSITIONAL AREAS.—

''(1) MAINTENANCE.—

''(A) SUBMISSION OF INVENTORY AND ANALYSIS.—By December 31, 2011, each area designated as transitional pursuant to section 107(d)(1) shall submit an updated emission inventory and an analysis of whether growth in emissions, including growth in vehicle miles traveled, will interfere with attainment by December 31, 2014.

''(B) REVIEW.—No later than December 31, 2011, the Administrator shall review each transitional area's maintenance analysis, and, if the Administrator determines that growth in emissions will interfere with attainment by December 31, 2014, the Administrator shall consult with the State and determine what action, if any, is necessary to assure that attainment will be achieved by December 31, 2014.

''(2) PREVENTION OF SIGNIFICANT DETERIORATION.—Each area designated as transitional pursuant to section 107(d)(1) shall be treated as an attainment or unclassifiable area for purposes of the prevention of significant deterioration provisions of part C of this title.

''(3) CONSEQUENCES OF FAILURE TO ATTAIN BY 2015.—No later than June 30, 2016, the Administrator shall determine whether each area designated as transitional for the 8-hour ozone standard or for the PM 2.5 standard has attained that standard. If the Administrator determines that a transitional area has not attained the standard, the area shall be redesignated as nonattainment within one year of the determination and the State shall be required to submit a State implementation plan revision satisfying the provisions of section 172 within three years of redesignation as nonattainment.''.

(4) In section 111(b)(1) by adding the following new subparagraph (C) after subparagraph (B):

''(C) No standards of performance promulgated under this section shall apply to units subject to regulations promulgated pursuant to section 481.''.

(5) In section 112:

(A) By amending paragraph (1) of subsection (c) to read as follows:

''(1) IN GENERAL.—Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but not less often than every eight years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). Electric utility steam generating units not subject to section 3005 of the Solid Waste Disposal Act shall not be included in any category or subcategory listed under this subsection. The Administrator shall have the authority to regulate the emission of hazardous air pollutants listed under section 112(b), other than mercury compounds, by electric utility steam generating units, provided that any determination shall be based on public health concerns and, on an individual source basis shall: consider the effects of emissions controls installed or anticipated to be installed in order to meet other emission reduction requirements under this Act by 2018; and, be based on a peer reviewed study with notice and opportunity to comment, to be completed not before January 2015. Any such regulations shall be promulgated within, and shall not take effect before, the date eight years after the commencement date of the requirements set forth in section 472. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.''.

(B) By amending subparagraph (A) of subsection (n)(1) to read as follows:

''(A) STUDY.—The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within three years after November 15, 1990.''

(6) Section 126 is amended as follows:

(A) By replacing ''section 110(a)(2)(D)(ii) or this section'' in subsection (b) with ''section 110(a)(2)(D)(i)''.

(B) In the language at end of subsection (c) by striking ''section 110(a)(2)(D)(ii)'' and inserting ''section 110(a)(2)(D)(i)'' and deleting the last sentence.

(D) By adding at the end the following:

''(d) DEFINITION OF AFFECTED UNIT.—

''(1) IN GENERAL.—For purposes of this subsection, the term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D, or is a designated unit under section 407.

''(2) FINDING FOR AFFECTED UNITS.—To the extent that any petition submitted under subsection (b) after the date of enactment of the Clear Skies Act of 2005 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary:

''(A) In determining whether to make a finding under subsection (b) for any affected unit, the Administrator shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the petitioning State or political subdivision.

''(B) The Administrator may not determine that affected units emit, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Administrator determines that—

''(i) such emissions may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify; and

''(ii) reductions in such emissions will improve air quality in the petitioning State's nonattainment area or areas at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides to the maximum extent that a methodology is reasonably available to make such a determination.

In making the determination under clause (ii), the Administrator shall use the best available peer-reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subdivision and incorporate other sources characteristics.

''(C) The Administrator shall develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006.

''(D) The Administrator shall not make any findings with respect to an affected unit under this section prior to December 1, 2011. For any petition submitted prior to January 1, 2010, the Administrator shall make a finding or deny the petition by the December 31, 2011.

''(E) The Administrator, by rulemaking, shall extend the compliance and implementation deadlines in subsection (c) to the extent necessary to assure that no affected unit shall be subject to any such deadline prior to January 1, 2014.''.

(b) TITLE III.—Section 307(d)(1)(G) of title III of the Clean Air Act is amended to read as follows:

''(G) the promulgation or revision of any regulation under title IV,''.

(c) NOISE POLLUTION.—Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.) is redesignated as title VII and amended by renumbering sections 401 through 403 as sections 701 through 703, respectively, and conforming all cross-references thereto accordingly.

(d) SECTION 406.—Title IV of the Clean Air Act Amendments of 1990 (relating to acid deposition control) is amended by repealing section 406 (industrial sulfur dioxide emissions).

(e) MONITORING.—Section 821 (a) of title VIII of the Clean Air Act Amendments of 1990 (miscellaneous provisions) is amended to read as follows:

''(a) MONITORING.—The Administrator shall promulgate regulations within eighteen

months after November 15, 1990, to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act as of December 31, 2009, shall also monitor carbon dioxide emissions according to the same timetable as in section 405(b). The regulations shall require that such data be reported to the Administrator. The provisions of section 405(e) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall implement this subsection under 40 CFR part 75 (2002), amended as appropriate by the Administrator.''.

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By Mr. SMITH (for himself and Mrs. LINCOLN):

S. 132. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance; to the Committee on Finance.

Mr. SMITH. Mr. President, today, I am reintroducing important legislation to help more Americans realize the dream of homeownership. The Mortgage Insurance Fairness Act would make mortgage insurance payment premiums tax deductible. In doing so, it will help more lower-income Americans purchase homes for their families.

It is widely recognized that homeownership helps to create stable and safe communities. As such, the Federal Government has long sought to increase homeownership. President Bush has announced a goal of 5.5 million new homeowners by the year 2010. Achieving that goal requires helping those that have typically had difficulty purchasing homes—young people, low-income families, members of minority groups.

Government and private mortgage insurance programs help first-time, low-income and veteran borrowers afford to purchase homes. The Veterans Affairs (VA), Federal Housing Authority (FHA), Regional Housing Authority (RHA) and Private Mortgage Insurance (PMI) programs allow buyers to make a down payment of 3 percent or less of the appraised value. For many lower- and middle-income families, mortgage insurance makes it possible for them to buy their first home.

In Oregon, more than 137,000 families held mortgages with either FHA or private mortgage insurance in 2002. In 2001, 62 percent of the insured home purchases in Oregon were low-income borrowers, and insured mortgages covered 25 percent of all home purchase loans that year.

Nationwide, mortgage insurance covers over half of home loans made to African American and Hispanic borrowers. Similarly, over half of the loans to borrowers with incomes below the median income were covered by mortgage insurance. The people who use mortgage insurance are regular working families who live in every community throughout the country. In all, more than twelve million American families pay mortgage insurance.

Currently, these borrowers are not allowed to deduct the cost of their mortgage insurance from their Federal taxes. If these payments were made deductible, the cost of homeownership would go down and more families would be able to buy homes. It is estimated that the Mortgage Insurance Fairness Act would increase the number of homeowners by 300,000 per year.

Extending tax deductions to mortgage insurance will help to make the dream of owning a home attainable for more Americans. We came very close to enacting this legislation last year when it was included in the Senate version of the JOBS Act. Unfortunately, in the end we were not able to complete action on this bill. I look forward to again working with my colleagues to see this legislation is passed and signed into law. I thank you for the opportunity to speak today, and I urge my colleagues to support this important bi-partisan legislation. I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 132

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Mortgage Insurance Fairness Act''.

**SEC. 2. PREMIUMS FOR MORTGAGE INSURANCE.**

(a) IN GENERAL.—Paragraph (3) of section 163(h) of the Internal Revenue Code of 1986 (relating to qualified residence interest) is amended by adding after subparagraph (D) the following new subparagraph:

''(E) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

''(i) IN GENERAL.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this subsection as qualified residence interest.

''(ii) PHASEOUT.—The amount otherwise allowable as a deduction under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).''.

(b) DEFINITION AND SPECIAL RULES.—Paragraph (4) of section 163(h) of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following new subparagraphs:

''(E) QUALIFIED MORTGAGE INSURANCE.—The term 'qualified mortgage insurance' means—

''(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

''(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.''.

**SEC. 3. INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.**

Section 6050H of the Internal Revenue Code of 1986 (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

''(h) RETURNS RELATING TO MORTGAGE INSURANCE PREMIUMS.—

''(1) IN GENERAL.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

''(2) STATEMENT TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

''(3) SPECIAL RULES.—For purposes of this subsection—

''(A) rules similar to the rules of subsection (c) shall apply, and

''(B) the term 'mortgage insurance' means—

''(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subsection).''.

**SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall apply to amounts paid or accrued after the date of enactment of this Act in taxable years ending after such date.

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By Mr. TALENT (for himself and Mr. FEINGOLD):

S. 133. A bill to amend section 302 of the PROTECT Act to modify the standards for the issuance of alerts through the AMBER Alert communications network; to the Committee on the Judiciary.

Mr. TALENT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 133

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Tory Jo's AMBER Response Act''.

**SEC. 2. MINIMUM STANDARDS FOR ISSUANCE AND DISSEMINATION OF ALERTS THROUGH AMBER ALERT COMMUNICATIONS NETWORK.**

Section 302(b) of the PROTECT Act (42 U.S.C. 5791a(b)) is amended by adding at the end the following:

''(5) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), allow local law enforcement officials to issue, and to provide for the dissemination of, an alert through the AMBER Alert communications network to facilitate the recovery of an abducted newborn.''.

**SEC. 3. DEFINITION.**

Title III of the PROTECT Act (42 U.S.C. 5791 et seq.) is amended by adding at the end the following:

**''SEC. 306. DEFINITION.**

''For purposes of this title, the term 'child' means—

''(1) an individual under 18 years of age; or

''(2) a newborn.''.

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By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 134. A bill to adjust the boundary of Redwood National Park in the State of California; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce legislation cosponsored by Senator BOXER to adjust the boundary of Redwood National Park in the State of California to include the addition of the Mill Creek property. This continues the effort initiated in the last Congress with the leadership of Congressman MIKE THOMPSON, to solidify and expand the co-operative management relationship between the United States Government and the State of California, working together to protect forever the ancient majesty of the redwood forest.

In 2002, the California Department of Parks and Recreation acquired from the Save-the-Redwoods League 25,000 acres of forest land known as the Mill Creek property in Del Norte County, which is contiguous with the Redwood National and State parks boundary. This bill would include within the park boundary the Mill Creek acquisition and about 900 acres of land acquired and added to the State redwood parks since the 1978 expansion of the Redwood National Park boundary. There would be no Federal costs for land acquisition or development resulting from this legislation.

Approval of the expansion of the boundary of Redwood National Park to include the headwaters of Mill Creek will complete the vision of the Redwood Park embraced by Senator Kuchel in S.1370 that he introduced in 1967, a vision dating back to the McLaughlin-Cook report issued by the National Park Service in 1937. Protection of the headwaters of Mill Creek will secure the long term viability of the ancient redwoods already within Redwood National and State Park. It would permanently safeguard the coho salmon who return to spawn in the clear, cold waters of this forest.

These lands will be managed by the same cooperative management agreement between the National Park Service and the California Department of Parks and Recreation. This partnership is viewed as a model of interagency cooperative management efforts and will provide for more efficient and costeffective management of an ecologically significant resource.

This bill enjoys strong support from local and Federal officials, including Del Norte County and the Department of the Interior. Given this support and lack of controversy, I believe this legislation to be of great importance to ensure that our Redwood National Park is further protected.

I have long held a deep interest in protecting California's magnificent Redwoods. The coast redwood, the sequoia sempervirens, is native only to the West Coast where it stands in a narrow band from the tip of the Big Sur Coast to the Chetco River, just north of the California-Oregon border. The redwood stands taller than any other tree in the world and traces its lineage to among the oldest of living things. The cathedrals formed by these ancient trees inspire the best in us as a people. The redwood forests of California are a national and worldwide treasure that is ours to protect and preserve.

In 1966, the Headwaters Agreement was negotiated in part in my offices to protect approximately 7,500 acres of old growth redwoods, which was the largest grove of redwoods held in private ownership at the time. It is my great pleasure today to introduce this legislation to extend our national commitment to collaboration in preservation of the redwoods and the watersheds they anchor.

I applaud Congressman MIKE THOMPSON's commitment to this issue and urge my colleagues to support this legislation.

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

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

S. 134

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Redwood National Park Boundary Adjustment Act of 2005''.

**SEC. 2. REDWOOD NATIONAL PARK BOUNDARY ADJUSTMENT.**

Section 2(a) of the Act of Public Law 90–545 (16 U.S.C. 79b(a)) is amended—

(1) in the first sentence, by striking ''(a) The area'' and all that follows through the period at the end and inserting the following: ''(a)(1) The Redwood National Park consists of the land generally depicted on the map entitled 'Redwood National Park, Revised Boundary', numbered 167/60502, and dated February, 2003.'';

(2) by inserting after paragraph (1) (as designated by paragraph (1)) the following:

''(2) The map referred to in paragraph (1) shall be—

''(A) on file and available for public inspection in the appropriate offices of the National Park Service; and

''(B) provided by the Secretary of the Interior to the appropriate officers of Del Norte and Humboldt Counties, California.''; and

(3) in the second sentence—

(A) by striking ''The Secretary'' and inserting the following:

''(3) The Secretary;'' and

(B) by striking ''one hundred and six thousand acres'' and inserting ''133,000 acres''.

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By Mrs. FEINSTEIN:

S. 136. A bill to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing education services for students attending schools located within Yosemite National Park, to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. I rise today to introduce a bill that combines needed help for small Yosemite schools, and an addition to the beautiful Golden Gate National Recreation Area. Each of these bills individually has passed both the House and Senate in previous Congresses.

The first title of this legislation provides critical funds to three small schools nestled in the heart of Yosemite National Park and authorizes the Yosemite Regional Transportation System to shuttle visitors in and out of the park.

Approximately 130 children of park service employees are taught in the three elementary small schools located in Yosemite National Park—Wawona, El Portal, and Yosemite Valley elementary schools.

These schools represent a dying breed of education models; they are small schools that teach children who live in remote communities and are taught by one or a group of teachers. At El Portal, three teachers instruct 53 students in seven grades. Wawona has 17 students in 7 grades who are taught by one teacher/principal.

And Yosemite Valley serves 60 students in 8 grades who are taught by two teachers.

The remote location of these schools, their small sizes and California's unique method for funding education, have all contributed to the schools amassing a combined deficit of $290,000. In their efforts to continue to provide basic educational services to students, the schools have had to cut supplemental instruction that would normally be available to students taught outside of the park.

Some have suggested that these schools consolidate into one to pool their limited resources. While this may seem to solve the problem, you must understand that many of these students already travel many miles on treacherous mountainous roads to attend their current schools. If the three schools were to consolidate, this problem would be exacerbated, requiring many students to make a 2 hour commute to their new schools.

I do not believe this is a viable option and that is why I support this legislation.

Last year, Senator BINGAMAN, Congressman RADANOVICH and I worked out a compromise on this legislation that would help the schools while protecting the National Park Service's budget. The compromise includes the following terms:

For fiscal year 2006 through 2009, the Secretary of the Interior may provide up to $400,000 in funds to the Bass Lake Union Elementary School District and the Mariposa Unified School District for educational services to students who are dependents of persons engaged in the administration, operation, and maintenance of the Park or students who live at or near the Park; the Secretary can only provide the funds if the State of California and local agencies maintain 2005 per-student funding levels to the schools, and the Secretary also must make sure that the assistance to the schools does not reduce the remaining funding available to Yosemite National Park below fiscal year 2005 levels.

Furthermore, this legislation allows the Park Service to allot federal funds for the continuing operation of a bus service that shuttles visitors through Yosemite National Park—the Yosemite Area Regional Transportation System.

The federally funded demonstration project that allowed YARTS to offer services on a temporary basis expired in May 2002 and since then, YARTS has leveraged local funds to ensure that services were not discontinued.

Both the Park Service and YARTS are supportive of continuing their mutually beneficial agreement. This legislation would do just that by taking the burden off local entities and providing the necessary assistance that this service needs.

I am also pleased to introduce today a second title in this legislation to allow the National Park Service to extend the boundaries of the Golden Gate National Recreation Area, GGNRA, by acquiring critical natural landscapes and scenic vistas.

This bill meets several distinct needs in California and national needs of all National Park System visitors by adding 4,600 acres of pristine natural land to the boundary of the Golden Gate Recreation Area. It will protect four major watersheds, preserve the home of numerous threatened, rare and endangered plant and animal species in the region, allow potential access to valuable future trail links to contiguous State and county parks, and establish a dramatic and logical southern entrance to the park.

A key component of this legislation is its three-way, local-state-federal partnership. Half of the total purchase price of these lands has already been donated by local and State sources. Additionally, this legislation specifically provides that all land transactions involve a willing seller and willing buyer.

Furthermore, this bill has the strong support of local community groups, the former Golden Gate National Recreation Area Advisory Commission, the San Mateo County Board of Supervisors, the National Park Service, and the California State Farm Bureau. It also has the endorsement of the San Francisco Chronicle and the San Jose Mercury News. I know of no opposition to this bill.

Expanding the boundary of the Golden Gate National Recreation Area to include Rancho Corral de Tierra through such a beneficial partnership is an opportunity not to be missed. A vast land within a major metropolitan area that offers extraordinary scenic views of the Pacific coastline and the greater Bay Area, a place with plants found nowhere else on earth find refuge, a home for rare and endangered animals, is available now for protection and enjoyment. We have the chance to enjoy this special land and to leave a lasting legacy for our children and our grandchildren.

California's national parks are truly invaluable and the park that this bill supports offers an opportunity for visitors and residents to enjoy unique national habitats and offers a unique chance for the National Park Service and the community to work together, not only to protect the environment, but also the interests of the nearby communities and national and international visitors.

This bill enjoys strong support from local and State officials and I hope that it will have as much strong bipartisan support this Congress, as it did last Congress. Congressman TOM LANTOS plans to introduce companion legislation for this bill in the House and I applaud his leadership on this issue.

I urge my colleagues to support this bill. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 136

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TABLE OF CONTENTS.**

The table of contents of this Act is as follows:

Sec. 1. Table of contents.

TITLE I—YOSEMITE NATIONAL PARK AUTHORIZED PAYMENTS

Sec. 102. Payments for educational services.
Sec. 103. Authorization for park facilities to be located outside the boundaries of Yosemite National Park.

TITLE II—RANCHO CORRAL DE TIERRA GOLDEN GATE NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT.

Sec. 201. Short title.
Sec. 202. Golden Gate National Recreation Area, California.

**TITLE I—YOSEMITE NATIONAL PARK AUTHORIZED PAYMENTS**

**SEC. 101. PAYMENTS FOR EDUCATIONAL SERVICES.**

(a) IN GENERAL.—(1) For fiscal years 2006 through 2009, the Secretary of the Interior may provide funds to the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District in the State of California for educational services to students—

(A) who are dependents of persons engaged in the administration, operation, and maintenance of Yosemite National Park; or

(B) who live within or near the park upon real property owned by the United States.

(2) The Secretary's authority to make payments under this section shall terminate if the State of California or local education agencies do not continue to provide funding to the schools referred to in subsection (a) at per student levels that are no less than the amount provided in fiscal year 2005.

(b) LIMITATION ON USE OF FUNDS.—Payments made under this section shall only be used to pay public employees for educational services provided in accordance with subsection (a). Payments may not be used for construction, construction contracts, or major capital improvements.

(c) LIMITATION ON AMOUNT OF FUNDS.—Payments made under this section shall not exceed the lesser of—

(1) $400,000 in any fiscal year; or

(2) the amount necessary to provide students described in subsection (a) with educational services that are normally provided and generally available to students who attend public schools elsewhere in the State of California.

(d) SOURCE OF PAYMENTS.—(1) Except as otherwise provided in this subsection, the Secretary may use funds available to the National Park Service from appropriations, donations, or fees.

(2) Funds from the following sources shall not be used to make payments under this section:

(A) Any law authorizing the collection or expenditure of entrance or use fees at units of the National Park System, including the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 et seq.); the recreational fee demonstration program established under section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (16 U.S.C. 4601–6a note); and the National Park Passport Program established under section 602 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5992).

(B) Emergency appropriations for flood recovery at Yosemite National Park.

(3)(A) The Secretary may use an authorized funding source to make payments under this section only if the funding available to Yosemite National Park from such source (after subtracting any payments to the school districts authorized under this section) is greater than or equal to the amount made available to the park for the prior fiscal year, or in fiscal year 2005, whichever is greater.

(B) It is the sense of Congress that any payments made under this section should not result in a reduction of funds to Yosemite National Park from any specific funding source, and that with respect to appropriated funds, funding levels should reflect annual increases in the park's operating base funds that are generally made to units of the National Park System.

**SEC. 102. AUTHORIZATION FOR PARK FACILITIES TO BE LOCATED OUTSIDE THE BOUNDARIES OF YOSEMITE NATIONAL PARK.**

(a) FUNDING AUTHORITY FOR TRANSPORTATION SYSTEMS AND EXTERNAL FACILITIES.—Section 814(c) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 346e) is amended—

(1) in the heading by inserting ''AND YOSEMITE NATIONAL PARK'' after ''ZION NATIONAL PARK'';

(2) in the first sentence—

(A) by inserting ''and Yosemite National Park'' after ''Zion National Park''; and

(B) by inserting ''for transportation systems or'' after ''appropriated funds''; and

(3) in the second sentence by striking ''facilities'' and inserting ''systems or facilities''.

