SENATE—*Tuesday, June 23, 1992*

(Legislative day of Tuesday, June 16, 1992)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

In a moment of silence, let us thank God for the recovery of Senator HELMS, the successful surgery of Senator ROTH, and remember in prayer Shirley Felix, who handles special functions in the dining room, now in the hospital, and Chaplain Jim Ford of the House.

For thus saith the Lord God, the Holy One of Israel; In returning and rest shall ye be saved; in quietness and in confidence shall be your strength * * *.—Isaiah 30:15.

Eternal God, as time for adjournment approaches and election responsibilities increase, help Senators and their staffs to comprehend the profound wisdom of quiet moments with God. Help them to see that a few minutes a day, set aside for contemplation, do not diminish time for activity but, rather, enhance one's effectiveness and productivity. Teach Your servants the sublime truth that time alone with God is never wasted, that daily moments for reflection and prayer nurture mind and heart, put life in perspective, and promote increased efficiency.

Mighty God of infinite love and truth, as pressures mount under relentless schedules and emotional heat increases as rational light diminishes, inspire Your servants to make time daily for spiritual illumination and renewal.

In the name of Him who is the Light of the World and the Prince of Peace. Amen.

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. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 23, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KERREY thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, am I correct that the period for morning business is to extend until 11 a.m., with Senators permitted to speak therein for up to 5 minutes each?

The ACTING PRESIDENT pro tempore. The majority leader is correct.

EXTENSION OF MORNING BUSINESS

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the period for morning business extend until 12:30 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time specified for Senators GORTON and BOND to remain as provided under the previous order.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECRECY

Mr. MITCHELL. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the protocol to the treaty with the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (Treaty Document No. 102-32), transmitted to the Senate on June 19, 1992, by the President. I ask that the treaty be considered as having been read the first time; that it be referred with accompanying papers to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

I am transmitting herewith, for the advice and consent of the Senate to ratification, the Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (the Protocol) signed at Lisbon, Portugal, on May 23, 1992. The Protocol is an integral part of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (the START Treaty), which I transmitted for the advice and consent of the Senate to ratification on November 25, 1991. The Protocol is designed to enable implementation of the START Treaty in the new international situation following the dissolution of the Soviet Union. The Protocol constitutes an amendment to the START Treaty, and I therefore request that it be considered along with the START Treaty for advice and consent to ratification.

I also transmit for the information of the Senate documents that are associated with, but not integral parts of, the Protocol or the START Treaty. These documents are letters containing legally binding commitments from the heads of state of the Republic of Byelarus, the Republic of Kazakhstan, and Ukraine concerning the removal of nuclear weapons and strategic offensive arms from their territories. Although not submitted for the advice and consent of the Senate to ratification, these documents are relevant to the consideration of the START Treaty by the Senate. No new U.S. security assurances or guarantees—beyond the assurances previously extended to all nonnuclear-weapon States Parties to the Non-Proliferation Treaty—are associated with any of these letters.

The START Treaty represents a nearly decade-long effort by the United States and the former Soviet Union to address the nature and magnitude of the threat that strategic nuclear weapons pose to both countries and to the world in general. As I indicated in transmitting that Treaty to the Senate, the United States had several objectives in the START negotiations. First, we consistently held the view that the START Treaty must enhance stability in times of crisis. Second, we sought an agreement that did not simply limit strategic arms, but that reduced them significantly below current levels. Third, we sought a treaty that would allow equality of U.S. strategic forces relative to those of the former Soviet Union. Fourth, we sought an agreement that would be effectively verifiable. And, finally, the United States placed great emphasis during the negotiations in seeking an agreement that would be supported by the American and allied publics.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

I was fully convinced in 1991 and I remain fully convinced that the START Treaty achieves these objectives. In addition, the Protocol transmitted herewith has allowed us to achieve another important objective: Ensuring that only one state emerging from the former Soviet Union will have nuclear weapons. To gain the benefits of START in the new international situation following the demise of the Soviet Union, it is necessary that Byelarus, Kazakhstan, Russia, and Ukraine—the four former Soviet republics within whose territory all strategic offensive arms are based and all declared START-related facilities are located—be legally bound by the START Treaty. The Protocol accomplishes this, while recognizing the sovereign and independent status of each of these four states.

Of equal importance, the Protocol obligates Byelarus, Kazakhstan, and Ukraine to adhere to the Nuclear Non-Proliferation Treaty as nonnuclear-weapon States Parties in the shortest possible time. In addition, the letters transmitted with the Protocol legally obligate these three states to eliminate all nuclear weapons and all strategic offensive arms located on their territories within 7 years following the date of entry into force of the START Treaty. The Protocol and the associated letters thus further one of our most fundamental non-proliferation objectives—that the number of nuclear-weapon states shall not be increased. Together with the START Treaty, the Protocol helps ensure that nuclear weapons will not be used in the future.

The START Treaty serves the interest of the United States and represents an important step in the stabilization of the strategic nuclear balance. With the addition of the Protocol, the START Treaty can be implemented in a manner consistent with the changed political circumstances following the demise of the Soviet Union and in a manner that achieves important non-proliferation goals. I therefore urge the Senate to give prompt and favorable consideration to the START Treaty, including its Annexes, Protocols, Memorandum of Understanding, and this new Protocol, and to give advice and consent to its ratification.

GEORGE BUSH.

THE WHITE HOUSE, *June 19, 1992.*

SCHEDULE

Mr. MITCHELL. Mr. President, as previously noted, under the order entered last Friday, the Senate was to be in morning business until 11 a.m., at which time the Senate was to return to the Government-sponsored enterprises bill. Earlier this morning, Senator DOLE's staff contacted my staff and requested that the time be extended until 11:30 to accommodate Republican Senators, and we also were contacted by the Banking Committee indicating that the chairman of that committee is conducting a hearing and would not be ready to proceed to the bill this morning. Therefore, I have extended the period for morning business to 12:30, at which time the Senate will go into recess for the party luncheons, and when we come back at 2:15 we will go back to the GSE bill.

APPOINTMENT OF CONFEREES—H.R. 5260

Mr. MITCHELL. Mr. President, I understand that the Chair is now prepared to appoint Senate conferees on the unemployment insurance bill.

The ACTING PRESIDENT pro tempore. The Senator is correct.

The Acting President pro tempore appointed Mr. BENTSEN, Mr. MOYNIHAN, Mr. BAUCUS, Mr. PACKWOOD, and Mr. DOLE conferees on the part of the Senate.

Mr. MITCHELL. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Washington is recognized.

HOUSE SPEAKER WEIGHS IN ON DEVASTATING ANCIENT FOREST LEGISLATION

Mr. GORTON. Mr. President, timber communities of the Pacific Northwest owe the Speaker of the House, THOMAS FOLEY, a profound thank you for his help last week. The chairman of the House Interior Committee was pushing a bill through the House that would devastate those timber communities and destroy the wood products industry of Washington, Oregon, and northern California. The so-called Miller bill was scheduled for markup last week. That bill proposed to lock up 5 million acres of prime, commercial forestland—in addition to the 3 million acres already locked away forever in national parks and wilderness areas.

Speaker FOLEY stepped in last week and persuaded several members of the Interior Committee to oppose the bill. His efforts paid off and the markup session was canceled. I commend the Speaker for his efforts. Working people and families in timber communities of the Pacific Northwest owe him their thanks.

As might be expected, the Speaker was immediately criticized. The Washington Post reported last Thursday that Speaker FOLEY weighed in and canceled the House Interior markup. The Post reported that FOLEY is being—

> Angrily accused of sabotaging the legislation and predicted it would only result in a continuation of the existing policy stalemate that has cost thousands of forest products workers their jobs in the Northwest.

George Frampton, head of the Wilderness Society, said that:

> By derailing the process the speaker is acting against the interests of Northwest communities.

This is a big lie.

The Wilderness Society criticizes the Speaker for preventing legislation that it claims the citizens of the Northwest desperately need. The people of the Northwest don't need a new 5-million-acre wildlife preserve. The people of the Northwest don't need a bill that sets aside more new acres than the injunctions imposed by Judge Dwyer. They don't need a bill that will destroy, forever, a significant portion of the wood products industry in the Northwest. And the people of the Northwest don't need a bill that destroys the livelihoods of tens of thousands of families and their communities without reason. The Speaker did the right thing in halting this devastating legislation.

Those who claim that the Speaker halted legislation designed to help timber communities of the Northwest are deceiving the public. The public needs to see this deception for what it is.

A look at the numbers shows why the Speaker did the right thing. The aggregate annual Federal timber sales volumes for the BLM and the Forest Service combined in the States of Washington, Oregon, and northern California have historically been approximately 6 billion board feet. The Secretary of the Interior's preservation plan would drop this figure to 4.2 billion board feet. The DeFazio bill would allow a total of about 3.25 billion board feet. The Thomas report would have allowed approximately 3.05 billion board feet.

The bill reported by the House Agriculture Committee last week would allow only 2 billion board feet. And, finally, the Miller bill would allow a mere 1.5 billion board feet annually throughout the region on all Federal lands. The Miller bill would drop the annual harvest from 6 billion board feet to 1.5 billion board feet and this is supposedly in the interests of Northwest communities. A 75-percent reduction in the supply of raw materials, and an equivalent number of jobs, is not in the interest of anyone concerned about human values, balance and the reasonable economic use of a renewable resource. It is not in the interest of working people and their families in timber communities of the Northwest and it is definitely not in the interest of the people of this country who continue to require more and more wood products at reasonable prices.