(b) CLARIFYING AMENDMENT FOR TRANSPORTATION FEE AUTHORITY.—Section 501 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5981) is amended in the first sentence by striking ''service contract'' and inserting ''service contract, cooperative agreement, or other contractual arrangement''.

**TITLE II—RANCHO CORRAL DE TIERRA GOLDEN GATE NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT**

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''Rancho Corral de Tierra Golden Gate National Recreation Area Boundary Adjustment Act''.

**SEC. 202. GOLDEN GATE NATIONAL RECREATION AREA, CALIFORNIA.**

(a) Section 2(a) of Public Law 92–589 (16 U.S.C. 460bb–1(a)) is amended—

(1) by striking ''The recreation area shall comprise'' and inserting the following:

''(1) INITIAL LANDS.—The recreation area shall comprise''; and

(2) by striking ''The following additional lands are also'' and all that follows through the period at the end of the subsection and inserting the following new paragraphs:

''(2) ADDITIONAL LANDS.—In addition to the lands described in paragraph (1), the recreation area shall include the following:

''(A) The parcels numbered by the Assessor of Marin County, California, 119–040–04, 119–040–05, 119–040–18, 166–202–03, 166–010–06, 166–010–07, 166–010–24, 166–010–25, 119–240–19, 166–010–10, 166–010–22, 119–240–03, 119–240–51, 119–240–52, 119–240–54, 166–010–12, 166–010–13, and 119–235–10.

''(B) Lands and waters in San Mateo County generally depicted on the map entitled 'Sweeney Ridge Addition, Golden Gate National Recreation Area', numbered NRA GG–80,000–A, and dated May 1980.

''(C) Lands acquired under the Golden Gate National Recreation Area Addition Act of 1992 (16 U.S.C. 460bb–1 note; Public Law 102–299).

''(D) Lands generally depicted on the map entitled 'Additions to Golden Gate National Recreation Area', numbered NPS–80–076, and dated July 2000/PWR–PLRPC.

''(E) Lands generally depicted on the map entitled 'Rancho Corral de Tierra Additions to the Golden Gate National Recreation Area', numbered NPS–80,079E, and dated March 2004.

''(3) ACQUISITION LIMITATION.—The Secretary may acquire land described in paragraph (2)(E) only from a willing seller.''.

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By Mr. KERRY:

S. 137. A bill to modify the contract consolidation requirements in the Small Business Act, and for other purposes; to the Committee on Small Business and Entrepreneurship.

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By Mr. KERRY (for himself and Mr. BINGAMAN):

S. 138. A bill to make improvements to the microenterprise programs administered by the Small Business Administration; to the Committee on Small Business and Entrepreneurship.

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By Mr. KERRY:

S. 139. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a vocational and technical entrepreneurship development program; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, as Ranking Member of the Small Business and Entrepreneurship Committee, today I am introducing a package of bills that will help small business owners with access to loans, business counseling and Federal procurement opportunities. Each of the bills was previously introduced on its own or as part of the Committee's extensive Small Business Administration reauthorization proposal that passed the Senate unanimously last Congress. These are provisions that are necessary for enabling our nation's small businesses to continue to have the resources and tools they need to compete with larger companies. They will help America's budding entrepreneurs continue to seek out business opportunities and continue to start businesses. Enactment of this assistance will show that the Federal government is not there to make the road to success more difficult for small businesses, but to help them where the private sector will not.

Mr. President, the first bill of this package is the Small Business Federal Contractor Safeguard Act. It includes essential contractor protections that were a part of the Small Business Administration reauthorization package that passed the Senate unanimously last Congress but was stalled during negotiations in the House of Representatives. These much-needed protections will help level the playing field for small firms and create a procurement atmosphere that fosters competition, fair access and equal opportunity for smaller entities.

With Federal agencies awarding larger, more complex and more costly contracts, and with less staff at the Small Business Administration and within Agency contracting offices performing oversight, this nation's small businesses and its taxpayers are the ones shouldering the burden when small business goals continue to be unmet. In addition to helping small businesses obtain access to procurement opportunities, these goals are meant to help the government benefit from the cost-savings and innovations small business contractors can often provide.

Significant steps were made during the last Congress to address the challenges of contract bundling; however, it is my belief that passing and implementing binding statutory requirements is the only long-term solution to the on-going problem of contract bundling, also called contract consolidation. The first section of the bill creates a two-tiered approach to preventing unnecessary contract consolidation. Civilian agencies will be required to meet specific standards if they attempt to consolidate contracts above $2 million and additional requirements for those contracts above $5 million. The Department of Defense is required to meet two types of similar requirements for contracts above $5 million and $7 million. The bill also eliminates the use of the term ''contract bundling'' and expands the definition of ''contract consolidation,'' closing a loophole that has been widely used to the detriment of many small businesses.

In addition to increasing opportunities for prime contracts by eliminating unnecessary contract consolidation, this bill addresses another serious problem: the dishonest treatment of small business subcontractors by large business prime contractors. Small businesses have been severely hamstrung by the dishonest practices of some large business prime contracts that delay paying their subcontractors, falsely report their subcontracting plans and use ''bait and switch'' tactics.

This bill holds prime contractors responsible for the validity of subcontracting data, requiring the CEO to certify to the accuracy of the subcontracting report under penalty of law. It also makes the penalties for falsifying data included in subcontracting reports match the current $500,000 penalty for businesses that falsify their status as a small and disadvantaged business. Under this bill, if one intentionally falsifies data as a part of a subcontracting report to a federal Agency, he is defrauding the United States government and will be punished to the full extent of the law.

Finally, the bill requires contracting officers to maintain a database of contract performance that is made available to the small business subcontractor upon completion of the contract. This report can then be used as a record of past performance, building a history that will help successful small firms bid on future Federal prime contracts or subcontracts. Each contracting officer will be empowered to withhold a portion of the payment to the prime contractor until he also receives the completed and accurate performance report. Any material breach of contract that is found will be immediately reported to the Inspector General of that Agency for a complete investigation.

The second bill of this small business legislative package is the SBA Microenterprise Improvements Act. It was also included as part of the Small Business Administration reauthorization package and passed by the Senate unanimously last Congress. I am reintroducing these provisions because they are vital to the microenterprise programs administered by the SBA: the Microloan Program and the Program for Investment in Microentrepreneurs (PRIME).

As I have stated on numerous occasions, I disagree with the Administration's proposals to cut back funding for microloans and training assistance intended to encourage entrepreneurship and foster America's smallest small businesses. And I wholeheartedly disagree with the Administration's ill-

founded argument that these borrowers are being, or will be, served through the SBA's 7(a) loan guarantee program. SBA's loan programs are not one-size fits all. The small borrower in the Microloan program is different, and therefore has different needs, than the small business borrower being served through the 7(a) loan program. Both lending vehicles are important, but they are different, and one is not a substitute for the other.

Who are these borrowers being served through the microloan program? Thirty percent are African American; 11 percent are Hispanic; 37 percent are women; and, anywhere from 30 percent to 40 percent go to small businesses in rural areas. Because of their size, the size of the loan they need and their relative inexperience, small businesses borrowers are turned away by banks, and yet the Administration proposed cutting the Microloan program by 36 percent in its fiscal year 2004 budget, and cut all funding in its fiscal year 2005 budget. The SBA needs to fully fund these programs and put more resources into the office that manages the program. Four people are not enough to manage 1,400 loans and 180 grants. To make matters worse, the SBA's long-time manager of micro-enterprise programs, Jody Raskind, is leaving the Agency. All those who support the good work of fostering SBA's Microloan program are sorry to see her go, not only because of her dedication and hard work, but also because they are concerned that the Administration will never really fill the job, letting the programs languish. I urge the Administration to move quickly to fill that position, just as the private sector would, by working with the Microloan community to identify someone who is competent, resourceful and dedicated to monitoring integrity of these programs and fostering their success.

In addition, we need to finally enact some changes to the Microloan program that have passed the Senate several times over the last four years but have yet to pass the full Congress because of unrelated political fights. I urge my colleagues to let us move forward with making these provisions law, once and for all. The first part of the SBA Microenterprise Improvements Act includes many of the provisions passed as part of S. 174, a bill which Senator SNOWE and I introduced in 2001 and the Committee and the full Senate voted to pass by unanimous consent in 2002. As I mentioned earlier, these provisions were also included as part of S.1375, the SBA reauthorization bill that passed the Senate unanimously in 2003. The updates and changes to the Microloan program included in this bill will improve the program in several ways.

First, it will allow intermediaries to make revolving-term loans or longer fixed term loans to small businesses. Currently, intermediaries may only make ''short-term'' loans with fixed terms, which restrict the ability of microlenders to structure loans that meet the needs of certain small enterprises. This will benefit small businesses, the lenders, and the SBA because it will eliminate repeated paperwork and unnecessary administrative burdens. It will help small businesses, such as carpenters, who need revolving loans to finance the jobs as they come in, rather than taking multiple little, fixed-term loans. Second, this bill also contains a change to the Microlenders eligibility. Rather than tying eligibility to the expertise of the entity, this bill makes it possible for new entities to qualify as the SBA microlending intermediaries if they have staffs who are experienced in this unique or specialized lending and technical assistance. This bill also adjusts, reflecting changes in the market, the average smaller size of microloans from $7,500 to $10,000, to make it consistent with similar changes enacted in December 2000. This is important because microloan intermediaries that have a microloan portfolio with an average loan size of not more than $10,000 will now be eligible to receive an interest rate lower than the normal rate extended by the SBA to intermediaries. This bill also changes, from 25 percent to 30 percent, the amount of technical assistance (TA) funds an intermediary can contract with an outside expert and the amount of grants a lender can use to counsel prospective borrowers. In addition, the legislation requires the SBA to report annually on the requirement that states that Agency must contract out 7 percent of its loan dollars for intermediary training.

Last, the SBA Microenterprise Improvements Act, like S.1375, requires the SBA to develop an improved subsidy rate model to determine the cost of microloans. The one the Agency has used since the program's inception does not reflect the performance of the program. For example, in Fiscal Year 2003, the administration's budget doubled the subsidy rate (which is the government's cost of the program) from 6.78 percent to 13.05 percent, even though the program had not experienced any loss of federal funds since the first loan was made in 1992. This broken method of calculating the cost of these loans is a waste of taxpayer money because Congress has to appropriate unnecessary funds to run the program. Now is the time to fix it.

The second part of the SBA Microenterprise Improvements Act also comes from S.1375, but was not included in the small business reauthorization bill that passed Congress last session. It begins by reauthorizing the PRIME program through 2007 and transfers its legislative language from the Riegle Community Development and Regulatory Improvement Act of 1994 to section 37 of the Small Business Act. Additionally, it includes a provision that Senator BINGAMAN and I worked closely to develop that will expand PRIME with a separate $2 million authorization to provide direct, in-depth technical assistance and counseling to disadvantaged Native American small business owners. The rationale for amending the PRIME Act, rather than creating a separate program, is that PRIME is currently operational and simply needs additional targeted efforts and funding so it can better address the needs of the Native American entrepreneurial community. The Bingaman-Kerry approach uses an existing program structure to help find a solution to the long-term economic handicap existing in Native American communities nationwide. There are a number of microenterprise organizations in states across the country that are willing and prepared to take on the additional challenge of assisting disadvantaged Native American entrepreneurs, and there are a number of Native American communities that are eager to explore a different path to economic development. However, there are currently a limited amount of funds to allow that to happen. Again, I commend Senator BINGAMAN for his continued attention to these needs, for his continued support of small business legislation to address them, and for his foresight and vision for Native Americans in New Mexico and across the country. The Native American communities of our nation will be better off with the assistance that this provision makes possible.

Again, it is time to move forward. Out of 66 pages of Small Business Administration reauthorizations and improvements that were slipped into the Omnibus Appropriations bill that passed at the end of the 108th Congress, these non-controversial provisions were included. They should have been.

The third part of the package that I'm introducing today is a reintroduction of the Vocational and Technical Entrepreneurship Development Act. Last Congress, I introduced this important piece of legislation as a companion to H.R. 1387, which bears the same name and was introduced in the House, in the 107th and 108th Congresses, by Congressman ROBERT BRADY of Pennsylvania.

Let me begin by reminding my colleagues that the Small Business Administration's Office of Advocacy states that only half of all small businesses survive past four years and that management and education remain two of the most important ingredients to small business success. We often think that small businesses only need money to succeed, but while adequate financing is vital, so too is careful planning and competent management. Often Americans who work in the trade sector—construction, plumbing, electrical work, etc.—enter these professions with the goal of one day starting their own business; however many of these aspiring entrepreneurs who participate in career training or vocational training in certain trades, unfortunately, fail to obtain the necessary education and ''back room'' management skills to grow and develop their fledgling business. This initiative would develop a

program that allows workers within the trades industry to move toward starting a new business by giving them the entrepreneurial skills to successfully manage a small business. Many small businesses fail not because they don't know the industry or make low-quality products or have poor service, but because they don't know the ins and outs of running a successful business.

The purpose of the Vocational and Technical Entrepreneurship Development Act is to assist in the development of curricula that will encourage the successful growth of small businesses. This legislation passed the House in each of the last Congresses, but was not taken up by the full Senate. I hope that the committee and full Senate will act quickly on it now.

The bill, in a business-education partnership, establishes a ''vocational entrepreneurship development demonstration program,'' under which the SBA would provide grants, through the Small Business Development Center network, to provide technical assistance to high school and technical career institutes, vo-tech schools, to promote small business ownership in their curriculum.

The SBDC program is designed to deliver such up-to-date counseling, training and technical assistance in all aspects of small business management and is the ideal vehicle to provide such a program. Each grant awarded under this program will be worth at least $200,000—which, in today's environment where vo-tech programs get short-changed in government education budgets, can do a great deal to help rebuild a worker-strapped trades industry.

There has been some concern that this legislation will duplicate programs such as those at the Department of Education's Office of Vocational and Adult Education, OVAE, which does provide valuable vocational education. The OVAE, and other such government programs, however, focus on helping workers gain new and updated skills so that they may find employment. In contrast, this legislation is targeted toward turning workers, not into better employees, but into potential employers. Traditional vocational education programs do not provide entrepreneurial training. This is a fundamental difference between this legislation's objective and that of the traditional vocation education provided by the Department of Education. Giving our trades industry professionals the skills to be successful business owners creates better employers and better, long-lasting businesses. This, in turn, will go a long way toward creating additional trade jobs across the country.

I again want to commend Representative BRADY for his years of hard work on behalf of entrepreneurs not just from his home State but on behalf of every trades industry worker who has ever thought of becoming his or her own boss by starting a business.

Mr. President, I urge all of my colleagues to cosponsor and support these three bills.

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

S. 137

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Small Business Federal Contractor Safeguard Act of 2005''.

**SEC. 2. CONTRACT CONSOLIDATION.**

(a) DEFINITIONS.—Section 3(o) of the Small Business Act (15 U.S.C. 632(o)) is amended to read as follows:

''(o) DEFINITIONS RELATING TO CONSOLIDATION OF CONTRACT REQUIREMENTS.—For purposes of this Act—

''(1) the terms 'consolidation of contract requirements' and 'consolidation', with respect to contract requirements of a military department, Defense Agency, Department of Defense Field Activity, or any other Federal department or agency having contracting authority mean a use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy 2 or more requirements of that department, agency, or activity for goods or services that—

''(A) have previously been provided to or performed for that department, agency, or activity under 2 or more separate contracts that are smaller in cost than the total cost of the contract for which the offers are solicited; or

''(B) are of a type capable of being provided or performed by a small business concern for that department, agency, or activity under 2 or more separate contracts that are smaller in cost than the total cost of the contract for which the offers are solicited;

''(2) the term 'multiple award contract' means—

''(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10, United States Code;

''(B) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 2304a through 2304d of title 10, United States Code, or sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

''(C) any other indeterminate delivery, indeterminate quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation; and

''(3) the term 'senior procurement executive' means—

''(A) with respect to a military department, the official designated under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) as the senior procurement executive for the military department;

''(B) with respect to a Defense Agency or a Department of Defense Field Activity, the official so designated for the Department of Defense; and

''(C) with respect to a Federal department or agency other than those referred to in subparagraphs (A) and (B), the official so designated by that department or agency.''.

(b) PROCUREMENT STRATEGIES.—Section 15(e) of the Small Business Act (15 U.S.C. 644(e)) is amended—

(1) in paragraph (2)—

(A) by striking ''.—

''(A) IN GENERAL ''; and

(B) by striking subparagraphs (B) and (C); and

(2) by amending paragraph (3) to read as follows:

''(3) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.—

''(A) CERTAIN DEFENSE CONTRACT REQUIREMENTS.—An official of a military department, defense agency, or Department of Defense Field Activity shall not execute an acquisition strategy that includes a consolidation of contract requirements of the military department, agency, or activity with a total value in excess of $5,000,000, unless the senior procurement executive first—

''(i) conducts market research;

''(ii) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements; and

''(iii) determines that the consolidation is necessary and justified.

''(B) CERTAIN CIVILIAN AGENCY CONTRACT REQUIREMENTS.—The head of a Federal agency not described in subparagraph (A) that has contracting authority shall not execute an acquisition strategy that includes a consolidation of contract requirements of the agency with a total value in excess of $2,000,000, unless the senior procurement executive of the agency first—

''(i) conducts market research;

''(ii) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements; and

''(iii) determines that the consolidation is necessary and justified.

''(C) ADDITIONAL REQUIREMENTS FOR HIGHER VALUE CONSOLIDATED CONTRACTS.—In addition to meeting the requirements under subparagraph (A) or (B), a procurement strategy by a civilian agency that includes a consolidated contract valued at more than $5,000,000, or by a defense agency that includes a consolidated contract valued at more than $7,000,000 shall include—

''(i) an assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the consolidation;

''(ii) the identification of the alternative strategies that would reduce or minimize the scope of the consolidation and the rationale for not choosing those alternatives;

''(iii) actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the consolidated requirement; and

''(iv) actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

''(D) NECESSARY AND JUSTIFIED.—A senior procurement executive may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for purposes of subparagraph (A), (B), or (C), if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under clause (ii) of any of those subparagraphs, as applicable. Savings in administrative or personnel costs alone shall not constitute, for such purpose, a sufficient justification for a consolidation of contract requirements in a procurement, unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

''(E) BENEFITS.—Benefits considered for purposes of this paragraph may include cost and, regardless of whether quantifiable in dollar amounts—

''(i) quality;

''(ii) acquisition cycle;

''(iii) terms and conditions; and

''(iv) any other benefit directly related to national security or homeland defense.''.

(c) ADDITIONAL TO TECHNICAL ADVISERS.—Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) is amended—

(1) in paragraph (5), by striking ''bundled contract'' and inserting ''consolidated contract''; and

(2) in paragraph (8), by striking ''representative—'' and inserting ''representative at each major procurement center under subsection (l)(1)—''.

(d) PROCUREMENT CENTER REPRESENTATIVES.—Section 15(l) of the Small Business Act (15 U.S.C. 644(l)) is amended—

(1) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively;

(2) by striking ''(l)(1)'' and inserting ''(2)'';

(3) by inserting before paragraph (2), as redesignated, the following:

''(l)(1) The Administration shall assign not fewer than 1 procurement center representative at each major procurement center, in addition to not fewer than 1 for each State.'';

(4) in paragraph (2), as redesignated, by striking ''to the representative referred to in subsection (k)(6)'' and inserting ''to the traditional procurement center representative and the commercial market representative, with each such position filled by a different individual, and each such representative having separate and distinct duties and responsibilities.''; and

(5) by striking ''paragraph (2)'' each place that term appears and inserting ''paragraph (3)''.

(e) REPORT REQUIREMENTS.—Section 15(p)(4)(B) of the Small Business Act (15 U.S.C. 644(p)(4)(B)) is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause (ii), by striking the period at the end and inserting the following: ''; and''; and

(3) by adding at the end the following:

''(iii) a description of best practices for maximizing small business prime and subcontracting opportunities.''.

(f) CONFORMING AMENDMENTS.—Section 15(p) of the Small Business Act (15 U.S.C. 644(p)) is amended—

(1) in the subsection heading, by striking ''BUNDLED CONTRACTS'' and inserting ''CONSOLIDATED CONTRACTS'';

(2) in the heading to paragraph (1), by striking ''BUNDLED CONTRACT'' and inserting ''CONSOLIDATED CONTRACT'';

(3) in the heading to paragraph (4), by striking ''CONTRACT BUNDLING'' and inserting ''CONTRACT CONSOLIDATION'';

(4) by striking ''bundled contracts'' each place that term appears and inserting ''consolidated contracts'';

(5) by striking ''bundled contract'' each place that term appears and inserting ''consolidated contract'';

(6) by striking ''bundling of contract requirements'' each place that term appears and inserting ''consolidation of contract requirements'';

(7) in paragraph (4)(B)(ii), by striking ''previously bundled'' and inserting ''previously consolidated'';

(8) in paragraph (4)(B)(ii)(I), by striking ''were bundled'' and inserting ''were consolidated'';

(9) in paragraph (4)(B)(ii)(II)(bb), by striking ''bundling the contract requirements'' and inserting ''the consolidation of contract requirements''; and

(10) in paragraph (4)(B)(ii)(II)(cc), by striking ''bundled status'' and inserting ''consolidated status''.