As the House drags this devastating legislation through its committees, the Senate does nothing. Early last year, I introduced, along with Senator PACKWOOD and others, legislation that would bring true relief to the timber economy of the Pacific Northwest. The Forests and Families Protection Act, drafted not by Senator PACKWOOD and myself but by a broad alliance of labor,

management, and community leaders, has rested in the Energy and Natural Resources Committee without any action. Hearings on the bill were held last year, but the bill has gone nowhere. While the House moves on legislation, albeit devastating legislative, the Senate does nothing.

This is why I intend to offer a floor amendment to bring the Senate back into the debate over the spotted owl, old growth forests, and Northwest timber towns. Last month, the Secretary of the Interior proposed a preservation plan for the northern spotted owl. I introduced legislation implementing the preservation plan to which I added several layers of protection for the spotted owl. This legislation goes well beyond the preservation plan, and yet I was roundly criticized for it. Environmentalists accused me of proposing to allow the spotted owl to go extinct in certain portions of its range. Though I put human and community values first, I have absolutely no desire to allow the extinction of the spotted owl. That is why my legislation adds owl protection zones prohibits shooting, and hunting of owls, and introduces ecosystem-based silviculture on two national forests in Washington State—all of this in addition to the millions of acres of national park and wilderness already set aside forever for owl populations.

The Governor of the State of Washington, Booth Gardner, estimates that my legislation would reduce the historic Federal timber volumes from national forests in Washington State from 1.148 billion board feet to just 674 million board feet. The center of gravity has obviously shifted when a nearly 50-percent reduction is criticized as inadequate. The Miller bill would reduce the historic volumes to just 290 million board feet. As you can see, the critics will not be satisfied until they achieve at least this 75-percent reduction in raw materials, jobs and morale in the timber communities of the Pacific Northwest—and they want to retain the right to challenge even that level of rules.

I continue to revise my legislation with the hope of passing something that brings timber communities back to some sense of certainty and of reason. The Miller bill is worse than even the status quo because it does not bring us out from under the repression of the court-imposed injunctions and, even if it did, the volumes would be lower than if the injunctions remained in place. How would the interests of Northwest communities be served by legislation that places those communities in an even worse position than the current devastation they are witnessing?

Speaker FOLEY did the right thing by stepping in to bring a halt to the Miller bill. I hope that the Speaker continues to use his position to influence the outcome of this debate. I hope that he supports something much more balanced than the Agriculture Committee bill. I hope that my colleagues in the Senate see the need to enter the debate and find a balanced solution that considers the lives of hard-working timber families in the Pacific Northwest.

THE LATEST U.S. NUCLEAR TEST

Mr. MITCHELL. Mr. President, the United States exploded a 20,000-ton nuclear device.

A week ago in this building, Russian President Boris Yeltsin made an impassioned plea for the United States to join Russia in a nuclear testing moratorium.

He noted that France, too, had joined in announcing its own moratorium on nuclear tests.

"Why shouldn't the United States support us since we are slashing nuclear weapons by one-third?" President Yeltsin asked Senators.

"Why are we improving nuclear warheads when there is no logic in doing so?" he wondered.

President Yeltsin apparently raised this question in discussions with administration officials.

The administration's response was to conduct a nuclear test.

Just days after the most sweeping and historic strategic arms reduction agreement in the history of our relations, the administration resumed nuclear testing.

This action signals that the United States would rather continue to develop a nuclear arsenal than set an example to the rest of the world that the arms race can be ended.

United States continuation of nuclear testing tells would-be nuclear powers that yes, they are right, to pursue nuclear weapons.

This is exactly the wrong message to other nations considering whether to develop nuclear weapons.

We should be working to dissuade other countries from developing nuclear weapons. Instead, by continuing testing we strengthen their nuclear motivations.

The administration is inconsistent on the issue of nuclear testing.

It says it opposes proliferation, but it will not take action that will strengthen nonproliferation.

Indeed, just last month the administration criticized China for conducting a massive nuclear test. But the administration insists on its own right to continue testing. How can we criticize others for doing what we are doing?

The United States already has tested almost 1,000 nuclear devices, five times more than any nation on Earth.

Now is a good time to pause.

We should be ending nuclear proliferation, not developing new nuclear warheads.

The cold war is over.

Real safety and reliability come from preventing the spread of nuclear weapons to unstable regimes.

Real security is helping to create a nonnuclear future.

There have been no nuclear tests conducted in the former Soviet Union since October of 1990.

But there are plenty of officers in the Russian military who want to continue nuclear testing and continue strengthening Russia's nuclear arsenal.

There is pressure on President Yeltsin to end the unilateral restraint he has shown.

The United States should be encouraging that restraint, not undermining it.

I joined with the distinguished Senator from Oregon [Mr. HATFIELD] to offer a bill halting nuclear testing for a year provided that no state in the former Soviet Union tests a nuclear device.

Over half the Senate believes that it is in the United States' interest to join in a temporary nuclear testing moratorium. A strong majority in the House already has voted to adopt this policy.