**SEC. 3. AGENCY ACCOUNTABILITY.**

(a) IN GENERAL.—Each procurement employee—

(1) shall communicate to their subordinates the importance of achieving small business goals; and

(2) shall have as an annual performance evaluation factor, if appropriate, the success of that procurement employee in small business utilization, in accordance with the goals established under this section.

(b) DEFINITION.—As used in this section, the term ''procurement employee'' means a senior procurement executive, senior program manager, or small and disadvantaged business utilization manager of a Federal agency having contracting authority.

**SEC. 4. SMALL BUSINESS PARTICIPATION IN PRIME CONTRACTING.**

(a) RESERVED CONTRACTS.—Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended by adding at the end the following:

''(4) Any adjustment to the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))), shall be immediately matched by an identical adjustment to the small business reserve for purposes of this subsection.''.

(b) PARTICIPATION IN MULTIPLE AWARD CONTRACTS.—Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended—

(1) in paragraph (2), by striking ''(2) In carrying out paragraph (1)'' and inserting ''(3) In carrying out paragraphs (1) and (2)'';

(2) in paragraph (3), by striking ''(3) Nothing in paragraph (1)'' and inserting ''(4) Nothing in this subsection''; and

(3) by inserting after paragraph (1) the following:

''(2)(A) In the case of orders under multiple award contracts, including Federal Supply Schedule contracts and multi-agency contracts, that are subject to the small business reserve, contracting officers shall consider not fewer than 2 small business concerns if such small business concerns can offer the items sought by the contracting officer on competitive terms, with respect to price, quality, and delivery schedule, with the goods or services available in the market.

''(B) If only 1 small business concern can satisfy the requirement, the contracting officer shall include such small business concern in their evaluation.''.

(c) REPORT REQUIREMENT.—

(1) IN GENERAL.—Not less than once every 180 days, the Comptroller General of the United States shall submit a report on the level of participation in multiple award contracts, including the Federal Supply Schedule to—

(A) the Small Business Administration;

(B) the Committee on Small Business and Entrepreneurship of the Senate; and

(C) the Committee on Small Business of the House of Representatives.

(2) CONTENTS.—Each report submitted under paragraph (1) shall contain, for the 6-month reporting period—

(A) the total number of multiple award contracts;

(B) the total number of small business concerns that received multiple award contracts;

(C) the total number of orders;

(D) the total value of orders;

(E) the number of orders received by small business concerns;

(F) the value of orders received by small business concerns;

(G) the number of small business concerns that received orders; and

(H) such other information that the Comptroller General considers relevant.

**SEC. 5. SMALL BUSINESS PARTICIPATION IN SUBCONTRACTING.**

(a) CERTIFICATIONS REQUIRED.—Section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)) is amended—

(1) in subparagraph (E), by striking ''and'' at the end;

(2) in subparagraph (F), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(G) certification that the offeror or bidder will acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from small business concerns in the amount and quality used in preparing the bid or proposal, unless such small business concerns are no longer in business or can no longer meet the quality, quantity, or delivery date.''.

(b) PENALTIES FOR FALSE CERTIFICATIONS.—Section 16(f) of the Small Business Act (15 U.S.C. 645(f)) is amended by striking ''of this Act'' and inserting ''or the reporting requirements of section 8(d)(11)''.

**SEC. 6. EVALUATING SUBCONTRACT PARTICIPATION IN AWARDING CONTRACTS.**

(a) SIGNIFICANT FACTORS.—Section 8(d)(4)(G) of the Small Business Act (15 U.S.C. 637(d)(4)(G)) is amended by striking ''a bundled'' and inserting ''any''.

(b) EVALUATION REPORTS.—Section 8(d)(10) of the Small Business Act (15 U.S.C. 637(d)(10)) is amended—

(1) by striking ''is authorized to'' and inserting ''shall'';

(2) in subparagraph (B), by striking ''and'' at the end;

(3) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(D) report the results of each evaluation under subparagraph (C) to the appropriate contracting officers.''.

(c) CENTRALIZED DATABASE; PAYMENTS PENDING REPORTS.—Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended—

(1) by redesignating paragraph (11) as paragraph (14); and

(2) by inserting after paragraph (10) the following:

''(11) CERTIFICATION.—A report submitted by the prime contractor pursuant to paragraph (6)(E) to determine the attainment of a subcontract utilization goal under any subcontracting plan entered into with a Federal agency under this subsection shall contain the name and signature of the president or chief executive officer of the contractor, certifying that the subcontracting data provided in the report are accurate and complete.

''(12) CENTRALIZED DATABASE.—The results of an evaluation under paragraph (10)(C) shall be included in a national centralized governmentwide database.

''(13) PAYMENTS PENDING REPORTS.—Each Federal agency having contracting authority shall ensure that the terms of each contract for goods and services includes a provision allowing the contracting officer of an agency to withhold an appropriate amount of payment with respect to a contract (depending on the size of the contract) until the date of receipt of complete, accurate, and timely subcontracting reports in accordance with paragraph (11).''.

(d) REFERRAL OF MATERIAL BREACH TO INSPECTORS GENERAL.—Section 8(d)(8) of the Small Business Act (15 U.S.C. 637(d)(8)) is amended by adding at the end the following: ''A material breach described in this paragraph shall be referred for investigation to the Inspector General (or the equivalent) of the affected agency.''.

**SEC. 7. BUSINESSLINC REPORT TO CONGRESS.**

Section 8(n) of the Small Business Act (15 U.S.C. 637(n)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by adding after paragraph (2) the following:

''(3) ANNUAL REPORT.—

''(A) IN GENERAL.—The Associate Administrator of Business Development of the Administration shall collect data on the BusinessLINC program and submit an annual report by April 30 of each year on the effectiveness of the program to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

''(i) the number of programs administered in each State;

''(ii) the corresponding grant awards and the date of each award;

''(iii) the dollar amount of the contracts in effect in each State as a result of the BusinessLINC program; and

''(iv) the number of teaming arrangements or partnerships created as a result of the BusinessLINC program.''.

S. 138

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''SBA Microenterprise Improvements Act''.

**SEC. 2. MICROLOAN PROGRAM IMPROVEMENTS.**

(a) INTERMEDIARY ELIGIBILITY REQUIREMENTS.—Section 7(m)(2) of the Small Business Act (15 U.S.C. 636(m)(2)) is amended—

(1) in subparagraph (A), by striking ''in paragraph (10); and'' and inserting ''of the term 'intermediary' under paragraph (11);''; and

(2) in subparagraph (B)—

(A) by striking ''(B) has at least'' and inserting the following:

''(B) has—

''(i) at least''; and

(B) by striking the period at the end and inserting the following: ''; or

''(ii) a full-time employee who has not less than 3 years experience making microloans to startup, newly established, or growing small business concerns; and

''(C) has at least 1 year experience providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.''.

(b) CONFORMING CHANGE IN AVERAGE SMALLER LOAN SIZE.—Section 7(m)(3)(F)(iii) of the Small Business Act (15 U.S.C. 636(m)(3)(F)(iii)) is amended by striking ''$7,500'' and inserting ''$10,000''.

(c) LIMITATION ON THIRD PARTY TECHNICAL ASSISTANCE.—Section 7(m)(4)(E)(ii) of the Small Business Act (15 U.S.C. 636(m)(4)(E)(ii)) is amended—

(1) by striking ''TECHNICAL ASSISTANCE'' and inserting ''THIRD PARTY TECHNICAL ASSISTANCE''; and

(2) by striking ''25 percent'' and inserting ''30 percent''.

(d) LOAN TERMS.—Section 7(m)(1)(B)(i) of the Small Business Act (15 U.S.C. 636(m)(1)(B)(i)) is amended by striking ''short-term''.

(e) REPORT ON TRANSFERRED AMOUNTS.—Section 7(m)(9)(B) of the Small Business Act (15 U.S.C. 636(m)(9)(B)) is amended—

(1) by striking ''The Administration'' and inserting the following:

''(i) IN GENERAL.—The Administration'';

(2) by striking the period after ''financing''; and

(3) by adding at the end the following:

''(ii) REPORT.—The Administration shall report, in its annual budget request and performance plan to Congress, on the performance by the Administration of the requirements of clause (i).''.

(f) ACCURATE SUBSIDY MODEL.—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended by adding at the end the following:

''(14) IMPROVED SUBSIDY MODEL.—The Administrator shall develop a subsidy model for the microloan program under this subsection, to be used in the fiscal year 2006 budget, that is more accurate than the subsidy model in effect on the day before the date of enactment of this paragraph.''.

(g) INCREASED FLEXIBILITY FOR PROVIDING TECHNICAL ASSISTANCE TO POTENTIAL BORROWERS.—Section 7(m)(4)(E)(i) of the Small Business Act (15 U.S.C. 636(m)(4)(E)(i)) is amended by striking ''25 percent'' and inserting ''30 percent''.

**SEC. 3. PRIME REAUTHORIZATION AND TRANSFER TO THE SMALL BUSINESS ACT.**

(a) PROGRAM REAUTHORIZATION.—Subtitle C of title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (15 U.S.C. 6901 note) is amended to read as follows:

**''SEC. 37. PROGRAM FOR INVESTMENT IN MICROENTREPRENEURS.**

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) ADMINISTRATION.—The term 'Administration' means the Small Business Administration.

''(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Small Business Administration.

''(3) CAPACITY BUILDING SERVICES.—The term 'capacity building services' means services provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

''(4) COLLABORATIVE.—The term 'collaborative' means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this section.

''(5) DISADVANTAGED ENTREPRENEUR.—The term 'disadvantaged entrepreneur' means a microentrepreneur that—

''(A) is a low-income person;

''(B) is a very low-income person; or

''(C) lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

''(6) DISADVANTAGED NATIVE AMERICAN ENTREPRENEUR.—The term 'disadvantaged Native American entrepreneur' means a disadvantaged entrepreneur who is also a member of an Indian Tribe.

''(7) INDIAN TRIBE.—The term 'Indian tribe' has the same meaning as in section 4(a) of the Indian Self-Determination and Education Assistance Act.

''(8) INTERMEDIARY.—The term 'intermediary' means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs, as authorized under subsection (d).

''(9) LOW-INCOME PERSON.—The term 'low-income person' means having an income, adjusted for family size, of not more than—

''(A) for metropolitan areas, 80 percent of the area median income; and

''(B) for nonmetropolitan areas, the greater of—

''(i) 80 percent of the area median income; or

''(ii) 80 percent of the statewide nonmetropolitan area median income.

''(10) MICROENTREPRENEUR.—The term 'microentrepreneur' means the owner or developer of a microenterprise.

''(11) MICROENTERPRISE.—The term 'microenterprise' means a sole proprietorship, partnership, or corporation that—

''(A) has fewer than 5 employees; and

''(B) generally lacks access to conventional loans, equity, or other banking services.

''(12) MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM.—The term 'microenterprise development organization or program' means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs.

''(13) TRAINING AND TECHNICAL ASSISTANCE.—The term 'training and technical assistance' means services and support provided to disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

''(14) VERY LOW-INCOME PERSON.—The term 'very low-income person' means having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section).

''(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a microenterprise technical assistance and capacity building grant program to provide assistance from the Administration in the form of grants to qualified organizations in accordance with this section.

''(c) USES OF ASSISTANCE.—A qualified organization shall use grants made under this section—

''(1) to provide training and technical assistance to disadvantaged entrepreneurs;

''(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

''(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs;

''(4) to provide training and technical assistance to disadvantaged Native American entrepreneurs and prospective entrepreneurs; and

''(5) for such other activities as the Administrator determines are consistent with the purposes of this section.

''(d) QUALIFIED ORGANIZATIONS.—For purposes of eligibility for assistance under this section, a qualified organization shall be—

''(1) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

''(2) an intermediary;

''(3) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

''(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this subsection exists within its jurisdiction.

''(e) ALLOCATION OF ASSISTANCE; SUBGRANTS.—

''(1) ALLOCATION OF ASSISTANCE.—

''(A) IN GENERAL.—The Administrator shall allocate assistance from the Administration under this section to ensure that—

''(i) activities described in subsection (c)(1) are funded using not less than 75 percent of amounts made available for such assistance; and

''(ii) activities described in subsection (c)(2) are funded using not less than 15 percent of amounts made available for such assistance.

''(B) LIMIT ON INDIVIDUAL ASSISTANCE.—No single person may receive more than 10 percent of the total funds appropriated under this section in a single fiscal year.

''(2) TARGETED ASSISTANCE.—The Administrator shall ensure that not less than 50 percent of the grants made under this section are used to benefit very low-income persons, including those residing on Indian reservations.

''(3) SUBGRANTS AUTHORIZED.—

''(A) IN GENERAL.—A qualified organization receiving assistance under this section may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such rules and regulations as the Administrator determines to be appropriate.

''(B) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of assistance received by a qualified organization under this section may be used for administrative expenses in connection with the making of subgrants under subparagraph (A).

''(4) DIVERSITY.—In making grants under this section, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities serving diverse populations.

''(5) PROHIBITION ON PREFERENTIAL CONSIDERATION OF CERTAIN SBA PROGRAM PARTICIPANTS.—In making grants under this section, the Administrator shall ensure that any application made by a qualified organization that is a participant in the program established under section 7(m) of the Small Business Act does not receive preferential consideration over applications from other qualified organizations that are not participants in such program.

''(f) MATCHING REQUIREMENTS.—

''(1) IN GENERAL.—Financial assistance under this section shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of each dollar provided by the Administration.

''(2) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement in paragraph (1).

''(3) EXCEPTION.—

''(A) IN GENERAL.—In the case of an applicant for assistance under this section with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirements of paragraph (1).

''(B) LIMITATION.—Not more than 10 percent of the total funds made available from the Administration in any fiscal year to carry out this section may be excepted from the matching requirements of paragraph (1), as authorized by subparagraph (A) of this paragraph.

''(g) APPLICATIONS FOR ASSISTANCE.—An application for assistance under this section shall be submitted in such form and in accordance with such procedures as the Administrator shall establish.

''(h) RECORDKEEPING AND REPORTING.—

''(1) IN GENERAL.—Each organization that receives assistance from the Administration in accordance with this section shall—

''(A) submit to the Administration not less than once in every 18-month period, financial statements audited by an independent certified public accountant;

''(B) submit an annual report to the Administration on its activities; and

''(C) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

''(2) ACCESS.—The Administration shall have access upon request, for the purposes of determining compliance with this section, to any records of any organization that receives assistance from the Administration in accordance with this section.

''(3) DATA COLLECTION.—Each organization that receives assistance from the Administration in accordance with this section shall collect information relating to, as applicable—

''(A) the number of individuals counseled or trained;

''(B) the number of hours of counseling provided;

''(C) the number of startup small business concerns formed;

''(D) the number of small business concerns expanded;

''(E) the number of low-income individuals counseled or trained; and

''(F) the number of very low-income individuals counseled or trained.

''(i) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Administrator $15,000,000 for each of the fiscal years 2005 through 2007 to carry out the provisions of this section, which shall remain available until expended.

''(2) TRAINING FOR NATIVE AMERICAN ENTREPRENEURS.—In addition to the amount authorized under subsection (i)(1), there are authorized to be appropriated to the Administrator $2,000,000 for each of the fiscal years 2005 through 2007 to carry out the provisions of subsection (c)(4), which shall remain available until expended.''.

(b) TRANSFER PROVISIONS.—

(1) SMALL BUSINESS ACT AMENDMENTS.—The Small Business Act (15 U.S.C. 631 et seq.) is amended by redesignating section 37 as section 38.

(2) TRANSFER.—Section 37 of the Riegle Community Development and Regulatory Improvement Act of 1994 (15 U.S.C. 6901 note), as so designated by subsection (a) of this section, is transferred to, and inserted after, section 36 of the Small Business Act.

(c) REFERENCES.—All references in Federal law to the ''Program for Investment in Microentrepreneurs Act of 1999'' or the ''PRIME Act'' shall be deemed to be references to section 37 of the Small Business Act, as added by this section.

(d) RULE OF CONSTRUCTION.—Nothing in this section or the amendments made by this section shall affect any grant or assistance provided under the Program for Investment in Microentrepreneurs Act of 1999, before the date of enactment of this Act, and any such grant or assistance shall be subject to the Program for Investment in Microentrepreneurs Act of 1999, as in effect on the day before the date of enactment of this Act.

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S. 139

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Vocational and Technical Entrepreneurship Development Act of 2005''.

**SEC. 2. VOCATIONAL AND TECHNICAL ENTREPRENEURSHIP DEVELOPMENT PROGRAM.**

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 37 as section 38; and

(2) by inserting after section 36 the following:

**''SEC. 37. VOCATIONAL AND TECHNICAL ENTREPRENEURSHIP DEVELOPMENT PROGRAM.**

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Small Business Administration.

''(2) ASSOCIATION.—The term 'Association' means the association of small business development centers recognized under section 21(a)(3)(A).

''(3) PROGRAM.—The term 'program' means the program established under subsection (b).

''(4) SMALL BUSINESS DEVELOPMENT CENTER.—The term 'small business development center' means a small business development center described in section 21.

''(5) STATE SMALL BUSINESS DEVELOPMENT CENTER.—The term 'State small business development center' means a small business development center from each State selected by the Administrator, in consultation with the Association and giving substantial weight to the Association's recommendations, to carry out the program on a statewide basis in such State.

''(b) ESTABLISHMENT.—In accordance with this section, the Administrator shall establish a program under which the Administrator shall make grants to State small business development centers to enable such centers to provide, on a statewide basis, technical assistance to secondary schools, or to postsecondary vocational or technical schools, for the development and implementation of curricula designed to promote vocational and technical entrepreneurship.

''(c) MINIMUM GRANT.—Each grant awarded under the program shall be in an amount equal to not less than $200,000.

''(d) APPLICATION.—Each State small business development center seeking a grant under the program shall submit to the Administrator an application in such form as the Administrator may require. The application shall include information regarding the goals and objectives of the applicant for the educational programs to be assisted.

''(e) REPORT TO ADMINISTRATOR.—The Administrator shall make as a condition of each grant under the program, that not later than 18 months after the date of receipt of the grant, the recipient shall transmit to the Administrator a report describing how the grant funds were used.

''(f) COOPERATIVE AGREEMENTS AND CONTRACTS.—The Administrator may enter into a cooperative agreement or contract with any State small business development center receiving a grant under this section to provide additional assistance that furthers the purposes of this section.

''(g) EVALUATION OF PROGRAM.—Not later than March 31, 2008, the Administrator shall transmit to Congress a report containing an evaluation of the program.

''(h) CLEARINGHOUSE.—The Association shall act as a clearinghouse of information and expertise regarding vocational and technical entrepreneurship education programs. In each fiscal year in which grants are made under the program, the Administrator shall provide additional assistance to the Association to carry out the functions described in this subsection.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $7,000,000 for each of the fiscal years 2006 through 2008. Such sums shall remain available until expended.''.

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By Mrs. CLINTON (for herself and Mr. SCHUMER):

S. 140. A bill to provide for a domestic defense fund to improve the Nation's homeland defense, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 140

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Domestic Defense Fund Act of 2005''.

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents
Sec. 2. Findings
Sec. 3. Definitions
Sec. 4. Grants to States, units of general local government and Indian tribes; authorizations
Sec. 5. Statement of activities and review
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**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) Since the September 11, 2001, terrorist attacks on our country, communities all across America have been on the front lines in the war against terrorism on United States soil.

(2) Since September 11, 2001, communities have been forced to bear a significant portion of the burden that goes along with the war against terrorism, a burden that local governments should not have to bear alone.

(3) Our homeland defense will only be as strong as the weakest link at the State and local level. By providing our communities with the resources and tools they need to bolster emergency response efforts and provide for other emergency response initiatives, we will have a better-prepared home front and a stronger America.

(4) Homeland security experts have repeatedly called upon Congress to allocate homeland security resources based on threat- and risk-based factors. The National Commission on Terrorist Attacks Upon the United States (referred to in this Act as the ''9/11 Commission'') stated in its report: ''We understand the contention that every State and city needs to have some minimum infrastructure for emergency response. But Federal homeland security assistance should not remain a program for general revenue sharing. It should supplement State and local resources based on the risks or vulnerability that merit additional support. Congress should not use this money as a pork barrel.'' The Commission made unequivocally clear that the current method of allocating the majority of Federal homeland security resources to states and local communities, on a per capita basis alone, must be changed.

(5) Not only did the 9/11 Commission recommend that such changes be made in how Federal homeland security funds are allocated, but commissions before it, such as the Homeland Security Independent Task Force of the Council on Foreign Relations, chaired by former Senators Gary Hart and Warren Rudman, have strongly recommended it as well.

(6) The Hart-Rudman Commission stated almost 2 years ago that ''Congress should establish a system for allocating scarce resources based less on dividing the spoils and more on addressing identified threats and vulnerabilities. To do this, the Federal Government should consider such factors as population, population density, vulnerability assessment, and presence of critical infrastructure within each State.''

(7) In addition to the need for threat and risk-based funding, direct funding to our major cities and counties across the country is necessary if we are to ensure that these communities, who are on the front lines of our nation's homeland defense, receive critical Federal homeland security resources quickly and efficiently. Numerous reports by organizations such as the United States Conference of Mayors, have clearly demonstrated that the current method of distributing Federal homeland security resources intended for local communities has not worked. Too often, too many communities receive resources, if at all, years after Congress appropriated the subject funds.

**SEC. 3. DEFINITIONS.**

(a) DEFINITIONS.—As used in this Act, the following definitions shall apply:

(1) CITY.—The term ''city'' means—

(A) any unit of general local government that is classified as a municipality by the United States Bureau of the Census; or

(B) any other unit of general local government that is a town or township and which, in the determination of the Secretary—

(i) possesses powers and performs functions comparable to those associated with municipalities;

(ii) is closely settled; and

(iii) does not contain within its boundaries any incorporated place, as defined by the United States Bureau of the Census, that has not entered into cooperation agreements with such town or township to undertake or to assist in the performance of homeland security objectives.

(2) FEDERAL GRANT-IN-AID PROGRAM.—The term ''Federal grant-in-aid program'' means a program of Federal financial assistance other than loans and other than the assistance provided by this Act.

(3) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

(4) METROPOLITAN AREA.—The term ''metropolitan area'' means a standard metropolitan statistical area as established by the Office of Management and Budget.

(5) METROPOLITAN CITY.—

(A) IN GENERAL.—The term ''metropolitan city'' means—

(i) a city within a metropolitan area that is the central city of such area, as defined and used by the Office of Management and Budget; or

(ii) any other city, within a metropolitan area, which has a population of not less than 50,000.

(B) PERIOD OF CLASSIFICATION.—Any city that was classified as a metropolitan city for at least 2 years pursuant to subparagraph (A) shall remain classified as a metropolitan city. Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under this Act, if it elects to have its population included in an urban county under subsection (d).

(C) ELECTION BY A CITY.—Notwithstanding subparagraph (B), a city may elect not to retain its classification as a metropolitan city. Any unit of general local government that was classified as a metropolitan city in any year, may, upon submission of written notification to the Secretary, relinquish such classification for all purposes under this Act if it elects to have its population included with the population of a county for purposes of qualifying for assistance (for such following fiscal year) under section 5(e) as an urban county.

(6) NONQUALIFYING COMMUNITY.—The term ''nonqualifying community'' means an area that is not a metropolitan city or part of an urban county and does not include Indian tribes.

(7) POPULATION.—The term ''population'' means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period of time.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of the Department of Homeland Security.

(9) STATE.—The term ''State'' means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(10) UNIT OF GENERAL LOCAL GOVERNMENT.—The term ''unit of general local government'' means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; a combination of such political subdivisions is recognized by the Secretary; and the District of Columbia.

(11) URBAN COUNTY.—The term ''urban county'' means any county within a metropolitan area.

(b) BASIS AND MODIFICATION OF DEFINITIONS.—

(1) BASIS.—Where appropriate, the definitions listed in subsection (a) shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available 90 days before the beginning of such fiscal year.

(2) MODIFICATION.—The Secretary may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) DESIGNATION OF PUBLIC AGENCIES.—The chief executive officer of a State or a unit of general local government may designate 1 or more public agencies, including existing local public agencies, to undertake activities assisted under this Act.

(d) INCLUSION OF LOCAL GOVERNMENTS IN URBAN COUNTY POPULATION.—With respect to program years beginning with the program year for which grants are made available from amounts appropriated for fiscal year 2005 under section 4, the population of any unit of general local government which is included in that of an urban county shall be included in the population of such urban county for 3 program years beginning with the program year in which its population was first so included and shall not otherwise be eligible for a grant as a separate entity, unless the urban county does not receive a grant for any year during such 3-year period.

(e) EXCLUSION OF LOCAL GOVERNMENTS FROM URBAN COUNTY POPULATION.—

(1) NOTIFICATION BY URBAN COUNTY.—Any county seeking qualification as an urban county, including any urban county seeking to continue such qualification, shall notify each unit of general local government, located within its geographical boundaries and eligible to elect to have its population excluded from that of the urban county, of its opportunity to make such an election. Such notification shall, at a time and in a manner prescribed by the Secretary, be provided so as to provide a reasonable period for response prior to the period for which such qualification is sought.

(2) FAILURE OF LOCAL GOVERNMENT TO ELECT TO BE EXCLUDED.—The population of any unit of general local government which is provided such notification and which does not inform, at a time and in a manner prescribed by the Secretary, the county of its election to exclude its population from that of the county shall, if the county qualifies as an urban county, be included in the population of such urban county as provided under subsection (d).

**SEC. 4. GRANTS TO STATES, UNITS OF GENERAL LOCAL GOVERNMENT AND INDIAN TRIBES; AUTHORIZATIONS.**

(a) AUTHORIZATION.—The Secretary may award grants to States, units of general local government, and Indian tribes to carry out activities in accordance with this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out section 7—

(A) $3,500,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal year 2010 and each fiscal year thereafter.

(2) STATE, REGIONAL, AND LOCAL PLANNING, TRAINING, AND COMMUNICATION SYSTEMS.—There are authorized to be appropriated to carry out section 8—

(A) $1,000,000,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal year 2010 and each fiscal year thereafter.

(3) URBAN AREA SECURITY INITIATIVE (UASI).—There are authorized to be appropriated to carry out section 9—

(A) $2,000,000,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal year 2010 and each fiscal year thereafter.

(4) HOMELAND SECURITY FLEXIBLE EMERGENCY ASSISTANCE.—There are authorized to be appropriated to carry out section 10—

(A) $500,000,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal year 2010 and each fiscal year thereafter.

(c) SUPPLEMENT NOT SUPPLANT.—Funds appropriated pursuant to the authority of this section shall be used to supplement and not supplant full Federal funding for other first responder programs, including—

(1) the Community Oriented Policing Services Program, as authorized under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.);

(2) the Local Law Enforcement Block Grant Program, as authorized under the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) and described in H.R. 728, as passed by the House of Representatives on February 14, 1995;

(3) the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, as authorized under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.);

(4) the Assistance to Firefighters Grant Program, as authorized under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229); and

(5) section 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a).

**SEC. 5. STATEMENT OF ACTIVITIES AND REVIEW.**

(a) APPLICATION.—

(1) IN GENERAL.—A State, metropolitan city, urban county, or unit of general local government desiring a grant under subsection (b) or (i) of section 7 shall submit an application to the Secretary that contains—

(A) a statement of homeland security objectives and projected use of grant funds; and

(B) the certifications required under paragraph (2) and, if appropriate, subsection (b).

(2) GRANTEE STATEMENT.—

(A) CONTENTS.—

(i) LOCAL GOVERNMENT.—In the case of metropolitan cities or urban counties receiving grants under section 7(b) and units of general local government receiving grants under section 7(i)(3), the statement of projected use of funds shall consist of proposed homeland security activities.

(ii) STATES.—In the case of States receiving grants under section 7, the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government.

(B) CONSULTATION.—In preparing the statement required under this subsection, the grantee shall consult with appropriate law enforcement agencies and emergency response authorities.

(C) FINAL STATEMENT.—A copy of the final statement and the certifications required under paragraph (3) and, where appropriate, subsection (b), shall be furnished to the Secretary and the Attorney General.

(D) MODIFICATIONS.—Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required under this paragraph for the preparation and submission of such statement.

(3) CERTIFICATION OF ENUMERATED CRITERIA BY GRANTEE TO SECRETARY.—A grant under section 7 shall not be awarded unless the grantee certifies to the satisfaction of the Secretary that the grantee—

(A) has developed a homeland security plan that identifies both short- and long-term homeland security needs that have been developed in accordance with the primary objective and requirements of this Act; and

(B) will comply with the other provisions of this Act and with other applicable laws.

(b) SUBMISSION OF ANNUAL PERFORMANCE REPORTS, AUDITS, AND ADJUSTMENTS.—

(1) IN GENERAL.—Each grantee shall submit to the Secretary, at a time determined by the Secretary, a performance and evaluation report concerning the use of funds made available under section 7, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a)(2).

(2) UNIFORM REPORTING REQUIREMENTS.—

(A) RECOMMENDATIONS BY NATIONAL ASSOCIATIONS.—The Secretary shall encourage and assist national associations of grantees eligible under section 7, national associations of States, and national associations of units of general local government in nonqualifying areas to develop and recommend to the Secretary, not later than 1 year after the date of enactment of this Act, uniform recordkeeping, performance reporting, evaluation reporting, and auditing requirements for such grantees, States, and units of general local government, respectively.

(B) ESTABLISHMENT OF UNIFORM REPORTING REQUIREMENTS.—Based on the Secretary's approval of the recommendations submitted pursuant to subparagraph (A), the Secretary shall establish uniform reporting requirements for grantees, States, and units of general local government.

(3) REVIEWS AND AUDITS.—Not less than annually, the Secretary shall make such reviews and audits as may be necessary or appropriate to determine—

(A) in the case of grants awarded under section 7(b), whether the grantee—

(i) has carried out its activities;

(ii) where applicable, has carried out its activities and its certifications in accordance with the requirements and the primary objectives of this Act and with other applicable laws; and

(iii) has a continuing capacity to carry out those activities in a timely manner; and

(B) in the case of grants to States made under section 7(i), whether the State—

(i) has distributed funds to units of general local government in a timely manner and in conformance to the method of distribution described in its statement;

(ii) has carried out its certifications in compliance with the requirements of this Act and other applicable laws; and

(iii) has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria described in subparagraph (A).

(4) ADJUSTMENTS.—The Secretary may make appropriate adjustments in the amount of the annual grants in accordance with the Secretary's findings under this subsection. With respect to assistance made available to units of general local government under section 7(i)(3), the Secretary may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Secretary's reviews and audits under this subsection, except that funds already expended on eligible activities under this Act shall not be recaptured or deducted from future assistance to such units of general local government.

(c) AUDITS.—Insofar as they relate to funds provided under this Act, the financial transactions of recipients of such funds may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(d) METROPOLITAN CITY AS PART OF URBAN COUNTY.—In any case in which a metropolitan city is located, in whole or in part, within an urban county, the Secretary may, upon the joint request of such city and county, approve the inclusion of the metropolitan city as part of the urban county for purposes of submitting a statement under subsection (a) and carrying out activities under this Act.

**SEC. 6. ACTIVITIES ELIGIBLE FOR ASSISTANCE.**

Activities assisted under this Act may include—

(1) funding additional law enforcement, fire, and emergency resources, including covering overtime expenses;

(2) purchasing and refurbishing personal protective equipment for fire, police, and emergency personnel and acquire state-of-the-art technology to improve communication and streamline efforts;

(3) improving cyber and infrastructure security by improving—

(A) security for water treatment plants, distribution systems, other water infrastructure, nuclear power plants, electrical grids, and other energy infrastructure;

(B) security for tunnels, bridges, locks, canals, railway systems, airports, land and water ports, and other transportation infrastructure;

(C) security for oil and gas pipelines and storage facilities;

(D) security for chemical plants and transportation of hazardous substances;

(E) security for agriculture infrastructure; and

(F) security for national icons and Federal facilities that may be terrorist targets;

(4) assisting local emergency planning committees so that local public agencies can design, review, and improve disaster response systems;

(5) assisting communities in coordinating their efforts and sharing information with all relevant agencies involved in responding to terrorist attacks;

(6) establishing timely notification systems that enable communities to communicate with each other when a threat emerges;

(7) improving communication systems to provide information to the public in a timely manner about the facts of any threat and the precautions the public should take; and

(8) devising a homeland security plan, including determining long-term goals and short-term objectives, evaluating the progress of the plan, and carrying out the management, coordination, and monitoring of activities necessary for effective planning implementation.

**SEC. 7. ALLOCATION AND DISTRIBUTION OF FUNDS.**

(a) SET-ASIDE FOR INDIAN TRIBES.—

(1) IN GENERAL.—The Secretary shall reserve 1 percent of the amount appropriated for each fiscal year for grants pursuant to section 4(b)(1) (excluding the amounts for activities described in section 6) for grants to Indian tribes.

(2) SELECTION OF INDIAN TRIBES.—

(A) IN GENERAL.—The Secretary shall distribute amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts.

(B) RULEMAKING.—The Secretary, after notice and public comment, shall promulgate regulations, which establish the criteria described in subparagraph (A).

(b) ALLOCATION TO METROPOLITAN CITIES AND URBAN COUNTIES.—

(1) ALLOCATION PERCENTAGE.—Of the amount remaining after allocations have been made to Indian tribes under subsection (a), the Secretary shall, not later than 60 days after the date on which such funds are appropriated, allocate and directly transfer 70 percent to metropolitan cities and urban counties.

(2) ENTITLEMENT.—Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant, to the extent authorized beyond fiscal year 2008, from such allocation in an amount not to exceed its basic amount computed pursuant to subsections (c) and (d).

(c) COMPUTATION OF AMOUNT ALLOCATED TO METROPOLITAN CITIES.—

(1) VULNERABILITY AND THREAT FACTORS.—The Secretary shall calculate the amount to be allocated to each metropolitan city, which shall bear the same ratio to the allocation for all metropolitan cities as the weighted average of—

(A) the population (including tourist, military, and commuting populations) of the metropolitan city divided by the population of all metropolitan cities;

(B) the population density of the metropolitan city;

(C) the proximity of the metropolitan city to international borders;

(D) the vulnerability of the metropolitan city as it pertains to chemical security;

(E) the vulnerability of the metropolitan city as it pertains to nuclear security;

(F) the vulnerability of the metropolitan city as it pertains to land and water port security;

(G) the vulnerability of the metropolitan city as it pertains to the security of energy infrastructure;

(H) the vulnerability of the metropolitan city as it pertains to the security of inland waterway infrastructure;

(I) the vulnerability of the metropolitan city as it pertains to the security of freight and passenger rail transportation infrastructure;

(J) the vulnerability of the metropolitan city as it pertains to the security of aviation infrastructure;

(K) the vulnerability of the metropolitan city as it pertains to the security of agriculture infrastructure;

(L) the proximity of the metropolitan city to the nearest national icons and Federal facilities that may be a terrorist target, as determined by the Department of Homeland Security, and the proximity of all metropolitan cities to the nearest national icons and Federal buildings that may be a terrorist target, as determined by the Department of Homeland Security; and

(M) the threat to the metropolitan city based upon intelligence information from the Department of Homeland Security;

(2) CLARIFICATION OF COMPUTATION RATIOS.—

(A) RELATIVE WEIGHT OF FACTORS.—In determining the weighted average of the ratios under paragraph (1)—

(i) threat, as defined by paragraph (1)(M), shall constitute 25 percent;

(ii) population, as defined by paragraph (1)(A), shall constitute 20 percent;

(iii) population density, as defined by paragraph (1)(B), shall constitute 15 percent; and

(iv) the remaining factors shall be equally weighted.

(B) POPULATION DENSITY.—The metropolitan cities shall be ranked according to the density of their populations in calculating the weighted average of this factor. The population density ratio shall be 1 divided by the total number of metropolitan cities, not to exceed 100.

(C) PROXIMITY TO INTERNATIONAL BORDERS.—If a metropolitan city is located within 50 miles of an international border, the ratio under paragraph (1)(C) shall be 1 divided by the total number of metropolitan cities, not to exceed 100, which are located within 50 miles of an international border.

(D) VULNERABILITY AS IT PERTAINS TO CHEMICAL SECURITY.—If a metropolitan city is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency or another instrument development by the Environmental Protection Agency or the Department of Homeland Security that captures the same information for the same facilities), the ratio under paragraph (1)(D) shall be 1 divided by the total number of metropolitan cities that are within such a zone, not to exceed 100.

(E) VULNERABILITY AS IT PERTAINS TO NUCLEAR SECURITY.—If a metropolitan city is located within 50 miles of an operating nuclear power plant, as identified by the Nuclear Regulatory Commission, the ratio under paragraph (1)(E) shall be 1 divided by the total number of metropolitan cities, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(F) VULNERABILITY AS IT PERTAINS TO PORT SECURITY.—If a metropolitan city is located within 50 miles of—

(i) one of the 75 largest United States ports, as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Ports Report by All Land Modes; or

(ii) one of the 25 largest United States water ports by metric tons and value, as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics,

the ratio under paragraph (1)(F) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a United States land or water port, not to exceed 100.

(G) VULNERABILITY AS IT PERTAINS TO ENERGY INFRASTRUCTURE SECURITY.—If a metropolitan city is among the 100 metropolitan cities that are closest to, or within 50 miles of, non-nuclear power generating plants, compressors, and other significant components of critical energy infrastructure as identified by the Department of Energy or the Department of Homeland Security, the ratio under paragraph (1)(G) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of critical energy infrastructure, not to exceed 100.

(H) VULNERABILITY AS IT PERTAINS TO INLAND WATERWAY INFRASTRUCTURE SECURITY.—If a metropolitan city is among the 100 metropolitan cities that are closest to, or within 50 miles of, the most significant locks, canals, and other components of critical inland waterway system infrastructure as identified by the Department of Transportation, the ratio under paragraph (1)(H) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of critical inland water infrastructure, not to exceed 100.

(I) VULNERABILITY AS IT PERTAINS TO RAIL TRANSPORTATION INFRASTRUCTURE SECURITY.—If a metropolitan city is among the 100 metropolitan cities that are closest to, or within 50 miles of, the largest railroad hubs and other significant components of critical freight and passenger rail infrastructure, as identified by the Department of Transportation, the ratio under paragraph (1)(I) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of critical inland water infrastructure, not to exceed 100.

(J) VULNERABILITY AS IT PERTAINS TO AVIATION INFRASTRUCTURE SECURITY.—If a metropolitan city is among the 100 metropolitan cities that are closest to, or within 50 miles of, major passenger or cargo airports that are significant components of the Nation's air transportation infrastructure as identified by the Department of Transportation, the ratio under paragraph (1)(J) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of critical aviation transportation infrastructure, not to exceed 100.

(K) VULNERABILITY AS IT PERTAINS TO AGRICULTURE INFRASTRUCTURE SECURITY.—If a metropolitan city is among the 100 metropolitan cities that are closest to, or within 50 miles of, major feed yards, food processing facilities, and other significant components of the nation's agriculture infrastructure, as defined and determined by the Department of Agriculture and the Department of Homeland Security, the ratio under paragraph (1)(K) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of critical agriculture infrastructure, not to exceed 100.

(L) PROXIMITY TO NATIONAL ICONS AND FEDERAL BUILDINGS.—If a metropolitan city is among the 100 metropolitan cities that are closest to, or within 50 miles of, national icons and Federal buildings that the Department of Homeland Security determines are most vulnerable with respect to a terrorist

attack, the ratio under paragraph (1)(L) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of such icons or Federal buildings, not to exceed 100.

(M) INTELLIGENCE.—If a metropolitan city is among the 100 metropolitan cities that have been identified by the Department of Homeland Security as being special alert or heightened alert status for the longest periods of time, the ratio under paragraph (1)(M) shall be 1 divided by the total number of metropolitan cities that have been identified by the Department of Homeland Security, not to exceed 100.

(d) COMPUTATION OF AMOUNT ALLOCATED TO URBAN COUNTIES.—

(1) VULNERABILITY AND THREAT FACTORS.—The Secretary shall determine the amount to be allocated to each urban county, which shall bear the same ratio to the allocation for all urban counties as the weighted average of—

(A) the population (including tourist, military, and commuting populations) of the urban county divided by the population of all urban counties;

(B) the population density of the urban county;

(C) the proximity of the urban county to international borders;

(D) the vulnerability of the urban county as it pertains to chemical security;

(E) the vulnerability of the urban county as it pertains to nuclear security;

(F) the vulnerability of the urban county as it pertains land and water port security;

(G) the vulnerability of the urban county as it pertains to the security of energy infrastructure;

(H) the vulnerability of the urban county as it pertains to the security of inland waterway infrastructure;

(I) the vulnerability of the urban county as it pertains to the security of freight and passenger rail transportation infrastructure;

(J) the vulnerability of the urban county as it pertains to the security of aviation infrastructure;

(K) the vulnerability of the urban county as it pertains to the security of agriculture infrastructure;

(L) the proximity of the urban county to the nearest national icons and Federal facilities that may be a terrorist target, as determined by the Department of Homeland Security, and the proximity of all urban counties to the nearest national icons and Federal buildings that may be a terrorist target, as determined by the Department of Homeland Security; and

(M) the threat to the urban county based upon intelligence information from the Department of Homeland Security;

(2) CLARIFICATION OF COMPUTATION RATIOS.—

(A) RELATIVE WEIGHT OF FACTORS.—In determining the weighted average of the ratios under paragraph (1)—

(i) threat, as defined in paragraph (1)(M), shall constitute 25 percent;

(ii) population, as defined in paragraph (1)(A), shall constitute 20 percent;

(iii) population density, as defined in paragraph (1)(B), shall constitute 15 percent; and

(iv) the remaining factors shall be equally weighted.

(B) POPULATION DENSITY.—The population density ratio shall be 1 divided by the total number of urban counties, not to exceed 100. The urban counties shall be ranked according to the density of their populations in calculating the weighted average of this factor.

(C) PROXIMITY TO INTERNATIONAL BORDERS.—If an urban county is located within 50 miles of an international border, the ratio under paragraph (1)(C) shall be 1 divided by the total number of urban counties, not to exceed 100, which are located within 50 miles of an international border.

(D) VULNERABILITY AS IT PERTAINS TO CHEMICAL SECURITY.—If an urban county is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency or another instrument development by the Environmental Protection Agency or the Department of Homeland Security that captures the same information for the same facilities), the ratio under paragraph (1)(D) shall be 1 divided by the total number of urban counties that are within such a zone, not to exceed 100.

(E) VULNERABILITY AS IT PERTAINS TO NUCLEAR SECURITY.—If an urban county is located within 50 miles of an operating nuclear power plant, as identified by the Nuclear Regulatory Commission, the ratio under paragraph (1)(E) shall be 1 divided by the total number of urban counties, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(F) VULNERABILITY AS IT PERTAINS TO PORT SECURITY.—If an urban county is located within 50 miles of—

(i) one of the 75 largest United States ports, as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Ports Report by All Land Modes; or

(ii) one of the 25 largest United States water ports by metric tons and value, as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics, the ratio under paragraph (1)(F) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port, not to exceed 100.