The administration is mistaken to pass up the opportunity we have to demonstrate our desire to create a nonnuclear world.

The United States ought to join Russia and France in a nuclear testing moratorium.

Mr. President, I yield the floor.

Mr. BOND addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized.

Mr. BOND. I thank the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. I thank the Chair.

(The remarks of Mr. BOND, Mr. MCCAIN, Mr. BURNS, Mr. SEYMOUR, Mr. DURENBERGER, Mr. COCHRAN, Mr. DANFORTH, and Mr. COATS, pertaining to the introduction of S. 2878 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Vermont [Mr. LEAHY] is recognized.

Mr. LEAHY. I thank the Chair.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 2879 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senate from New Mexico [Mr. DOMENICI].

Mr. DOMENICI. Mr. President, do I understand that under the previous order, the Senator from New Mexico has 10 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I thank the Chair.

THE AMERICAN ENCOUNTERS EXHIBIT AT THE SMITHSONIAN

Mr. DOMENICI. Mr. President, I frequently stand before you and the Senate to tell you how unique my home State of New Mexico is, and how very lucky I feel to be a New Mexican. As I like to point out, New Mexico is one of few States in the Union where several languages and cultures live together to make up a diverse population mosaic. It is a place where people of every race, creed, and ethnicity have come together in a multicultural society, and whose history is shaped by native Americans, Hispanics, and European settlers.

I am therefore very pleased that, beginning June 24, millions of Americans visiting Washington will have the opportunity to see for themselves why we New Mexicans are so proud of our heritage and of our culture. On that day, the Smithsonian's National Museum of American History will premiere its Americans Encounters exhibition, which will focus on the effects of historical and contemporary encounters among native Americans, Hispanics, and Anglo-Americans in New Mexico.

This exhibit has been created to commemorate the Columbus quincentenary. Frankly, I think the focus on New Mexico is wonderfully appropriate, and I would like to take just a moment to explain why.

In the past few years, we, Americans, have debated the issue and impacts of the expedition of Columbus in 1492. One of the most frequently examined questions is whether the conquest of America by the Europeans was a triumph or a crime, a discovery or an invasion.

I think Stephan Thernstrom, a Harvard history professor, put it best in his essay on the Columbus controversy when he states:

> The Columbus story, like every other momentous historical event, calls not for easy moralizing and finger pointing but for an appreciation of a complex clash of cultures that was crucial to the emergence of the modern world we inhabit.

Nowhere is this appreciation more fully realized than in New Mexico. The arrival of Spanish settlers in New Mexico in 1539 began a weaving together of native American, Hispanic, and Anglo cultures, developing into an interlocking pattern of living while competing for the scarce resources of the Southwest. The exhibit in the Smithsonian will address the challenges of cultural pluralism—a challenge New Mexicans have successfully met through mutual respect for one another's cultures and ways of life.

As our society takes steps to address the very serious problems of racism and cultural intolerance, I think New Mexico's culturally diverse society can and should serve as a model for the rest of the Nation. Tolerance and respect were our State's chief tools and our success is undeniable. This exhibit is all about the special relationships—past, present, and future—between Hispanics, native Americans, and Anglos in New Mexico's Rio Grande Valley.

American Encounters will explore the ways in which native American and Hispanic cultures have endured in New Mexico, resisting efforts by other cultures to absorb them. The exhibit was developed in close collaboration with artists, scholars, and tribal and community representatives to give as accurate a picture as possible of New Mexican lifestyles and traditions. The sheer size of the exhibit is in itself very impressive: There are more than 300 artifacts and 200 graphics, constituting 3,800 square feet of exhibit space.

What we call New Mexico's history really began in 1539, when Zuni Indians encountered emissaries of the Spanish Government searching for gold. The two factions fought with each other, off and on, for 40 years, until, in 1598, Spanish soldiers, settlers, and priests came to live among the Indians.

The Spanish—and other Europeans—soon established forts, trading posts, and colonies throughout the American Southwest and across the country. From 1598 to 1680, Franciscan priests set up missions at many pueblos in New Mexico. By 1776, in addition to the 21 missions at Indian pueblos, the Franciscans maintained missions in Abiquiú, Albuquerque, Santa Fe, and Santa Cruz de la Cañada. With this piece of history in mind, the exhibit opens when museum visitors step through a wooden entryway based on wood carvings made for a church at Pecos Pueblo in 1715.

While the exhibit will look at some of the ways native Americans and Hispanics interacted with each other and with the Anglo-Americans for 500 years, the primary focus of the exhibit will be on the history of the Indian pueblo of Santa Clara and its neighboring Hispanic community of Chimayó. These are two of our most culturally rich communities in north-central New Mexico.

The ancestors of the Santa Clara Pueblo first came to the upper Rio Grande around 1350. The Indians who currently reside at Santa Clara are direct descendants of these early settlers, who called themselves Kha p'on. For more than five centuries, first by the Spaniards, then by Anglo-Americans, these people have endured and adapted to challenges to their lives, lands, and customs.

When the Spanish arrived in New Mexico, they forced the Pueblo Indians to provide them food and other provisions, such as handmade blankets and tanned hides. The Spanish then sold these beautifully made products. The Spanish influence, though initially resisted by the Indians, eventually merged with the Indians' traditional trade economy. This impact can still be seen today, as the Santa Clarans exchange goods—such as hides and pottery—and their labor, for their needs and comforts.

The Spanish domination also influenced the way the Kha p'on made their pottery. When the Spanish seized the pueblos' lead mines, the Indians were forced to abandon their traditional lead-based finishes on their pottery for vegetable-based formulas. Another innovation was the use of manure from cattle and sheep to create a black, polished finish on the pottery.

Today, the Kha p'on's pottery has become an institution in itself, and a primary source of income for many families at the pueblo. With the wide assortment of renowned work that is for sale, the Santa Clara Pueblo has quickly become a tourist's—and pottery collector's—favorite place to visit. An example of the Kha p'o pottery will be on display at the Smithsonian, and I think everyone who sees it will agree that it is extraordinary.

It is interesting to note that in 1600, Kha p'o was one of more than 130 self-governing pueblos. By 1706, their numbers had been reduced to 18, mainly through epidemic diseases, warfare, and forced relocation. Today, there are 19 pueblos in New Mexico, and 1 in Arizona. One portion of the Smithsonian exhibit, "Pueblo Resistance and Self-Determination," will give visitors some idea of the measures the pueblos have taken to preserve their way of life since 1600.

While we speak many languages in New Mexico, I think one of the most significant cultural losses experienced not only by the Kha p'on, but also other tribes, is the erosion—and sometimes total eradication—of their native languages. The Spanish forced the Indians to speak Spanish, while Anglo-Americans in the 19th century tried to enforce an English-only policy. Even today, many tribes have lost their native language, while others have native speakers who teach members of the tribe their native language. Through taped interviews, visitors to the museum will get to hear some of the many languages we speak in our State, including the native languages of the Zuni and Navajo.

Along with the language struggle, perhaps one of the most passionate of conflicts has been that between different religions and religious ceremonies. Both the native Americans and Hispanics have been the victims of religious oppression as the Spanish attempted to convert Indians to Catholicism, and Anglo-Americans attempted to convert Hispanic Catholics to Protestantism.

Of the many who converted, some practiced this new faith through revised forms of their traditional worship. However, others preserved their own traditions under the eye of Catholic and Protestant missionaries in the Southwest. Even after centuries of

Spanish and Anglo influences, Catholic and traditional Indian religions still exist side-by-side in New Mexico. American Encounters examines the difficult issue of how native Americans and Hispanics alike have preserved their traditional religions, or modified their traditions to conform to the new religious ideas and customs.

Visitors will also learn more about how traditional religions are practiced in various New Mexican communities. Some Hispanic communities, for example, stage traditional Spanish dramas, such as "Moros y Cristianos," which tells the story of how Christian soldiers lose, then regain, the true cross from Muslim warriors.

Another group honors Our Lady of Guadalupe, a Mexican manifestation of the Virgin Mary. This group, known as Guadalupanas, was formed in 1976 and is made up solely of Hispanic Catholic women. Together, they direct their own public rituals.

There is also a portion of the exhibit dedicated to the now-famous yearly pilgrimage to the shrine in Chimayó to seek its healing powers. The journey to Chimayó has been a tradition for generations for both Hispanics and native Americans alike, but the practice was reborn with a new fervor in 1973, when a group of priests from Estancia made the 100-mile walk to the shrine. On display will be some of the objects that many of these peregrinos, or pilgrims, have carried on their journey to Chimayó.

However, Chimayó has much more to offer than its mountain shrine. The history of this Hispanic community is as fascinating as that of its native American neighbor to the southwest. I am pleased the Smithsonian has chosen to focus a portion of its exhibit on Chimayó because I think it is the ideal community for examination of traditional Hispanic family values, their sense of community, and an awareness of the history of Spanish settlers in the area.

Chimayó was originally settled in 1695 by a group of Spanish settlers who displaced Pueblo Indians in the tributaries of the upper Rio Grande valley. For generations, Chimayó was the center of Spanish life, work, and worship. This was due largely to the tradition of Spanish village organization and lifestyle the Spanish brought into the valley.

Around 1750, the first Spanish settlers in the area built an enclosure of connecting adobe houses they called the Plaza del Cerro. Extended families continued to expand on the Plaza del Cerro, building additional plazas and building and maintaining a complex system of aqueducts to bring water into their communities. Many of these plazas and watercourses are still visible today, as museum visitors will see in the exhibit.