(G) VULNERABILITY AS IT PERTAINS TO ENERGY INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, non-nuclear power generating plants, compressors, and other significant components of critical energy infrastructure as identified by the Department of Energy or the Department of Homeland Security, the ratio under paragraph (1)(G) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical energy infrastructure, not to exceed 100.

(H) VULNERABILITY AS IT PERTAINS TO INLAND WATERWAY INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, the most significant locks, canals, and other components of critical inland waterway system infrastructure as identified by the Department of Transportation, the ratio under paragraph (1)(H) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical inland water infrastructure, not to exceed 100.

(I) VULNERABILITY AS IT PERTAINS TO RAIL TRANSPORTATION INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, the largest railroad hubs and other significant components of critical freight and passenger rail infrastructure, as identified by the Department of Transportation, the ratio under paragraph (1)(I) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical inland water infrastructure, not to exceed 100.

(J) VULNERABILITY AS IT PERTAINS TO AVIATION INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, major passenger or cargo airports that are significant components of the Nation's air transportation infrastructure as identified by the Department of Transportation, the ratio under paragraph (1)(J) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical aviation transportation infrastructure, not to exceed 100.

(K) VULNERABILITY AS IT PERTAINS TO AGRICULTURE INFRASTRUCTURE SECURITY.—If urban county is among the 100 urban counties that are closest to, or within 50 miles of, major feed yards, food processing facilities, and other significant components of the Nation's agriculture infrastructure, as defined and determined by the Department of Agriculture and the Department of Homeland Security, the ratio under paragraph (1)(K) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical agriculture infrastructure, not to exceed 100.

(L) PROXIMITY TO NATIONAL ICONS AND FEDERAL BUILDINGS.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, national icons and Federal buildings that the Department of Homeland Security determines are most vulnerable with respect to a terrorist attack, the ratio under paragraph (1)(L) shall be 1 divided by the total number of urban counties that are located within 50 miles of such icons or Federal buildings, not to exceed 100.

(M) INTELLIGENCE.—If an urban county is among the 100 urban counties that have been identified by the Department of Homeland Security as being special alert or heightened alert status for the longest periods of time, the ratio under paragraph (1)(M) shall be 1 divided by the total number of urban counties that have been identified by the Department of Homeland Security, not to exceed 100.

(e) EXCLUSIONS.—

(1) IN GENERAL.—In computing amounts or exclusions under subsection (d) with respect to any urban county, units of general local government located in the county that are not included in the population of the county in determining the eligibility of the county to receive a grant under this subsection shall be excluded, except that any independent city (as defined by the Bureau of the Census) shall be included if it—

(A) is not part of any county;

(B) is not eligible for a grant;

(C) is contiguous to the urban county;

(D) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(E) is not included as a part of any other unit of general local government for purposes of this section.

(2) INDEPENDENT CITIES.—Any independent city that is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (i) for that fiscal year.

(f) INCLUSIONS.—

(1) LOCAL GOVERNMENT STRADDLING COUNTY LINE.—In computing amounts under subsection (d) with respect to any urban county, there shall be included all of the area of any unit of local government which is part of, but is not located entirely within the boundaries of, such urban county if—

(A) the part of such unit of local government that is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this section; and

(B) the part of such unit of local government that is not within the boundaries of such urban county is not included as a part

of any other unit of local government for the purpose of this section.

(2) USE OF GRANT FUNDS OUTSIDE URBAN COUNTY.—Any amount received under this section by an urban county described under paragraph (1) may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(g) POPULATION.—

(1) EFFECT OF CONSOLIDATION.—Where data are available, the amount to be allocated to a metropolitan city that has been formed by the consolidation of 1 or more metropolitan cities within an urban county shall be equal to the sum of the amounts that would have been allocated to the urban county or cities and the balance of the consolidated government, if such consolidation had not occurred.

(2) LIMITATION.—Paragraph (1) shall apply only to a consolidation that—

(A) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(B) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(C) took place on or after January 1, 2005.

(3) GROWTH RATE.—The population growth rate of all metropolitan cities defined in section 3(a)(6) shall be based on the population of—

(A) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and

(B) cities that were metropolitan cities before their incorporation into consolidated governments.

(4) ENTITLEMENT SHARE.—For purposes of calculating the entitlement share for the balance of the consolidated government under this subsection, the entire balance shall be considered to have been an urban county.

(h) REALLOCATION.—

(1) IN GENERAL.—Except as provided under paragraph (2), any amounts allocated to a metropolitan city or an urban county under this section that are not received by the city or county for a fiscal year because of failure to meet the requirements of subsection (a) or (b) of section 5, or that otherwise became available, shall be reallocated in the succeeding fiscal year to the other metropolitan cities and urban counties in the same metropolitan area that certify to the satisfaction of the Secretary that they would be adversely affected by the loss of such amounts from the metropolitan area.

(2) RATIO.—The amount of the share of funds reallocated under this subsection for any metropolitan city or urban county shall bear the same ratio to the total of such reallocated funds in the metropolitan area as the amount of funds awarded to the city or county for the fiscal year in which the reallocated funds become available bears to the total amount of funds awarded to all metropolitan cities and urban counties in the same metropolitan area for that fiscal year.

(3) TRANSFER.—Notwithstanding paragraphs (1) and (2), the Secretary may, upon request, transfer to any metropolitan city the responsibility for the administration of any amounts received, but not obligated, by the urban county in which such city is located if—

(A) such city was an included unit of general local government in such county prior to the qualification of such city as a metropolitan city;

(B) such amounts were designated and received by such county for use in such city prior to the qualification of such city as a metropolitan city; and

(C) such city and county agree to such transfer of responsibility for the administration of such amounts.

(i) ALLOCATION TO STATES ON BEHALF OF NON-QUALIFYING COMMUNITIES.—

(1) IN GENERAL.—Of the amount appropriated pursuant to section 4 that remains after allocations under subsections (a) and (b), the Secretary shall allocate 30 percent among the States for use in nonqualifying communities.

(2) ALLOCATION FORMULA.—

(A) FACTORS.—The Secretary shall make the allocation for each State based on factors such as threat, vulnerability, population, population density, the presence of critical infrastructure, and other factors considered appropriate by the Secretary.

(B) PRO-RATA REDUCTION.—The Secretary shall make a pro rata reduction of each amount allocated to the nonqualifying communities in each State under subparagraph (A) so that the nonqualifying communities in each State will receive the same percentage of the total amount available under this subsection as the percentage that such communities would have received if the total amount available had equaled the total amount allocated under subparagraph (A).

(3) DISTRIBUTION.—

(A) STATES.—A State shall distribute amounts it receives under this subsection to units of general local government located in nonqualifying areas of the State in such manner and at such time as the Secretary shall prescribe, consistent with the statement submitted under section 5(a), and not later than 45 days after the date on which the State receives such amounts from the Federal Government.

(B) CERTIFICATION.—Before a State may receive or distribute amounts allocated under this subsection, the State must certify that—

(i) with respect to units of general local government in nonqualifying areas, the State—

(I) provides, or will provide, technical assistance to units of general local government in connection with homeland security initiatives;

(II) will not refuse to distribute such amounts to any unit of general local government on the basis of the particular eligible activity selected by such unit of general local government to meet its homeland security objectives, except that this clause may not be considered to prevent a State from establishing priorities in distributing such amounts on the basis of the activities selected; and

(III) has consulted with local elected officials from among units of general local government located in nonqualifying areas of that State in determining the method of distribution of funds required by subparagraph (A); and

(ii) each unit of general local government to be distributed funds will be required to identify its homeland security objectives, and the activities to be undertaken to meet such objectives.

(4) MINIMUM AMOUNT.—

(A) IN GENERAL.—Except as provided under subparagraph (B), each State shall be allocated, for each fiscal year authorized under this Act and under this section, the greater of—

(i) 0.25 percent of the total amount appropriated in the fiscal year for grants to States that are not located on an international border under this section;

(ii) 0.45 percent of the fatal amount appropriated in the fiscal year for grants to States that are located on an international border; or

(iii) the amount the State would otherwise be allocated under the formula set forth in this section.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.25 percent of the total amount appropriated in each fiscal year for grants to States under this section.

(5) ADMINISTRATION.—

(A) IN GENERAL.—Each State shall be responsible for the administration of all funds received and distributed under paragraph (1). Except as provided under subparagraph (B), the State shall pay for all administrative expenses incurred by the State in carrying out its responsibilities under this Act.

(B) FEDERAL SHARE.—From the amounts received by each State for distribution in nonqualifying areas, the State may deduct an amount to pay—

(i) the first $150,000 of its administrative expenses under this subsection; and

(ii) 50 percent of any State administrative expenses under this subsection in excess of $150,000, which amount shall not exceed 2 percent of the amount received by the State under paragraph (1).

(C) DISTRIBUTION.—Any distribution by the Secretary under paragraph (1) shall be made in accordance with—

(i) determinations of the Secretary;

(ii) statements submitted and the other requirements under section 5 (except for subsection (c));

(iii) regulations and procedures prescribed by the Secretary.

(D) REALLOCATION.—

(i) FAILURE TO COMPLY.—Any amounts allocated for use in a State under paragraph (1) that are not received by the State for any fiscal year because of failure to meet the requirements of subsection (a) or (b) of section 5 shall be added to amounts allocated to all States under paragraph (1) for the succeeding fiscal year.

(ii) CLOSEOUT.—Any amounts allocated for use in a State under paragraph (1) that become available as a result of the closeout of a grant made by the Secretary under this section in nonqualifying areas of the State shall be added to amounts allocated to the State under paragraph (1) for the fiscal year in which such amounts become available.

(6) SINGLE UNIT.—Any combination of units of general local governments may not be required to obtain recognition by the Secretary to be treated as a single unit of general local government for purposes of this subsection.

(7) DEDUCTION.—From the amounts received under paragraph (1) for distribution in nonqualifying areas, the State may use not more than 1 percent to provide technical assistance to local governments.

(8) APPLICABILITY.—Any activities conducted with amounts received by a unit of general local government under this subsection shall be subject to the applicable provisions of this Act and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a).

(j) QUALIFICATIONS AND DETERMINATIONS.—The Secretary may prescribe such qualification or submission dates as the Secretary determines to be necessary to permit the computations and determinations required by this section to be made in a timely manner, and all such computations and determinations shall be final and conclusive.

(k) PRO RATA REDUCTION AND INCREASE.—

(1) REDUCTION.—If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section is insufficient to provide the

amounts to which metropolitan cities and urban counties would be entitled under this section, and funds are not otherwise appropriated to meet the deficiency, the Secretary shall meet the deficiency through a pro rata reduction of all amounts determined under this section.

(2) INCREASE.—If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section exceeds the amounts to which metropolitan cities and urban counties would be entitled under this section, the Secretary shall distribute the excess through a pro rata increase of all amounts determined under this section.

**SEC. 8. STATE AND REGIONAL PLANNING AND COMMUNICATION SYSTEMS.**

(a) ALLOCATIONS.—From the amounts appropriated pursuant to section 4(b)(2), the Secretary shall allocate $1,000,000,000 to States, regional cooperations, and units of general local government for—

(1) homeland defense planning within the States;

(2) providing increased security through additional first responder personnel;

(3) purchasing and refurbishing personal protective equipment for first responder personnel;

(4) homeland defense planning within the regions;

(5) the development and maintenance of Statewide training facilities and homeland security best-practices clearinghouses; and

(6) the development and maintenance of communications systems that can be used between and among first responders, including law enforcement, fire, and emergency medical personnel.

(b) USE OF FUNDS.—Of the amount allocated under subsection (a)—

(1) $500,000,000 shall be used by the States for homeland defense planning and coordination within each State;

(2) $50,000,000 shall be used by regional cooperations and regional, multistate, or intrastate authorities for homeland defense planning and coordination within each region;

(3) $50,000,000 shall be used by the States to develop and maintain statewide training facilities and best-practices clearinghouses; and

(4) $400,000,000 shall be used by the States and units of general local government to develop and maintain communications systems that can be used between and among first responders at the State and local level, including law enforcement, fire, and emergency personnel.

(c) ALLOCATIONS TO STATES.—

(1) IN GENERAL.—Amounts allocated to States under this section shall be allocated among the States based on factors such as threat, vulnerability, population, population density, the presence of critical infrastructure, and other factors considered appropriate by the Secretary.

(2) MINIMUM AMOUNT PROVISION.—The provision under section 7(i)(4) relating to a minimum amount shall apply to amounts allocated to States under this section.

(3) LOCAL COMMUNICATIONS SYSTEMS.—

(A) IN GENERAL.—Not less than 50 percent of the amounts allocated under subsection (b)(4) shall be used for the development and maintenance of local communications systems.

(B) DISTRIBUTION OF FUNDS.—Each State shall distribute amounts reserved for local communications systems in that State under subparagraph (A) to units of general local government not later than 45 days after the State receives such amounts from the Federal Government.

(d) ALLOCATIONS TO REGIONAL COOPERATIONS.—Funds allocated under subsection (b)(2) shall be allocated to regional cooperations and regional, multistate, or intrastate authorities, based upon the population of the areas covered by each regional cooperative.

**SEC. 9. URBAN AREA SECURITY INITIATIVE.**

(a) ALLOCATIONS.—

(1) IN GENERAL.—From the amounts appropriated pursuant to section 4(b)(3), the Secretary shall allocate $2,000,000 for discretionary grants made under the Urban Area Security Initiative to high-threat, high-risk urban areas, as determined by the Secretary, for rail security, port security, inter-city bus security, trucking industry security, and high-threat non-profit organizations.

(2) DISTRIBUTION.—Grant funds awarded under this section shall be transferred directly to Urban Areas Security Initiative recipients not later than 60 days after the date on which funds are appropriated pursuant to section 4(b)(3).

(b) SELECTION CRITERIA.—In selecting high-threat, high-risk urban area grantees under this section, the Secretary shall consider—

(1) credible threat;

(2) vulnerability;

(3) the presence of critical infrastructure, including infrastructure described in section 7;

(4) population;

(5) population density;

(6) identified needs of public agencies; and

(7) other factors considered appropriate by the Secretary.

(c) HOMELAND SECURITY PLAN.—Each grantee awarded a grant under this section shall submit a homeland security plan to the State in which it is located and to the Secretary that describes the intended use of grant funds received under this section.

(d) MINIMUM AMOUNT.—Section 1014(c)(3) of the USA PATRIOT ACT (42 U.S.C. 3711(c)(3)) and section 7(i)(4) of this Act shall not apply to funds awarded under this section.

**SEC. 10. FLEXIBLE EMERGENCY ASSISTANCE FUND.**

(a) IN GENERAL.—From the amounts appropriated pursuant to section 4(b)(4), $500,000,000 shall be used to create a flexible emergency assistance fund, from which the Secretary shall provide funds directly to State and units of local government that incur extraordinary homeland security costs.

(b) RELEASE OF FUNDS.—The Secretary may release emergency assistance funds to a State or local community as the Secretary determines to be appropriate, including—

(1) when the Secretary determines that a State or local community may be the specific target of a terrorist threat;

(2) when a local community is the venue of a high profile trial related to homeland security or terrorism;

(3) when the State or local community has been asked to assist in a Federal investigation concerning homeland security or terrorism; and

(4) when an agency of the Federal Government has requested the State or local community to assist that agency in performing homeland security functions.

(c) REIMBURSEMENTS.—The Secretary may disburse flexible emergency assistance funds to reimburse States and units of general local government for increased personnel costs associated with the activation of first responders who serve in the Reserves or National Guard.

(d) MINIMUM AMOUNT.—Section 1014(c)(3) of the USA PATRIOT ACT (42 U.S.C. 3711(c)(3)) and section 7(i)(4) of this Act shall not apply to funds awarded under this section.

**SEC. 11. FEDERAL PREPAREDNESS, EQUIPMENT, AND TRAINING STANDARDS.**

(a) IN GENERAL.—The Department of Homeland Security shall develop national homeland security preparedness, first responder training, and equipment standards, and best practices to facilitate the most effective and efficient use of funds authorized under this Act.

(b) CONSULTATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop the standards described in subsection (a) in consultation with first responders, States, local communities, nongovernmental homeland security experts, and such other persons and organizations as the Secretary determines to be appropriate.

(c) REPORTS.—

(1) DEVELOPMENT OF STANDARDS AND BEST PRACTICES.—The Secretary shall submit a report to Congress on the progress made in developing the standards and best practices described in subsection (a)—

(A) not later than 90 days after the date of enactment of this Act; and

(B) not later than 180 days after the date of enactment of this Act.

(2) ALLOCATION METHODS.—The Secretary shall submit a report to Congress detailing the specific methods used to make the allocations under section 9. The report shall be submitted in unclassified form to the greatest extent consistent with the protection of law enforcement-sensitive information and classified information and the administration of applicable law. The report may contain a classified annex, if necessary.

**SEC. 12. NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES.**

(a) IN GENERAL.—No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Act.

(b) AGE OR HANDICAP.—Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any such program or activity.

**SEC. 13. REMEDIES FOR NONCOMPLIANCE WITH REQUIREMENTS.**

If the Secretary finds, after reasonable notice and opportunity for a hearing, that a recipient of assistance under this Act has failed to comply substantially with any provision of this Act, the Secretary shall—

(1) terminate payments to the recipient under this Act;

(2) reduce payments to the recipient under this Act by an amount equal to the amount of such payments which were not expended in accordance with this Act; or

(3) limit the availability of payments under this Act to programs, projects, or activities not affected by such failure to comply.

**SEC. 14. REPORTING REQUIREMENTS.**

(a) IN GENERAL.—Not later than 180 days after the end of each fiscal year in which assistance is awarded under this Act, the Secretary shall submit to Congress a report containing—

(1) a description of the progress made in accomplishing the objectives under this Act;

(2) a summary of the use of such funds during the preceding fiscal year; and

(3) a description of the activities carried out under section 7.

(b) REPORTS TO SECRETARY.—The Secretary may require recipients of assistance under this Act to submit such reports and other information as may be necessary in order for the Secretary to comply with subsection (a).

**SEC. 15. CONSULTATION BY ATTORNEY GENERAL.**

In carrying out the provisions of this Act including the issuance of regulations, the Secretary shall consult with the Attorney

General and other Federal departments and agencies administering Federal grant-in-aid programs.

**SEC. 16. INTERSTATE AGREEMENTS OR COMPACTS; PURPOSES.**

The consent of Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States—

(1) for cooperative effort and mutual assistance in support of homeland security planning and programs carried out under this Act as they pertain to interstate areas and to localities within such States; and

(2) to establish such agencies, joint or otherwise, that the States consider desirable for making such agreements and compacts effective.

**SEC. 17. MATCHING REQUIREMENTS; SUSPENSION OF REQUIREMENTS FOR ECONOMICALLY DISTRESSED AREAS.**

(a) MATCHING REQUIREMENT.—Grant recipients shall contribute, from funds other than those received under this Act, an amount equal to 10 percent of the total funds received under this Act, which shall be used in accordance with the grantee's statement of homeland security objectives.

(b) WAIVER FOR ECONOMIC DISTRESS.—The Secretary shall waive the matching requirement under subsection (a) for grant recipients that the Secretary determines to be economically distressed.

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By Mr. LEVIN (for himself and Mr. JEFFORDS):

S. 141. A bill to amend part A of title IV of the Social Security Act to allow up to 24 months of vocational educational training to be counted as a work activity under the temporary assistance to needy families program; to the Committee on Finance.

I am pleased to be joined by Senator JEFFORDS in reintroducing legislation that seeks to add an important measure of flexibility to a provision of the Temporary Assistance for Needy Families program, TANF, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The legislation we are introducing increases the limit on the amount of vocational education training that a State can count towards meeting its work participation rate, from 12 to 24 months.

This legislation enjoys the support of the American Association of University Women, with over 100,000 members; The Workforce Alliance, a coalition of experienced leaders nationwide from the field of workforce development, who know what works in preparing people for jobs; the National Association of State Directors of Career Technical Education Consortium; the Center for law and Social Policy and the American Association of Community Colleges.

Under the pre–1996 Aid to Families with Dependent Children program, recipients could participate in post-secondary vocational training or community college programs for up to 24 months. While I support TANF's emphasis on moving welfare recipients more quickly into jobs, I am troubled by the restriction on post-secondary education training, limiting it to 12 months. One year of vocational education is, under current law, an approved work activity, but the second year of post-secondary education study is not.

The limitation on post-secondary education and training raises a number of concerns, not the least of which is whether individuals may be forced into lower paying, short-term employment that will lead them back onto public assistance because they are unable to support themselves or their families. Well, according to recent studies, this is exactly what has happened in far too many cases.

According to a findings of the Congressional Research Service, although the majority of recipients who have left the welfare rolls left because they became employed, most remained poor. The research also revealed that the hourly wage for these former welfare recipients ranged from $5.50 to $8.80 per hour.

Study after study indicates that short-term training programs raise the income of workers only marginally, while completion of at least a 2-year associate degree has the greater potential of breaking the cycle of poverty for welfare recipients. According to the U.S. Census Bureau, the mean earnings of adults with an associate degree are 20 percent higher than adults who have not achieved such a degree.