However, I think the most endearing and fascinating part of the Chimayó portion of the exhibit is its focus on the life and experiences of the Trujillo family, who have lived in Chimayó for generations. Gabino Trujillo and Urselita Deagüero raised their family in Chimayó around the turn of the century. Their son, Esquípul Deagüero Trujillo married Romanita Ortega—another Chimayó resident—and the two of them raised nine children. The lives of the Trujillo family form the framework for the exhibit to give visitors an understanding of cultural continuity and adaptation.

Visitors will also have the opportunity to watch videos of Hispanic communities and Pueblo Indians doing the Matachinas dance, which is another example of an entwining of two cultures. Although the details vary, most historians agree that the dance was brought to New Mexico by the Spaniards. The Matachinas dance is a drama in which dancers, playing different symbolic roles such as El Toro and El Monarca, pay homage to a young girl named Malinche, named for a legendary Mexican Indian convert.

The dance still exists today, and is performed by Indians and Hispanics alike, although it holds different meanings for different groups. At the Jemez Pueblo, for example, dancers perform both the Spanish and Indian versions of the dance. At the Santa Clara Pueblo, the dance is performed on Christmas Day, with the dancers in traditional Pueblo costumes. In Hispanic communities such as Chimayò, the dance is often a form of community worship, performed annually on saint's day. Participation in the dance commits the dancers to a discipline of Christian practice and prayer for the year.

Religion is an important part of life in Chimayò, and the Matachinas dance is only one of many religious traditions of the community. One religious group, the hermanos, or brothers, are a voluntary religious group that practice the centuries-old rituals of self-inflicted pain to atone for sin during the Holy Week. During the remainder of the year, they devote themselves to serving the community. Another group, the Carmelitas, is composed of women devoted to Our Lady of Mount Carmel. The Carmelitas maintain their own chapel in Chimayò.

For better or for worse, our increasingly technical world has taken its toll on the community of Chimayò. While the men of Chimayò had been seeking work outside of their community since the late 1800's when the village outgrew its agricultural resources, the opening of Los Alamos National Laboratory in 1943 stimulated the exodus of men—and women—from the village to work in the laboratory more than 30 miles away.

Still, the village of Chimayò remains a source of identity for those who live or once lived there. Many of those who have moved away still return for weekends and holidays to visit parents, friends, and peregrinos on their way to the shrine. I hope museum visitors will come away with some sense of the history and the closeness of the Chimayò community.

Chimayò's difficulties in finding appropriate employment opportunities within their small community is typical of many of New Mexico's older, more traditional communities. When many of New Mexico's Indians lost land in the late 1800's, they lost their livelihoods as well. No longer can they hunt and fish on land they had called their own.

However, many native Americans soon discovered that their own culture, their own history, was one of their sources of income. Making and selling Indian arts and crafts eventually replaced manual labor as a more effective way to participate in the economy.

As traditional craftsmen soon learned, catering to a buyer's market will always begin to affect the design of the product. No longer did the products made reflect the needs of the community, but the tastes of the tourists. And after 1900, tourist's demand exploded for Southwestern, or at least Southwestern-style, crafts.

The Smithsonian exhibit will examine the economic and cultural impact of the tourist markets on native American and Hispanic crafts. I think visitors will be surprised to see the vast array of available arts and crafts, from elaborately decorated Indian necklaces, bracelets, and concho belts, to Spanish tinware, furniture, and woodcarvings. And, of course, visitors will see the images that have come to be associated with the Southwest, such as the increasingly art-deco coyote statues, as well as ristras, the strings of chile peppers many of us—including myself—hang in the entryways of our homes.

Mr. President, I started off today by saying that New Mexico can serve as a model for how people across the country and, indeed, all over the world can live side-by-side, despite racial, cultural, and religious differences. New Mexicans know what this is like; we do it every day. We share a history of conflict and reconciliation, of ignorance and appreciation of misconceptions and understanding. And like any group, we sometimes struggle with each other and fight for our rights to be uniquely who we are.

However, I like to think that, more often than not, any clenched fist soon opens into an outstretched hand. We have had our share of difficulties, but we have seen past our differences to recognize that it is, in fact, those differences, those certain unique qualities, that tie us all together.

It is my hope—and I know the Smithsonian shares this hope as well—that the exhibit will not only increase awareness and understanding of New

Mexico and its history, but will also make a positive contribution toward understanding and appreciation for cultural diversity. What we have created in New Mexico through our mutual understanding of each other and our differences is something very special, and something of which I am very proud to be a part.

Mr. President, I could go on much longer tracing the history of New Mexico and placing it in this marvelous exhibit that is going to be found in the Smithsonian as part of American Encounters, and also on The Mall, when many New Mexicans will bring that culture here.

Obviously, people will be able to walk through that culture which has been transplanted by way of buildings, hornos—that is outdoor ovens—various displays which will show how these cultures, artisans, artists, have lived through history.

I believe this is a rare opportunity for millions of Americans and millions of people from around the world, to see how this really worked and still lives in New Mexico.

Mr. President, I ask unanimous consent that Senator DOLE of Kansas be added as cosponsor of S. 2866, ADEPT, Program for international assistance in the deployment of energy and energy-related environmental practices and technologies.

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

Mr. DOMENICI. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas [Mr. GRAMM].

THE BALANCED BUDGET AMENDMENT

Mr. GRAMM. Mr. President, last Thursday there was a flurry of parliamentary activity relating to the balanced budget amendment to the Constitution. Over the weekend there have been many articles run in papers around the country, and especially here in the Federal City, about that debate and what is at stake in the debate.

I thought it would be very helpful this morning, despite the fact that the leadership has postponed the debate from the scheduled 11 to 2:15, to basically talk about what the issue is, what is at stake, and where we are in terms of the consideration of important legislation.

On Tuesday of last week when a unanimous-consent request was made by the majority leader to complete action on the bankruptcy bill, I notified the majority leader that when the GSE bill came up, the Government-sponsored enterprise bill came up later in the week, that it was my intention to either offer the balanced budget amendment to the Constitution or that another Republican Member of the Senate would offer it on behalf of himself and on my behalf and on behalf of other Members of the Senate.

By Tuesday, the majority side clearly understood that the balanced budget amendment would be offered to the GSE bill.

On Thursday, when the GSE bill was scheduled to come to the floor of the Senate for debate, we went through a series of delays that lasted almost all day long as various pleas went out around the Federal City and around the countryside basically saying that unless I gave up my right to offer the balanced budget amendment a myriad of bad things would happen; that unemployment compensation would not be extended; that no aid would be given to those who suffered from the riots in Los Angeles; that no assistance would go to the Russian Republic; and that numerous other bad things would happen both here and around the world.

Mr. President, I decided on Thursday to move ahead with the business of the Nation and to offer the balanced budget amendment to the Constitution. After the majority leader had initially, in essence, threatened to hold unemployment insurance hostage, to hold aid to Los Angeles and our cities hostage and to hold the Russian aid bill hostage, he subsequently decided to let two of the hostages go and, as our colleagues know, we adopted the unemployment insurance bill and we adopted the emergency supplemental appropriations bill.

I do not know what will happen at 2:15, but I wanted to remind my colleagues where we are.

First of all, the distinguished majority leader has the power at 2:15, or at any later time he might have the volition to do so, to move to Russian aid. No Member of the Senate can object to that motion. Russian aid has been on the calendar for over 2 days and, as a result, the majority leader has the right unilaterally to move to Russian aid. I do not block that right. I do not seek to block it, and if I sought to do so, I would not have the power as an individual Member to do so.

Where we are, in essence, is that Members of the Senate desire to offer the balanced budget amendment to the Constitution to the GSE bill which will be before the Senate at 2:15, if the distinguished majority leader decides that it will be under consideration. If it comes up and the amendment is offered, as it will be, the majority leader would have many options, but one of which would be to complete debate on the balanced budget amendment to the Constitution and have it voted on. Let me make it clear that I would be willing to enter into a time agreement. Obviously, it would have to be shopped on both sides of the aisle, but I would be willing to agree as an individual Senator to 4 hours equally divided on the balanced budget amendment to the Constitution with a vote to come at that point.

The majority leader has the option at 2:15 to move to go to Russian aid at that point or if debate begins on the balanced budget amendment to the Constitution he has the power under the rules of the Senate to move to Russian aid. So I am afraid that as the majority leader has tried to portray me as a person holding up Russian aid, it reminds me of a terrorist who has seized some poor hostage and while standing with a gun at the hostage's temple blames people who are not giving him what he wants for having the hostage under his control.

I am ready to move to Russian aid. I am supportive of Russian aid, but I am not willing to limit my rights or the rights of my colleagues to offer the most important issue facing America today: The need to balance the budget and to offer the balanced budget amendment to the Constitution as an amendment to a totally separate bill. And let me remind my colleagues what the majority leader is asking is that we give up our rights to offer an important amendment to another bill in return for which the majority leader will exercise a right which he clearly already has to move to a measure that is of importance I think not just to the people of Russia but to the people of the world.

So I for one intend to press onward working for a balanced budget amendment to the Constitution.

Let me make two other points, and I want to yield because I have several colleagues here who wish to be heard on this subject.

I want to address the issue of whether or not the balanced budget amendment is still a live issue. Some of our colleagues who are so desperate to have us not vote on it say that this is an exercise that has no real meaning; that the House is not going to vote on it again and so, therefore, we are wasting our time. Mr. President, I think if that were the case, we would not see so much energy expended, so much effort put to trying to prevent us from voting on this amendment.

Let me explain why there is such an effort. The House adopted a rule, House Resolution 450, for consideration of the balanced budget amendment to the Constitution, and in that rule in sections 3 and 4, it has extraordinary provisions. In fact, I am not aware that a similar rule to this was ever adopted in my 6 years in the House. Basically what these two sections deal with is the possibility that the Senate would adopt a balanced budget amendment to the Constitution and what the House would do if the Senate adopted it. And it says:

> If a comparable joint resolution has been passed by the Senate, it shall be in order at any time after House consideration of H.J. Res. 290—

That is the balanced budget amendment that they have now considered in the House—

for Representative Stenholm, or his designee, to move for immediate consideration of such Senate joint resolution and to move for concurrence with the passage of such Senate joint resolution.