In June of 2003, we were very pleased that our proposal was included in the Senate Finance Committee reported bill, which reauthorized TANF. However, the reauthorization bill was not considered by the full Senate. Rather the Temporary Assistance for Needy Families Act has been twice extended. It is our hope that the Senate will again act favorably and expeditiously on this legislation and that the House will support this much-needed State flexibility. We must do what is necessary to achieve TANF's intended goal of getting families permanently off of welfare and onto self-sufficiency.

All citizens should have the opportunity to become productive and successful members of the workforce. Again, I urge my colleagues to act quickly on this legislation. This modification will give the States the flexibility they need to improve the economic status of families across America.

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

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

S. 141

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. INCREASE IN NUMBER OF MONTHS OF VOCATIONAL EDUCATIONAL TRAINING COUNTED AS A WORK ACTIVITY UNDER THE TANF PROGRAM.**

Section 407(d)(8) of the Social Security Act (42 U.S.C. 607(d)(8)) is amended by striking ''12'' and inserting ''24''.

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By Mr. DAYTON:

S. 143. A bill to ensure that Members of Congress do not receive better prescription drug benefits than medicare beneficiaries; to the Committee on Homeland Security and Governmental Affairs.

Mr. DAYTON. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 143

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Taste of Our Own Medicine Act of 2005''.

**SEC. 2. LIMITATION ON PRESCRIPTION DRUG BENEFITS OF MEMBERS OF CONGRESS.**

(a) LIMITATION ON BENEFITS.—Notwithstanding any other provision of law, the actuarial value of the prescription drug benefits of any Member of Congress enrolled in a health benefits plan under chapter 89 of title 5, United States Code, may not exceed the actuarial value of basic prescription drug coverage (as defined in section 1860D–2(a)(3) of the Social Security Act (42 U.S.C. 1395w–102(a)(3)), as added by section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071)).

(b) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations to carry out this section.

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By Mr. KOHL (for himself and Mr. CORZINE):

S. 144. A bill to change the date for regularly scheduled Federal elections and establish polling place hours; to the Committee on Rules and Administration.

Mr. KOHL. Mr. President, today I am introducing the Weekend Voting Act. This legislation will change the day for Congressional and Presidential elections from the first Tuesday in November to the first weekend in November. This legislation is virtually identical to legislation that I first proposed in 1997 in the 105th Congress and most recently reintroduced in the 107th Congress.

The last two elections have revealed a glaring need for us to rethink how we conduct elections in our Nation. The 2000 election galvanized Congress into passing major election reform legislation. The Help American Vote Act, which was enacted into law in 2002, was an important step forward in establishing minimum standards for states in the administration of federal elections and in providing funds to replace outdated voting systems and improve election administration. The HAVA legislation also created a new federal agency, the Election Assistance Commission, to serve as a clearinghouse for election administration information. That Commission is finally on its feet after a delayed start.

However, as the 2004 election made clear, there is much that still needs to be done.

With more and more voters needing to cast their ballots on Election Day, we need to build on the movement

which already exists to make it easier for Americans to cast their ballots by providing alternatives to voting on just one election day. Twenty-six States, including my own state of Wisconsin, now permit any registered voter to vote by absentee ballot. These States constitute 45 percent of the voting age citizens of the United States. Twenty three states permit in-person early voting at election offices or at other satellite locations. The state of Oregon now conducts statewide elections completely by mail. These innovations are critical if we are to conduct fair elections for it has become unreasonable to expect that a nation of 294 million people can line up at the same time and cast their ballots at the same time. And if we continue to try to do so, we will encounter even more reports of broken machines and long lines in the rain and registration errors that create barriers to voting.

That is why I have been a long-time advocate of moving our Federal election day from the first Tuesday after the first Monday in November to the first weekend in November. Holding our federal elections on a weekend will create more opportunities for voters to cast their ballots and will help end the gridlock at the polling places which threaten to undermine our elections.

Under this bill, polls would be open nationwide for a uniform period of time from Saturday, 6 p.m. eastern time to Sunday, 6 p.m. eastern time. Polls in other time zones would also open and close at this time. Election officials would be permitted to close polls during the overnight hours if they determine it would be inefficient to keep them open. Because the polls are open from Saturday to Sunday, they also would not interfere with religious observances.

Keeping polls open the same hours across the continental United States, also addresses the challenge of keeping results on one side of the country, or even a State, from influencing voting in places where polls are still open. Moving elections to the weekend will expand the pool of buildings available for polling stations and people available to work at the polls, addressing the critical shortage of poll workers.

Most important, weekend voting has the potential to increase voter turnout by giving all voters ample opportunity to get to the polls without creating a national holiday. There is already evidence that holding elections on a nonworking day can increase voter turnout. In one survey of 44 democracies, 29 held elections on holidays or weekends and in all these cases voter turnout surpassed our country's voter participation rates. Closer to home, weekend voting in some California counties resulted in increased voter turnout compared to comparable elections held on Tuesdays.

In 2001, the National Commission on Federal Election Reform recommended that we move our federal election day to a national holiday, in particular Veterans Day. As expected, the proposal was not well received among veterans and I do not endorse such a move, but I share the Commission's goal of moving election day to a nonworking day.

Since the mid-19th century, election day has been on the first Tuesday of November. Ironically, this date was selected because it was convenient for voters. Tuesdays were traditionally court day, and land-owning voters were often coming to town anyway.

Just as the original selection of our national voting day was done for voter convenience, we must adapt to the changes in our society to make voting easier for the regular family. Sixty percent of all households have two working adults. Since most polls in the United States are open only 12 hours, from 7 a.m. to 7 p.m., voters often have only one or two hours to vote. As we saw in this last election, long lines in many polling places kept some waiting much longer than one or two hours. If voters have children, and are dropping them off at day care, or if they have a long work commute, there is just not enough time in a workday to vote.

With long lines and chaotic polling places becoming the unacceptable norm in many communities, we have an obligation to reexamine how our Nation votes. In the last election, too many Americans had to confront a variety of obstacles to cast their ballots at their local polling places. We can do better by offering more flexible voting hours for Americans, especially working families.

Serious allegations have been raised about voting irregularities in Ohio during the 2004 presidential election. I agree with many of my colleagues that these allegations must be investigated to the fullest extent possible because every eligible citizen in this nation must have an equal opportunity to exercise the constitutional right to cast a vote in federal elections.

In the meantime, we have an obligation to do more than investigate. If we are to grant all Americans an equal opportunity to participate in the electoral process, and to elect our representatives in this great democracy, then we must be willing to reexamine all aspects of voting in America. Changing our election day to a weekend may seem like a change of great magnitude. Given the stakes—the integrity of future elections—I hope my colleagues will recognize it as a common sense proposal whose time has come.

I ask unanimous consent that the text of the Weekend Voting Act be printed in the RECORD.

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

S. 144

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Weekend Voting Act''.

**SEC. 2. CHANGE IN CONGRESSIONAL ELECTION DAY TO SATURDAY AND SUNDAY.**

Section 25 of the Revised Statutes (2 U.S.C. 7) is amended to read as follows:

''SEC. 25. The first Saturday and Sunday after the first Friday in November, in every even numbered year, are established as the days for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January thereafter.''.

**SEC. 3. CHANGE IN PRESIDENTIAL ELECTION DAY TO SATURDAY AND SUNDAY.**

Section 1 of title 3, United States Code, is amended by striking ''Tuesday next after the first Monday'' and inserting ''first Saturday and Sunday after the first Friday''.

**SEC. 4. POLLING PLACE HOURS IN CONTINENTAL UNITED STATES.**

(a) IN GENERAL.—

(1) PRESIDENTIAL GENERAL ELECTION.—Chapter 1 of title 3, United States Code, is amended—

(A) by redesignating section 1 as section 1A; and

(B) by inserting before section 1A the following:

**''§ 1. Polling place hours in continental United States**

''(a) DEFINITIONS.—In this section:

''(1) CONTINENTAL UNITED STATES.—The term 'continental United States' means a State (other than Alaska and Hawaii) and the District of Columbia.

''(2) PRESIDENTIAL GENERAL ELECTION.—The term 'Presidential general election' means the election for electors of President and Vice President.

''(b) POLLING PLACE HOURS.—

''(1) IN GENERAL.—Each polling place in the continental United States shall be open, with respect to a Presidential general election, beginning on Saturday at 6:00 p.m. eastern standard time and ending on Sunday at 6:00 p.m. eastern standard time.

''(2) EARLY CLOSING.—A polling place may close between the hours of 12:00 p.m. (midnight) and 5:00 a.m. local time as provided by the law of the State in which the polling place is located.''.

(2) CONGRESSIONAL GENERAL ELECTION.—Section 25 of the Revised Statutes of the United States (2 U.S.C. 7) is amended—

(A) by redesignating section 25 as section 25A; and

(B) by inserting before section 25A the following:

**''SEC. 25. POLLING PLACE HOURS IN THE CONTINENTAL UNITED STATES.**

''(a) DEFINITIONS.—In this section:

''(1) CONTINENTAL UNITED STATES.—The term 'continental United States' means a State (other than Alaska and Hawaii) and the District of Columbia.

''(2) CONGRESSIONAL GENERAL ELECTION.—The term 'congressional general election' means the general election for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

''(b) POLLING PLACE HOURS.—

''(1) IN GENERAL.—Each polling place in the continental United States shall be open, with respect to a congressional general election, beginning on Saturday at 6:00 p.m. eastern standard time and ending on Sunday at 6:00 p.m. eastern standard time.

''(2) EARLY CLOSING.—A polling place may close between the hours of 12:00 p.m. (midnight) and 5:00 a.m. local time as provided by the law of the State in which the polling place is located.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 1 of title 3, United States Code, is amended by striking the item relating to section 1 and inserting the following:

''1. Polling place hours in continental United States.

''1A. Time of appointing electors.''.

(2) Sections 871(b) and 1751(f) of title 18, United States Code, are each amended by striking ''title 3, United States Code, sections 1 and 2'' and inserting ''sections 1A and 2 of title 3''.

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By Mr. ALLARD (for himself, Mr. INHOFE, Mr. LOTT, Mr. ENZI, Mr. DEMINT, Mr. SANTORUM, Mr. CRAPO, Mr. SESSIONS, Mr. VITTER, Mr. THUNE, Mr. ALEXANDER, Mr. FRIST, Mr. TALENT, Mr. BURR, Mrs. HUTCHISON, Mr. KYL, Mrs. DOLE, Mr. MARTINEZ, Mr. ISAKSON, Mr. MCCONNELL, Mr. HATCH, Mr. ROBERTS, and Mr. CORNYN):

S.J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.

Mr. ALLARD. Mr. President, I would like to first express my gratitude to the leadership for making the Marriage Protection Amendment a priority in this Congress. The Marriage Protection Amendment is a constitutional amendment that I have introduced today. It is S.J. Res. 1. In the press conference earlier today I indicated I hoped that the designation of the number would reflect its priority with the leadership. I realize that was an overly optimistic request, but I am very pleased we have the support from leadership that we do and that it is among their priority items. We have the complete support of the leadership. They all signed as cosponsors on S.J. Res. 1.

As of this very moment, we have a quarter of the Senate who have signed on as cosponsors. I think that is fabulous. It is certainly a better start than we had in the last session. In the last session, if my memory serves me correctly, I think we only had about 13 or so cosponsors on it, even after we had the debate in the Senate. So even before we have sent out a letter to our colleagues in the Senate, we have 25 original cosponsors. I am excited about that.

So today we have reintroduced the Marriage Protection Amendment in the Senate. The intent and policy goals remain the same as last year. It is the same bill we debated on the floor of the Senate. What it does is define marriage as a union between a man and a woman.

The amendment represents a democratic process: the voice of the American people following recent and widespread efforts by activist courts to change this ages-old definition of marriage.

People say, well, what about the rights of the State legislature? What we are trying to do is protect the voice of the American people. The right place for this to be determined is in the legislative bodies of this country, in the Congress of the United States and each and every legislature in every State, and not in the Federal courts. The amendment does restrict the ability of the courts to define marriage. The Marriage Protection Amendment does not override State and local authority. Under the Marriage Protection Amendment, cities, States, and private companies would still be free to determine for themselves civil union, benefit, and partnership definitions.

The Marriage Protection Amendment would not permit the redefining of marriage, a definition agreed upon by every civilization, culture, ethnicity, and religion around the world.

The definition of marriage in itself is not discriminatory. Those who have been opposed to the amendment tried to make that argument in the last session. Even civil rights leaders, Hispanic and African Americans, have said this is not a civil rights issue.

Congress does have a vital role to play in this debate. The policy goals are widely agreed upon. Recent election results illustrate broad support for the definition of marriage.

Mr. President, 14 million voters in 11 States voted for constitutional amendments on November 2, 2004, with an average majority of 67 percent. This reflects great support throughout the country. Some 13 States voted on the ballot issue in 2004.

Mr. President, I ask unanimous consent to have the information on this chart printed in the RECORD, which illustrates what happened in each one of those elections.

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

2004 STATEWIDE BALLOT RESULTS ON MARRIAGE AMENDMENTS

| | State | Date of vote | Referred by | Vote in legislature | Signatures required | Signatures turned in | Certified by SOS | Outcome of vote | Percentages |
|---|---|---|---|---|---|---|---|---|---|
| 1 | Arkansas | Nov. 2 | People's Initiative | N/A | 80,570 | 200,000 | Certified | Passed | Y: 75<br>N: 25 |
| 2 | Georgia | Nov. 2 | Legislature | S: 40–14<br>H: 122–52–3–3 | N/A | N/A | N/A | Passed | Y: 77<br>N: 23 |
| 3 | Kentucky | Nov. 2 | Legislature | S: 33–4–1<br>H: 85–11 | N/A | N/A | N/A | Passed | Y: 75<br>N: 25 |
| 4 | Louisiana | Sept. 18 | Legislature | S: 31–6<br>H: 88–13 | N/A | N/A | N/A | Passed | Y: 78<br>N: 22 |
| 5 | Michigan | Nov. 2 | People's Initiative | N/A | 317,757 | 500,000 | Certified | Passed | Y: 59<br>N: 41 |
| 6 | Mississippi | Nov. 2 | Legislature | S: 51–0–1<br>H: 97–17 | N/A | N/A | N/A | Passed | Y: 86<br>N: 14 |
| 7 | Missouri | Aug. 3 | Legislature | S: 26–6<br>H: 90–63 | N/A | N/A | N/A | Passed | Y: 70.8<br>N: 29.2 |
| 8 | Montana | Nov. 2 | People's Initiative | N/A | 41,020 | 70,000 | Certified | Passed | Y: 66<br>N: 34 |
| 9 | North Dakota | Nov. 2 | People's Initiative | N/A | 25,688 | 52,000 | Certified | Passed | Y: 73<br>N: 27 |
| 10 | Ohio | Nov. 2 | People's Initiative | N/A | 322,899<br>390,508 | Waiting for | Passed | Y: 62<br>N: 38. | |
| 11 | Oklahoma | Nov. 2 | Legislature | S: 38–7<br>H: 92–4 | N/A | N/A | N/A | Passed | Y: 76<br>N: 24 |
| 12 | Oregon | Nov. 2 | People's Initiative | N/A | 100,840 | 204,360 | Certified | Passed | Y: 57<br>N: 43 |

Mr. ALLARD. The emphasis here must be on the process, democratic, deliberative, and responsive to the electorate, not to just appointed judges and lawyers. We want the American public to have a say in this debate. Courtrooms are not the place for this important decision about the most fundamental institution of mankind, and that is the definition of marriage. Courts should interpret the law, not write it.

So we are eager to begin to have hearings, to talk about the research, to debate and have constructive dialog on this very important issue. It is important to the American people. It is important we continue to move forward with the momentum that has evolved as a result of our debate last year and the momentum that has evolved as a result of the elections of this past fall.

I am excited about introducing the Marriage Protection Amendment, which is exactly the same amendment we debated on the floor of the Senate last year.

Mr. President, before I wrap up, I ask unanimous consent that Senator COBURN be added as an original cosponsor and Senator STEVENS be added as an original cosponsor.

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

Mr. ALLARD. Again, in conclusion, I thank the leadership for their support and my colleagues for their support on this particular amendment. We had a number of elections for Senate seats where this was a very important issue and critical to the election of many of our new Members in the Senate. We have at least five votes that have switched as a result of this election. I think that is the American people having an opportunity to speak their mind.

I can say, this amendment is to protect the voice of the American people. The proper way to have this debate is in the legislative bodies of America. That includes the Congress and each and every legislature.

Again, I thank the leader for his leadership on this particular issue. I also thank my colleagues who showed up at the press conference this morning to talk about this issue, particularly Senator SANTORUM, Senator HUTCHISON, Senator SESSIONS, and Senator THUNE who joined me in the press conference. I thank them for their leadership this morning in that press conference.

Mr. ALLARD. Mr. President, 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. 1

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

''ARTICLE—

''SECTION 1. This article may be cited as the 'Marriage Protection Amendment'.

''SECTION 2. Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.''.

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By Mr. CRAIG:

S.J. Res. 2. A joint resolution proposing an amendment to the Constitution of the United States relative to require a balanced budget and protect Social Security surpluses; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, today I am reintroducing the Balanced Budget Amendment to the Constitution of the United States. When we were in deficit and when we were in surplus, I have always said, if we could adopt one fundamental reform to the way the Federal Government does business, this is it. The fiscal events of the last few years have again demonstrated the need for this long-term, fundamental, permanent reform.

For many Americans, one of the signs of our deep respect for the Constitution is our acknowledgment that, in exceptional cases, a problem rises to such a level that it can be adequately addressed only in the Constitution—by way of a constitutional amendment.

From 1998 through 2001, Congress balanced the Federal budget. These four budget surpluses in a row, for the first time since the 1920s, set the modern record for balancing the Federal budget. The first Republican Congresses in 40 years made balancing the budget our top priority, and did what was necessary, reaching across the aisle and working on a bipartisan basis. We ran surpluses and began the process we needed to pay down the national debt. This in turn promised, among other things, to help us safeguard the future of Social Security.

Then events intervened.

A return to budget deficits was caused by an economic recession and a war begun by terrorist attacks. Even before taking office in 2001, President Bush correctly foresaw the coming recession and prescribed the right medicine—the tax relief that has bolstered the economy and has saved and created jobs. The current economic recovery, in turn, has prevented even worse Federal budget deficits.

The return to deficit spending can and should be a temporary phenomenon. We are rebounding from the recession of 2001 and the body blow to the economy caused by the war with terrorism.

We must do whatever it takes to win that war. Providing for the self-defense and survival of our people and our Nation is the most fundamental responsibility of the Federal Government. That principle has been reflected in every significant version of the balanced budget constitutional amendment, in exceptions for war and imminent military threats. Historically, that principle was followed even when balancing the budget was the norm, because the U.S. Government always has borrowed when necessary to fight and win a war.

Beyond that, we must keep all other Federal spending under control, so that we return, as soon as possible, to balancing the budget.

In other words, the return to deficit spending will be a temporary problem only if we make a permanent commitment to the moral imperative of fiscal responsibility.

We always did, and always will, need a balanced budget amendment to our Constitution.

Even in the heady days of budget surpluses, I always maintained the only way to guarantee that the Federal Government would stay fiscally responsible was to add a balanced budget amendment to the Constitution.

Before we balanced the budget in 1998, the Government was deficit spending for 28 years in a row and for 59 out of 67 years. The basic law of political temptation—to just say ''yes''—was not repealed in 1998, but only restrained some, when we came together and briefly faced up to the great threat to the future posed by decades of debt.

Now, the Government is back to borrowing. And for some, a return to deficit spending seems to have been liberating, as the demands for new spending only seem to be multiplying again.

That is why, today, I am again introducing a balanced budget amendment to the Constitution and calling upon my colleagues to send it to the States for ratification.

The amendment I introduce today is the same one I sponsored in the 108th Congress. This is essentially the same as the amendment that came within a single vote of the two-thirds necessary for passage, twice in two previous Senates. In addition, this amendment would not count the Social Security surplus in its calculation of a balanced budget. Those annual surpluses would be set aside exclusively to meet the future needs of Social Security beneficiaries.

It's a new day, a new year, and a new Senate. We have the opportunity of a fresh start and, hopefully, the wisdom of experience. Today, with the first piece of legislation I am introducing in the 109th Congress, I call on the Senate to safeguard the future, by considering and passing a balanced budget amendment to the Constitution—a bill of economic rights for our future and our children.

I ask unanimous consent that a copy of this joint resolution, proposing a balanced budget amendment to the Constitution, 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. 2

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission by the Congress:

''ARTICLE —

''SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

''SECTION 2. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

''SECTION 3. Any surplus of receipts (including attributable interest) over outlays of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds shall not be counted for purposes of this article. Any deficit of receipts (including attributable interest) relative to outlays of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds shall be counted for purposes of this article, and must be completely offset by a surplus of all other receipts over all other outlays.

''SECTION 4. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

''SECTION 5. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

''SECTION 6. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

''SECTION 7. The Congress may waive the provisions of this article for any fiscal year

in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

''SECTION 8. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

''SECTION 9. This article shall take effect the second fiscal year beginning after its ratification.''.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 7—RELATING TO THE DEATH OF HOWARD S. LIEBENGOOD, FORMER SERGEANT AT ARMS OF THE SENATE

Mr. FRIST (for himself, Mr. ALEXANDER, Mr. DOMENICI, Mr. COCHRAN, Mr. HAGEL, Mr. WARNER, Mr. BIDEN, Mr. HATCH, Mr. KENNEDY, Mr. DODD, and Mr. GRAHAM) submitted the following resolution; which was considered and agreed to:

S. RES. 7

Whereas Howard S. Liebengood served as a captain in the United States Army Military Police Corps in Vietnam from 1968 to 1970, receiving the Bronze Star and the Army Commendation Medal for his exemplary service;

Whereas Howard S. Liebengood began his service to the Senate in 1973 as minority counsel to the Senate Watergate Committee;

Whereas Howard S. Liebengood served as an aide to the Senate Church Committee in 1975, as the minority staff director of the Senate Select Committee on Intelligence in 1976, and as legislative counsel to Senate Majority Leader Howard H. Baker, Jr., in 1980;

Whereas Howard S. Liebengood served as Sergeant at Arms of the Senate from 1981 to 1983;

Whereas Howard S. Liebengood served as chief of staff to Senator Fred Thompson from 2001 to 2003, and as chief of staff to Senate Majority Leader William H. Frist, M.D., from 2003 until his death in January, 2005;

Whereas Howard S. Liebengood was a caring and devoted husband, father, and colleague who served with the utmost humility and distinction and was admired and respected by all as a teacher, adviser, and friend; and

Whereas Howard S. Liebengood inspired others through his personal leadership, generosity, and great love for the United States: Now, therefore, be it

*Resolved,* That—

(1) the Senate has heard with profound sorrow and deep regret the announcement of the death of Howard S. Liebengood; and

(2) the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy of these resolutions to the family of Howard S. Liebengood.

### SENATE RESOLUTION 8—EXPRESSING THE SENSE OF THE SENATE REGARDING THE MAXIMUM AMOUNT OF A FEDERAL PELL GRANT

Ms. COLLINS (for herself, Mr. FEINGOLD, and Mr. COLEMAN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 8

Whereas public investment in higher education yields a return of several dollars for each dollar invested;

Whereas higher education promotes economic opportunity and recipients of bachelor's degrees earn 73 percent more in lifetime earnings than those with only a secondary school diploma and are also significantly less likely to be unemployed;

Whereas access to a college education has become a hallmark of American society, and is vital to upholding our belief in equality of opportunity;

Whereas for a generation, the Federal Pell Grant has served as an established and effective means of providing access to higher education;

Whereas when viewed in constant dollars, the value of today's Pell Grant maximum award has actually declined by 16 percent since the mid 1970s;

Whereas grant aid as a portion of student aid has fallen significantly in the past 30 years;

Whereas in 1975, grant aid constituted approximately 80 percent of total student aid awarded to college students and loans constituted only 17 percent, now this has reversed with grants making up only 38 percent, and loans covering 56 percent of total student aid; and

Whereas the increasing reliance on borrowing to finance a higher education is particularly burdensome on low-income families and has negative consequences for the enrollment of these students.

Now, therefore, be it

*Resolved,* That it is the sense of the Senate that—

(1) the maximum Federal Pell Grant for which a student should be eligible during award year 2005–2006 should be $4,500; and

(2) the authorized levels for the Federal Pell Grant maximum amount found in section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) should be set high enough to accommodate a Federal Pell Grant amount of $9,000 by award year 2010–2011.

Ms. COLLINS. Mr. President, I rise today to introduce the first piece of legislation that I will sponsor in the 109th Congress—a resolution calling on the Senate to strengthen the Pell grant program so that more families can afford higher education.

The Pell grant program is the single largest source of grant aid for postsecondary education funded by the Federal Government. It provides grants to students based on their level of financial need to support their studies at the institutions they have chosen to attend. For this fiscal year, the Pell program is funded at $12.8 billion and is estimated to serve more than 5.3 million students.

I am pleased to have Senator FEINGOLD and Senator COLEMAN joining me in this bipartisan effort to marshal additional Federal resources for the Pell program. They each have been a leader in the effort to expand access to higher education.

Our system of higher education is in many ways the envy of the world, but its benefits have not been equally available. Unfortunately, it is still the case that one of the most determinative factors of whether students will pursue higher education is their family income. Students from families with incomes above $75,000 are more than twice as likely to attend college as students from families with incomes of less that $25,000.

Even more unsettling are studies demonstrating the negative effect of unmet financial need on college attendance for even the most academically prepared students. Among the most highly qualified high school students, those from low-income families were 43 percent less likely to attend college than their wealthier counterparts.

To help remedy these inequities, the Federal Government has wisely invested in a need-based system of student financial aid designed to help remove the economic barriers to higher education. Central to this effort over the past 30 years has been the Pell grant program. This program was designed as the cornerstone of Federal student assistance.

Unfortunately, the purchasing power of the Pell grant has been significantly eroded in recent years, forcing students to rely increasingly on loans to finance their higher education. In 1975, the maximum Pell grant covered approximately 80 percent of the costs of attending a public, 4–year institution. Today, it covers less than half of these costs, forcing students to make up the difference by taking on larger and larger amounts of debt. On average, students from the University of Maine graduate with approximately $18,000 in debt from Federal student loans alone, and this reflects national trends. As startling as this figure is, it does not include additional indebtedness that many students incur through private loans or credit card debt to finance their education.

The decline in the value of grant aid and the growing reliance on loans bring other negative consequences. The staggering amount of loans can force some students to abandon their plans to attend college altogether. According to the College Board, low-income families are significantly less willing, by almost 50 percent, to finance a college education through borrowed money than their wealthier counterparts.

That does not surprise me. Many working families in Maine are committed to living within their means. Understandably, they are extremely wary of the staggering amount of debt that is now required to finance a college education.

I also know this to be true from my experiences as a college administrator at Husson College in Maine. At Husson, 85 to 90 percent of students currently receive some sort of Federal financial aid, and approximately 60 percent of students receive Pell grants.

As Linda Conant, the financial aid director at Husson told me, ''You cannot imagine how difficult it is to sit with a family and to explain to them the amount of loans that are needed to finance a post-secondary degree. It

scares them. That is why Pell grant aid is so important for low-income families. For these families, loans don't always work, but Pell does.''

I also heard from Judy Kenney from Northern Maine about the importance of Pell grants. Judy lives in Castle Hill, not far from my home town of Caribou. Her daughter and son both were able to attend college with the help of Pell grants. As she told me, ''At the time, my husband Maylen was farming and having a rough go of it and I was a teacher and didn't make much. But the Pell grants my children received made it possible for them to graduate, one from the University of New England and one from Thomas College. Without these grants, they couldn't have finished and now they are making good wages and paying taxes!''

Judy couldn't be more right on both counts. Not only can the typical bachelor's degree recipient expect to earn about 73 percent more over a lifetime than a high school graduate, they also typically contribute 100 percent more in Federal income taxes than the average high school graduate. So this is truly a Federal investment that pays for itself over the long run.

We also know that having a well-educated workforce is crucial to our economic future and competitiveness in the global economy. The Bureau of Labor Statistics has projected that over the next 10 years, there will be significant growth in jobs requiring at least some post-secondary education. So increasingly, higher education is going to be necessary to ensure employability and to prepare Americans to participate in tomorrow's economy.

Pell grants make the difference in whether students have access to higher education, and a chance to participate fully in the American dream. That is why today I am introducing a resolution calling on the Senate to begin restoring the value of the Pell grant program.

This resolution calls on the Senate to raise the Pell maximum grant award to $4,500, a $450 increase in a single year. This increase is long overdue. The maximum grant award has been essentially level-funded for 4 straight years—at $4,050 for the past 3 years and only a $50 increase in FY 2002.

During these 4 years, think of the students who might have entered college and graduated with a degree, if only they had received additional Pell grant aid. Pell grants are targeted to the neediest of students—recipients have a median family income of only $15,200. An additional $450 in Pell grant aid may very well be the deciding factor on whether these students can pursue their college dreams.

The resolution also calls on the Senate to amend the Higher Education Act to provide higher authorization levels for the Pell maximum grant that would allow for a doubling of the maximum grant to $9,000 over the next 5 years. This is an ambitious goal but a worthy one for a nation that understands the opportunities that a college education brings.

As my colleagues know, the Higher Education Act is expected to be reauthorized this year. As the Senate HELP Committee considers the reauthorization, it is my hope that this resolution will prompt a discussion about the need for the maximum grant to grow.

I know that my good friends Senator ENZI, the new chairman of the Senate HELP Committee; Senator KENNEDY, the ranking member; Senator ALEXANDER, the chairman of the new Education and Early Childhood Development Subcommittee; and his Democratic counterpart will all work hard with other committee members to produce a strong reauthorization bill. I look forward to working with them further; they are all champions of ensuring greater access to quality education for all Americans, regardless of their financial means.

The President also has recently announced his intention to include a proposal in his 2006 budget request to eliminate the Pell shortfall and to provide an increase in the maximum grant of $100 for each of the next 5 years. I commend the President for focusing on Pell grants, and I hope that we can work together to provide a more substantial increase for the maximum grant for the upcoming year. An increase of approximately $100 for each of the next 5 years will not be enough to increase the purchasing power of Pell grants and will not keep pace with inflation or rising tuition costs. For 2004–2005, the average costs of tuition and fees for a public, 4-year institution rose by over 10 percent.

I will ask unanimous consent to have a letter of support for my legislation printed in the RECORD. This letter is from the Student Aid Alliance, a coalition of more than 60 organizations representing students, colleges and universities. Founded by the American Council on Education and the National Association of Independent Colleges and Universities, the Student Aid Alliance includes members such as the American Association of Community Colleges, the American Association of State Colleges and Universities, and the National Association of Student Financial Aid Administrators, to name just a few. I am pleased to have their support.

Mr. President, now is the time for us to make a commitment to raising the Pell maximum award to $4,500 for the upcoming award year. The Pell grant program is the foundation of making good on the American promise of access to higher education. I hope that my colleagues will join me in supporting this resolution.

I ask unanimous consent to have the letter to which I referred printed in the RECORD.

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

STUDENT AID ALLIANCE,
*Washington, DC, January 24, 2005.*

Re support for Collins-Feingold Resolution on Pell Grants

DEAR SENATOR: The Student Aid Alliance, a coalition of over 60 higher education associations representing students, parents, colleges and universities, supports the passage of the Collins-Feingold resolution to increase the Pell Grant maximum award to $4,500 in the 2005–06 award year, and to double the maximum over the next 5 years. We urge the Senate to adopt this legislation, which paves the way toward achieving increased support for students seeking to finance a college education.

The Pell Grant program is one of the most successful programs that the federal government has ever initiated. It has financed the education of millions of college students who are now contributing members of society—doctors, teachers, mayors, and members of Congress. It is rooted in the abiding American value that one's aspirations—not one's income—should determine the shape of one's future.

Increasing the Pell Grant maximum award by $450 is vitally important to the millions of college students who have seen no increase in their grants for the past three years in a row. During this period, the college-age population has continued to expand, states have been cutting their investments in higher education, and family savings have been diminished by economic losses. Increasing the Pell Grant maximum award is an essential and necessary component of keeping college possible for these students.

Passage of the Collins-Feingold resolution will signal Congress' interest in and support of America's neediest students. We encourage you to support this important legislation.

Sincerely,

DAVID WARD,
*Co-Chair.*
DAVID WARREN,
*Co-Chair.*

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

2005 LIST OF MEMBERS

American Association for Higher Education
American Association of Colleges for Teacher Education
American Association of Colleges of Nursing
American Association of Colleges of Pharmacy
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Dental Education Association
American Association of State Colleges and Universities
American Association of University Professors
American College Personnel Association
American College Testing
American Council on Education
American Indian Higher Education Consortium
American Jewish Congress
American Psychological Association
American Society for Engineering Education
American Student Association of Community Colleges
APPA: The Association of Higher Education Facilities Officers
Association of Academic Health Centers
Association of Advanced Rabbinical and Talmudic Schools
Association of American Colleges and Universities

Association of American Law Schools
Association of American Medical Colleges
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Citizen's Scholarship Foundation of Arnerica
Coalition of Higher Education Assistance Organizations
College and University Personnel Association for Human Resources
College Board
College Parents of America
Council for Advancement and Support of Education
Council for Christian Colleges and Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
Council for Opportunity in Education
Educational Testing Service
Hispanic Association of Colleges and Universities
Lutheran Educational Conference of North America
NAFSA: Association of International Educators
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Graduate and Professional Students
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Personnel Administrators
National College Access Network
National Collegiate Athletic Association
National Council for Community and Education Partnerships
National Council of University Research Administrators
National Education Association
NAWE: Advancing Women in Higher Education
The Council on Government Relations
United Negro College Fund
United States Public Interest Research Group
United States Student Association
University Continuing Education Association
Women's College Coalition

## SENATE RESOLUTION 9—EXPRESSING THE SENSE OF THE SENATE REGARDING DESIGNATION OF THE MONTH OF NOVEMBER AS ''NATIONAL MILITARY FAMILY MONTH''

Mr. INOUYE submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 9

Whereas military families, through their sacrifices and their dedication to our Nation and its values, represent the bedrock upon which our Nation was founded and upon which our Nation continues to rely in these perilous and challenging times: Now, therefore, be it

*Resolved,* That it is the sense of the Senate—

(1) that the month of November should be designated as ''National Military Family Month''; and

(2) to request that the President—

(A) designate the month of November as ''National Military Family Month''; and

(B) issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

Mr. INOUYE. Mr. President, today I rise to honor all our military families by introducing a Resolution to designate November as National Military Family Month. As we all know, memories fade and the hardships experienced by our military families are easily forgotten unless they touch our own immediate family.

Today, we have our men and women deployed all over the world, engaged in this war on terrorism. These far-ranging military deployments are extremely difficult on the families who bear this heavy burden.

To honor these families, the Armed Services YMCA has sponsored Military Family Week in late November since 1996. However, due to frequent ''short week'' conflicts around the Thanksgiving holidays, the designated week has not always afforded enough time to schedule observance on and near our military bases.

I believe a month long observation will allow greater opportunity to plan events. Moreover, it will provide a greater opportunity to stimulate media support.

A resolution will help pave the way for this effort. I ask my colleagues to join me in supporting this tribute to our military families.

## SENATE CONCURRENT RESOLUTION 3—EXPRESSING THE SENSE OF THE CONGRESS WITH RESPECT TO THE MURDER OF EMMETT TILL

Mr. SCHUMER (for himself and Mr. TALENT) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 3

Whereas Emmett Till was born in Chicago, Illinois, at Cook County Hospital, on July 25, 1941, to Mamie and Louis Till;

Whereas Emmett Till traveled to Money, Mississippi, to spend the summer with his uncle, Moses Wright, and his relatives;

Whereas in August 1955, 14-year-old Emmett Till—with adolescent flamboyance, but unfamiliarity of the racial customs of the South—allegedly whistled at Carolyn Bryant, a White woman;

Whereas on August 28, at about 2:30 a.m., Roy Bryant, Carolyn Bryant's husband, and his half brother, J.W. Milam, kidnaped Emmett Till from his uncle Moses Wright's home;

Whereas Bryant and Milam brutally beat Emmett Till, took him to the edge of the Tallahatchie River, shot him in the head, fastened a large metal fan used for ginning cotton to his neck with barbed wire, and pushed the body into the river;

Whereas 3 days later, Emmett Till's decomposed corpse was pulled from the Tallahatchie River;

Whereas Emmett's mother, Mamie Till, made the extraordinary decision to leave the casket open at her son's funeral in Chicago, in order to allow the world to see the brutality of the crime perpetrated against her son;

Whereas tens of thousands of people viewed Emmett Till's body in a Chicago church for 4 days; and press from around the world published photographs of Emmett's maimed face; and the sheer brutality of his murder became international news that highlighted the violent racism of the Jim Crow South;

Whereas Jet Magazine and the Chicago Defender published photographs of Emmett Till's body outraging African-Americans around the United States;

Whereas the trial of J.W. Milam and Roy Bryant began in September of that year with an all-male, all-White jury, because African-Americans and women were banned from serving;

Whereas the trial of Milam and Bryant was a microcosm of the Jim Crow South: African-Americans were packed in a specific section of the courtroom balcony; the defendants' families were seen laughing and joking with the prosecution and the jury; and food and snacks were passed out to White observers;

Whereas Moses Wright did the unthinkable as an African-American and openly accused the White defendants in public court of murdering his nephew;

Whereas Moses Wright was run out of town for his actions in court;

Whereas J.W. Milam and Roy Bryant were acquitted of the murder of Emmett Till, and Bryant celebrated his acquittal with his wife in front of the cameras;

Whereas protected from further prosecution, Milam and Bryant candidly confessed their torture and murder of Emmett Till; Milam did so on the record to Look Magazine for $4,000;

Whereas Mamie Till and thousands of others pleaded with the Department of Justice and the Federal Bureau of Investigation to reopen and investigate the case;

Whereas the Federal Government did absolutely nothing, and President Eisenhower and FBI Director J. Edgar Hoover refused to reopen the case and did not even answer Mamie Till's urgent telegraph;

Whereas 100 days later, Rosa Parks refused to give up her bus seat to a White patron and the modern civil rights revolution began;

Whereas many historians regard the murder of Emmett Till as the true spark of the civil rights movement;

Whereas Mamie Till, who died on January 6, 2003, moved back to Chicago, taught, and continued to talk about her son Emmett's murder; and expressed her wishes for a full Federal investigation;

Whereas more than 48 years have passed since the murder of Emmett Till;

Whereas the remaining witnesses to this gruesome crime are elderly;

Whereas House Concurrent Resolution 360 entitled ''Expressing the sense of Congress with respect to the murder of Emmett Till'', was introduced on February 10, 2004, by Representative Bobby Rush;

Whereas the Department of Justice reopened the investigation into the murder of Emmett Till on May 11, 2004; and

Whereas Congress supports the decision to reopen the investigation of the murder of Emmett Till: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress—

(1) calls on all authorities with jurisdiction, including the Department of Justice and the State of Mississippi, to—

(A) expeditiously bring those responsible for the murder of Emmett Till to justice, due to the amount of time that has passed since the murder and the age of the witnesses; and

(B) provide all the resources necessary to ensure a timely and thorough investigation; and

(2) calls on the Department of Justice to fully report the findings of their investigation to Congress.

## NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, January 26, 2005, at 10:30 a.m. in room 485 of the Russell Senate Office Building to conduct a business meeting to consider the Committee budget resolution and proposed changes to the Committee rules and any other organizational business the committee needs to attend to.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. McCAIN. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, February 8, 2005, at 10 a.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to review the implementation of Titles I through III of P.L. 106–393, the Secure Rural Schools and Community Self-Determination Act of 2000.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should sent two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Frank M. Gladics at 202–224–2878 or Amy Millet at 202–224–8276.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. President, I announce that the Committee on Agriculture, Nutrition, and Forestry will conduct a business meeting on January 26, 2005 in SR–332 at 10 a.m. The purpose of this meeting will be to discuss the organization of the Committee for the 109th Congress.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON VETERANS' AFFAIRS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Monday, January 24, 2005, for a hearing to consider the nomination of: Mr. R. James Nicholson to be Secretary of Veterans' Affairs.

The hearing will take place in room 418 of the Russell Senate Office Building at 10:00 A.M.

A markup on Mr. Nicholson's nomination will take place in room 418 of the Russell Senate Office Building at 2:00 P.M.

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

## ORDERS FOR TUESDAY, JANUARY 25, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Tuesday, January 25. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and there then be a period of morning business for up to 60 minutes with the first half of the time under the control of the majority leader or his designee and the remaining time under the control of the Democratic leader or his designee; provided that following morning business, the Senate proceed to executive session as provided under the previous order.

I further ask consent that the Senate recess tomorrow from 12:30 p.m. until 2:15 for the weekly party lunches.

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

## PROGRAM

Mr. FRIST. Tomorrow, following morning business, the Senate will begin debate on the nomination of Condoleeza Rice to be Secretary of State. Under the order, there will be up to 9 hours of debate on the nomination during tomorrow's session with a short period of additional debate on Wednesday, prior to a vote on confirmation. In addition, the nomination of Jim Nicholson to be Secretary of Veterans Affairs was reported today. The Senate may act on that nomination and any other nomination that is available during the remainder of this week.

We are working across the aisle together, at the committee level and the floor level, to consider these nominations just as soon as they are made available.

## ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, as a further mark of respect for Howard S. Liebengood.

There being no objection, the Senate, at 7:16 p.m. adjourned until Tuesday, January 25, 2005, at 9:45 a.m.

## NOMINATIONS

Executive nominations received by the Senate January 24, 2005:

DEPARTMENT OF AGRICULTURE

THOMAS C. DORR, OF IOWA, TO BE UNDER SECRETARY OF AGRICULTURE FOR RURAL DEVELOPMENT, VICE JILL L. LONG, RESIGNED.

THOMAS C. DORR, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION, VICE JILL L. LONG, RESIGNED.

DEPARTMENT OF DEFENSE

PETER CYRIL WYCHE FLORY, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE JACK DYER CROUCH, II.

JOHN PAUL WOODLEY, JR., OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE ARMY, VICE MICHAEL PARKER.

BUDDIE J. PENN, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE NAVY, VICE H. T. JOHNSON.

NATIONAL SECURITY EDUCATION BOARD

ANDREW J. MCKENNA, JR., OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE ROBERT N. SHAMANSKY, TERM EXPIRED.

GEORGE M. DENNISON, OF MONTANA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE BRUCE SUNDLUN, TERM EXPIRED.

JAMES WILLIAM CARR, OF ARKANSAS, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE MANUEL TRINIDAD PACHECO, TERM EXPIRED.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PAMELA HUGHES PATENAUDE, OF NEW HAMPSHIRE, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT, VICE ROMOLO A. BERNARDI.

FEDERAL HOUSING FINANCE BOARD

RONALD ROSENFELD, OF OKLAHOMA, TO BE A DIRECTOR OF THE FEDERAL HOUSING FINANCE BOARD FOR THE REMAINDER OF THE TERM EXPIRING FEBRUARY 27, 2009, VICE JOHN THOMAS KORSMO, RESIGNED.

NATIONAL INSTITUTE OF BUILDING SCIENCES

WILLIAM HARDIMAN, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL INSTITUTE OF BUILDING SCIENCES FOR A TERM EXPIRING SEPTEMBER 7, 2006, VICE H. TERRY RASCO, TERM EXPIRED.

REFORM BOARD (AMTRAK)

FLOYD HALL, OF NEW JERSEY, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS, VICE AMY M. ROSEN, TERM EXPIRED.

AMTRAK

ENRIQUE J. SOSA, OF FLORIDA, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS, VICE LINWOOD HOLTON, TERM EXPIRED.

ENVIRONMENTAL PROTECTION AGENCY

THOMAS V. SKINNER, OF ILLINOIS, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE JOHN PETER SUAREZ, RESIGNED.

LUIS LUNA, OF MARYLAND, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE MORRIS X. WINN.

MISSISSIPPI RIVER COMMISSION

MAJOR GENERAL DON T. RILEY, UNITED STATES ARMY, TO BE A MEMBER AND PRESIDENT OF THE MISSISSIPPI RIVER COMMISSION.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

D. MICHAEL RAPPOPORT, OF ARIZONA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2008. (REAPPOINTMENT)

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

MICHAEL BUTLER, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2008, VICE ERIC D. EBERHARD, TERM EXPIRED.

DEPARTMENT OF THE TREASURY

RAYMOND THOMAS WAGNER, JR., OF MISSOURI, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2009. (REAPPOINTMENT)

HAROLD DAMELIN, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF THE TREASURY, VICE JEFFREY RUSH, JR., RESIGNED.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DANIEL R. LEVINSON, OF MARYLAND, TO BE INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES, VICE JANET REHNQUIST, RESIGNED.

DEPARTMENT OF STATE

HOWARD J. KRONGARD, OF NEW JERSEY, TO BE INSPECTOR GENERAL, DEPARTMENT OF STATE, VICE CLARK KENT ERVIN.

INTER-AMERICAN FOUNDATION

NADINE HOGAN, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING JUNE 26, 2008, VICE FRANK D. YTURRIA, TERM EXPIRED.

BROADCASTING BOARD OF GOVERNORS

KENNETH Y. TOMLINSON, OF VIRGINIA, TO BE CHAIRMAN OF THE BROADCASTING BOARD OF GOVERNORS. (REAPPOINTMENT)

D. JEFFREY HIRSCHBERG, OF WISCONSIN, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2007. (REAPPOINTMENT)

KENNETH Y. TOMLINSON, OF VIRGINIA, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2007. (REAPPOINTMENT)

EXECUTIVE OFFICE OF THE PRESIDENT

JORGE A. PLASENCIA, OF FLORIDA, TO BE A MEMBER OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR A TERM EXPIRING OCTOBER 27, 2006, VICE JOSEPH FRANCIS GLENNON, TERM EXPIRED.

INTER-AMERICAN FOUNDATION

ROGER W. WALLACE, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2008, VICE FRED P. DUVAL.

JACK VAUGHN, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING SEPTEMBER 20, 2006, VICE PATRICIA HILL WILLIAMS, TERM EXPIRED.

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

JAY T. SNYDER, OF NEW YORK, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2007. (REAPPOINTMENT)

DEPARTMENT OF STATE

DAVID B. BALTON, OF THE DISTRICT OF COLUMBIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES. (NEW POSITION)

JOSEPH R. DETRANI, OF VIRGINIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL ENVOY FOR THE SIX PARTY TALKS. (NEW POSITION)

JOHN THOMAS SCHIEFFER, OF TEXAS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO JAPAN.

DEPARTMENT OF EDUCATION

CRAIG T. RAMEY, OF WEST VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF TWO YEARS. (NEW POSITION)

NATIONAL MUSEUM AND LIBRARY SERVICES BOARD

A. WILSON GREENE, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL MUSEUM AND LIBRARY SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2009. (REAPPOINTMENT)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

HARRY ROBINSON, JR., OF TEXAS, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2008. (REAPPOINTMENT)

NATIONAL MUSEUM AND LIBRARY SERVICES BOARD

KATINA P. STRAUCH, OF SOUTH CAROLINA, TO BE A MEMBER OF THE NATIONAL MUSEUM AND LIBRARY SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2009, VICE ELIZABETH J. PRUET, TERM EXPIRING.

LEGAL SERVICES CORPORATION

THOMAS A. FUENTES, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 2005, VICE THOMAS F. SMEGAL, JR., TERM EXPIRED.

BERNICE PHILLIPS, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 2005, VICE MARIA LUISA MERCADO, TERM EXPIRED.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

GEORGE PERDUE, OF GEORGIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR A TERM EXPIRING NOVEMBER 5, 2006, VICE CARROLL A. CAMPBELL, JR., TERM EXPIRED.

NATIONAL LABOR RELATIONS BOARD

RONALD E. MEISBURG, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2008, VICE RENE ACOSTA, RESIGNED.

NATIONAL SECURITY EDUCATION BOARD

KIRON KANINA SKINNER, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE HERSCHELLE S. CHALLENOR.

BARRY GOLDWATER SCHOLARSHIP & EXCELLENCE IN EDUCATION FOUNDATION

CHARLES P. RUCH, OF SOUTH DAKOTA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION FOR A TERM EXPIRING AUGUST 11, 2010, VICE NIRANJAN SHAMALBHAI SHAH, TERM EXPIRED.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

EDWARD L. FLIPPEN, OF VIRGINIA, TO BE INSPECTOR GENERAL, CORPORATION FOR NATIONAL AND COMMUNITY SERVICES, VICE J. RUSSELL GEORGE.

GENERAL SERVICES ADMINISTRATION

BRIAN DAVID MILLER, OF VIRGINIA, TO BE INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION, VICE DANIEL R. LEVINSON.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

ALLEN WEINSTEIN, OF MARYLAND, TO BE ARCHIVIST OF THE UNITED STATES, VICE JOHN W. CARLIN.

UNITED STATES POSTAL SERVICE

CAROLYN L. GALLAGHER, OF TEXAS, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 8, 2009, VICE LOUIS J. GIULIANO, RESIGNED.

LOUIS J. GIULIANO, OF NEW YORK, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2005, VICE CAROLYN L. GALLAGHER.

POSTAL RATE COMMISSION

TONY HAMMOND, OF VIRGINIA, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR A TERM EXPIRING OCTOBER 14, 2010. (REAPPOINTMENT)

UNITED STATES POSTAL SERVICE

LOUIS J. GIULIANO, OF NEW YORK, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2014. (REAPPOINTMENT)

DEPARTMENT OF JUSTICE

STEPHEN THOMAS CONBOY, OF VIRGINIA, TO BE UNITED STATES MARSHAL FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS, VICE TODD WALTHER DILLARD.

FOREIGN CLAIMS SETTLEMENT COMMISSION

DAVID B. RIVKIN, JR., OF VIRGINIA, TO BE A MEMBER OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES FOR THE TERM EXPIRING SEPTEMBER 30, 2007, VICE LARAMIE FAITH MCNAMARA.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER-MINISTER:

DONALD B. CLARK, OF NEW HAMPSHIRE
WALTER E. NORTH, OF WASHINGTON
CARLOS PASCUAL, OF THE DISTRICT OF COLUMBIA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

OLIVER CHARLES CARDUNER, OF VIRGINIA
SHARON CROMER, OF THE DISTRICT OF COLUMBIA
DAVID ECKERSON, OF WASHINGTON
WILLIAM JOHN GRAVELINK, OF VIRGINIA
JAMES R. KIRKLAND, OF TENNESSEE
MARY CATHERINE OTT, OF MARYLAND
ANDREW B. SISSON, OF NEW YORK
JAMES THOMPSON SMITH, JR., OF VIRGINIA
JAMES STEPHENSON, OF VIRGINIA
DIANE SWAIN, OF VIRGINIA
LOUISE B. WISE, OF VIRGINIA
STEVEN G. WISECARVER, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JAMES B. AHN, OF FLORIDA
DAVID ADKINS ATWOOD, OF VIRGINIA
CAROL BECKER, OF MARYLAND
JEFF BORNS, OF MARYLAND
ROBERT STEPHEN BRENT, OF MARYLAND
CLIFFORD H. BROWN, OF WASHINGTON
LESLIE B. CURTIN, OF CONNECTICUT
FRANCIS ALOYSIUS DONOVAN, OF MARYLAND
PATRICK CHILION FINE, OF NEW HAMPSHIRE
KAREN L. FREEMAN, OF VIRGINIA
MICHAEL T. FRITZ, OF WYOMING
EARL W. GAST, OF CALIFORNIA
RICHARD S. GREENE, OF VIRGINIA
WALTER M. KINDRED, OF VIRGINIA
HENDERSON M. PATRICK, OF FLORIDA
CARL ABDOU RAHMAAN, OF MARYLAND
JAMES H. REDDER, OF NEW YORK
TIM C. RIEDLER, OF CALIFORNIA
MONICA STEIN-OLSON, OF WASHINGTON
LEON S. WASKINS, OF VIRGINIA
ROBERT J. WILSON, OF CONNECTICUT

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF AGRICULTURE FOR PROMOTION WITHIN AND INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER:

PETER FERNANDEZ, OF NEW YORK
FRANKLIN D. LEE, OF VIRGINIA
KENNETH J. ROBERTS, OF MISSOURI

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER COUNSELOR:

MAURICE W. HOUSE, OF TENNESSEE
M. KATHRYN TING, OF FLORIDA
HOWARD R. WETZEL, OF VIRGINIA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR:

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## CONFIRMATION

Executive nomination confirmed by the Senate Monday, January 24, 2005:

DEPARTMENT OF COMMERCE

CARLOS M. GUTIERREZ, OF MICHIGAN, TO BE SECRETARY OF COMMERCE.

# EXTENSIONS OF REMARKS

## SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, January 25, 2005 may be found in the Daily Digest of today's RECORD.

## MEETINGS SCHEDULED

### JANUARY 26

9:15 a.m.
Environment and Public Works
Business meeting to consider pending business.
SD–406

9:30 a.m.
Energy and Natural Resources
Business meeting to consider pending calendar business.
SD–366

Judiciary
Business meeting to continue consideration of the nomination of Alberto R. Gonzales, of Texas, to be Attorney General.
SD–226

10 a.m.
Agriculture, Nutrition, and Forestry
Organizational business meeting to consider an original resolution authorizing expenditures for committee operations, committee's rules of procedure for the 109th Congress, and subcommittee assignments.
SR–332

Environment and Public Works
Clean Air, Climate Change, and Nuclear Safety Subcommittee
To hold hearings to examine multi-emissions legislation.
SD–406

Banking, Housing, and Urban Affairs
Organizational business meeting to consider an original resolution authorizing expenditures for committee operations, committee's rules of procedure for the 109th Congress, and subcommittee assignments.
SD–538

Homeland Security and Governmental Affairs
To hold hearings to examine the Department of Homeland Security.
SD–342

Aging
To hold hearings to examine the risks and benefits associated with Internet pharmacy and importation.
SD–628

10:30 a.m.
Indian Affairs
Business meeting to consider Committee budget resolution and proposed changes to the Committee rules.
SR–485

2:30 p.m.
Intelligence
To receive a closed briefing on certain intelligence matters.
SH–219

### FEBRUARY 1

2:30 p.m.
Judiciary
To hold hearings to examine certain issues relative to CIA document disclosure under the Nazi War Crimes Disclosure Act.
SD–226

### FEBRUARY 3

10 a.m.
Veterans' Affairs
To hold hearings to examine benefits for survivors of those killed in the line of duty.
SR–418

11 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings to examine the effects of Bovine Spongiform Encephalopathy (BSE) on United States imports and exports of cattle and beef.
SD–106

### FEBRUARY 8

10 a.m.
Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to examine the implementation of Titles I through III of P.L. 106–393, The Secure Rural Schools and Community Self-Determination Act of 2000.
SD–366

### FEBRUARY 10

9:30 a.m.
Armed Services
To hold hearings to examine the proposed Defense Authorization Request for Fiscal Year 2006 and the Future Years Defense Program.
SH–216

### FEBRUARY 15

10 a.m.
Veterans' Affairs
To hold hearings to examine the Adminstration's proposed fiscal year 2006 Department of Veterans Affairs budget.
SR–418

### MARCH 8

2 p.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the Disabled American Veterans.
345 CHOB

### MARCH 9

10 a.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the Veterans of Foreign Wars.
SH–216

### MARCH 10

10 a.m.
Veterans' Affairs
To hold hearings to examine legislative presentations of the Blinded Veterans Association, the Non-Commissioned Officers Association, the Military Order of the Purple Heart, the Paralyzed Veterans of America and the Jewish War Veterans.
345 CHOB

### APRIL 14

10 a.m.
Veterans' Affairs
To hold hearings to examine legislative presentations of the Military Officers Association of America, the National Association of State Director of Veterans Affairs, AMVETS, the American Ex-Prisoners of War, and Vietnam Veterans of America.
345 CHOB

### APRIL 21

10 a.m.
Veterans' Affairs
To hold hearings to examine legislative presentations of the Fleet Reserve Association, the Air Force Sergeants Association, the Retired Enlisted Association, and the Gold Star Wives of America.
345 CHOB

### SEPTEMBER 20

10 a.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the American Legion.
345 CHOB

## POSTPONEMENTS

### JANUARY 26

9:30 a.m.
Judiciary
To hold hearings to examine pending judicial nominations.
SD–226

# *Daily Digest*

## HIGHLIGHTS

**Senate confirmed the nomination of Carlos M. Gutierrez, of Michigan, to be Secretary of Commerce.**

# Senate

## *Chamber Action*

***Routine Proceedings, pages S107–S371***

**Measures Introduced:** One hundred-thirty bills and six resolutions were introduced, as follows: S. 6, 9, 11, 13–20, 24–25, 27, 29, 31–144, S.J. Res. 1–2, S. Res. 7–9, and S. Con. Res. 3. **Pages S142–45**

**Measures Passed:**

***Honoring Howard S. Liebengood:*** Senate agreed to S. Res. 7, relating to the death of Howard S. Liebengood, former Sergeant at Arms of the Senate. **Pages S107–09**

**Nomination—Agreement:** A unanimous-consent-time agreement was reached providing for consideration of the nomination of Condoleezza Rice, of California, to be Secretary of State at 10:45 a.m., on Tuesday, January 25, 2005, with nine hours for debate; following which, when the Senate resumes consideration of the nomination on Wednesday, January 26, 2005, a vote on confirmation of the nomination will occur following 40 additional minutes for closing remarks.

**Nominations Confirmed:** Senate confirmed the following nominations:

Carlos M. Gutierrez, of Michigan, to be Secretary of Commerce. **Pages S116–26, S371**

**Nominations Received:** Senate received the following nominations:

Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development.

Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

Peter Cyril Wyche Flory, of Virginia, to be an Assistant Secretary of Defense.

John Paul Woodley, Jr., of Virginia, to be an Assistant Secretary of the Army.

Buddie J. Penn, of Virginia, to be an Assistant Secretary of the Navy.

Andrew J. McKenna, Jr., of Illinois, to be a Member of the National Security Education Board for a term of four years.

George M. Dennison, of Montana, to be a Member of the National Security Education Board for a term of four years.

James William Carr, of Arkansas, to be a Member of the National Security Education Board for a term of four years.

Pamela Hughes Patenaude, of New Hampshire, to be an Assistant Secretary of Housing and Urban Development.

Ronald Rosenfeld, of Oklahoma, to be a Director of the Federal Housing Finance Board for the remainder of the term expiring February 27, 2009.

William Hardiman, of Michigan, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 2006.

Floyd Hall, of New Jersey, to be a Member of the Reform Board (Amtrak) for a term of five years.

Enrique J. Sosa, of Florida, to be a Member of the Reform Board (Amtrak) for a term of five years.

Thomas V. Skinner, of Illinois, to be an Assistant Administrator of the Environmental Protection Agency.

Luis Luna, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency.

Major General Don T. Riley, United States Army, to be a Member and President of the Mississippi River Commission.

D. Michael Rappoport, of Arizona, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring October 6, 2008.

Michael Butler, of Tennessee, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring October 6, 2008.

Raymond Thomas Wagner, Jr., of Missouri, to be a Member of the Internal Revenue Service Oversight Board for a term expiring September 14, 2009.

Harold Damelin, of Virginia, to be Inspector General, Department of the Treasury.

Daniel R. Levinson, of Maryland, to be Inspector General, Department of Health and Human Services.

Howard J. Krongard, of New Jersey, to be Inspector General, Department of State.

Nadine Hogan, of Florida, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring June 26, 2008.

Kenneth Y. Tomlinson, of Virginia, to be Chairman of the Broadcasting Board of Governors.

D. Jeffrey Hirschberg, of Wisconsin, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2007.

Kenneth Y. Tomlinson, of Virginia, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2007.

Jorge A. Plasencia, of Florida, to be a Member of the Advisory Board for Cuba Broadcasting for a term expiring October 27, 2006.

Roger W. Wallace, of Texas, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring October 6, 2008.

Jack Vaughn, of Texas, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 2006.

Jay T. Snyder, of New York, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 2007.

David B. Balton, of the District of Columbia, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary of State for Oceans and Fisheries.

Joseph R. DeTrani, of Virginia, for the rank of Ambassador during his tenure of service as Special Envoy for the Six Party Talks.

John Thomas Schieffer, of Texas, to be Ambassador to Japan.

Craig T. Ramey, of West Virginia, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of two years.

A. Wilson Greene, of Virginia, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2009.

Harry Robinson, Jr., of Texas, to be a Member of the National Museum Services Board for a term expiring December 6, 2008.

Katina P. Strauch, of South Carolina, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2009.

Thomas A. Fuentes, of California, to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 2005.

Bernice Phillips, of New York, to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 2005.

George Perdue, of Georgia, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring November 5, 2006.

Ronald E. Meisburg, of Virginia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2008.

Kiron Kanina Skinner, of Pennsylvania, to be a Member of the National Security Education Board for a term of four years.

Charles P. Ruch, of South Dakota, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring August 11, 2010.

Edward L. Flippen, of Virginia, to be Inspector General, Corporation for National and Community Services.

Brian David Miller, of Virginia, to be Inspector General, General Services Administration.

Allen Weinstein, of Maryland, to be Archivist of the United States.

Carolyn L. Gallagher, of Texas, to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 2009.

Louis J. Giuliano, of New York, to be a Governor of the United States Postal Service for a term expiring December 8, 2005.

Tony Hammond, of Virginia, to be a Commissioner of the Postal Rate Commission for a term expiring October 14, 2010.

Louis J. Giuliano, of New York, to be a Governor of the United States Postal Service for a term expiring December 8, 2014.

Stephen Thomas Conboy, of Virginia, to be United States Marshal for the Superior Court of the District of Columbia for the term of four years.

David B. Rivkin, Jr., of Virginia, to be a Member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 2007.

Routine lists in the Foreign Service. **Pages S370–71**

**Executive Reports of Committees:** **Pages S141–42**

**Statements on Introduced Bills/Resolutions:** **Pages S146–S370**

**Additional Statements:** **Pages S140–41**

**Notices of Hearings/Meetings:** **Page S370**

**Authority for Committees to Meet:** Page S370

**Adjournment:** Senate convened at 2:01 p.m., and as a further mark of respect to the memory of the late Howard S. Liebengood, former Sergeant at Arms of the Senate, and in accordance with S. Res. 7, adjourned at 7:16 p.m., until 9:45 a.m., on Tuesday, January 25, 2005. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S 370.)

## *Committee Meetings*

*(Committees not listed did not meet)*

### BUSINESS MEETING

*Committee on Veterans Affairs:* Committee ordered favorably reported the nomination of Jim Nicholson, of Colorado, to be Secretary of Veterans Affairs. Prior to this action, committee concluded a hearing to examine the nomination of Jim Nicholson, of Colorado, to be Secretary of Veterans Affairs, after the nominee, who was introduced by Senators Allard and Salazar, testified and answered questions in his own behalf.

# House of Representatives

## *Chamber Action*

The House was not in session today.

## *Committee Meetings*

No committee meetings were held.

### COMMITTEE MEETINGS FOR TUESDAY, JANUARY 25, 2005

*(Committee meetings are open unless otherwise indicated)*

#### Senate

*Committee on Finance:* business meeting to consider organizational matters; to be followed by a business meeting to consider the nomination of Michael O. Leavitt, of Utah, to be Secretary of Health and Human Services, 10 a.m., SD–215.

#### House

*Committee on Rules,* to hold an organizational meeting, and to consider H.R. 54, Congressional Gold Medal Enhancement Act of 2005, 5 p.m., H–313 Capitol.

*Next Meeting of the* SENATE

9:45 a.m., Tuesday, January 25

Senate Chamber

**Program for Tuesday:** After the transaction of any morning business (not to extend beyond 60 minutes), Senate will consider the nomination of Condoleezza Rice, of California, to be Secretary of State, with a vote on confirmation of the nomination to occur following 9 hours of debate.

*(Senate will recess from 12:30 p.m. until 2:15 p.m. for their respective party conferences.)*

*Next Meeting of the* HOUSE OF REPRESENTATIVES

2 p.m., Tuesday, January 25

House Chamber

**Program for Tuesday:** To be announced.

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