And then it says further that:

Consideration shall be a matter of highest privilege in the House, and shall take precedence over any other motion, business, or order of the House, and the House shall proceed with such consideration to final passage.

What does all that mean? What it means is this: If we bring up the balanced budget amendment in the Senate and it is adopted, then Congressman STENHOLM, or his designee, would be able to make a motion in the House which is highly privileged, which cannot be superseded by any other business of the House, requiring the House to bring up the balanced budget amendment to the Constitution, and if we adopt a balanced budget amendment to the Constitution in the Senate, it will be voted on again in the House.

Twelve Members of the House cosponsored the balanced budget amendment to the Constitution and then turned around and voted against the amendment when it was voted on in the House. Twelve Members who had cosponsored the resolution voted "no," and it failed by 9 votes. I do not need to call on our colleagues to have much imagination to realize what has been said about those 12 Members back in their home districts since they cosponsored a balanced budget, many of them going back home praising its virtues, saying how strongly they were for it, and then turning around and casting the votes to kill it.

So where we are is this: When the GSE bill comes up, if it does come up, the balanced budget amendment to the Constitution will be offered.

The majority leader can offer a motion to go to Russian aid at any point he wants and if he wants to go to it now, I support that. If he wants to go to it in the middle of the debate on the balanced budget amendment, I support that. But we are not going to be denied on the balanced budget amendment to the Constitution.

If we do adopt it in the Senate, then it will immediately go to the House, and it will be voted on again. And the 12 Members of the House who cosponsored it, supported it, who basked in its glory back home, will have an opportunity once again to vote on it, and I believe that we have an opportunity to make it the law of the land.

Mr. President, I have pushed ahead on this amendment, because I think it is important to the future of America. I am hopeful that the Senate will have an opportunity to work its will, and I am committed to that objective.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The time of the Senator from Texas has expired.

The Senator from Nebraska is recognized.

THE BALANCED BUDGET AMENDMENT

Mr. EXON. Mr. President, I was listening with keen interest to my colleague from the State of Texas. I hope that the Senator from Texas and others either heard or have maybe read my statement in this regard on last Thursday.

This Senator was previously Governor of the great State of Nebraska. We have a constitutional amendment in Nebraska, as do most of the States, and I thought that served Nebraska well, in trying to bring some form of discipline in the executive and legislative branches of Nebraska State government.

I have long been a supporter of the constitutional amendment for a balanced budget and a cosponsor of the amendment. I have supported it for a long, long time. I believe that despite all of the attacks that have been made on the current effort, most would agree that, certainly, a budget-balancing amendment could not do any harm. In fact, I believe it could do a great deal of good. I think my colleague from Texas knows that this Senator has made that stand and been out in front in support of the basic same principles that the Senator from Texas addressed last week and has addressed again here this morning.

However, as I said last week, one of the great disenchantments that I think the public at large has with the institution of the Congress today is that despite our strongly held views, despite the fact that we have differences of opinion on many things, the people of the United States today are most concerned about the gridlock that has developed here. And I believe that the people of the United States—and correctly so, in my view—have come to the conclusion that much of the debate, much of the posturing that goes on here, is just that. We seem to go overboard more so than I have ever seen in my 13 years as a Member of this body, more so than the 8 years that I spent serving the people of Nebraska as their Governor. Partisan politics is rampant in this body and in our sister body on the other side of the Capitol.

I am not blaming the Democrats for this; I am not blaming the Republicans for this; I am blaming all of us collectively who seem to feel that our main mission in life and the real goal that we are here for is to try and put the opposition behind the eight ball. It so happens that on a constitutional amendment, I agree completely with my colleagues and friend from the State of Texas. However, as I said last Thursday, I think the people of America want us to get on with the business of America and not waste our time on game playing.

I certainly was somewhat shocked, Mr. President, to at least the comparison of the majority leader, as described as I understood the words by the Senator from Texas, as using "terrorist-type tactics." The majority leader has a very, very difficult position. His job is to try and get things moving. I have served under several majority leaders since I have been in the Senate, both Republican majority leaders and Democratic majority leaders. And while I have not always agreed with the positions that they have taken, I, frankly, have some understanding of the difficult position that the majority leader has in trying to accommodate all of the 100 strongly held egos of all of us who have the privilege to serve here. So I do not think any of them have ever done anything that could be remotely compared or should be compared with terrorist-type activities.

I say to the Senator from Texas that I reiterate today what I said last Thursday when I said that I am weary of spinning our wheels; I am weary of not getting anything done, despite the many problems that face America. All you have to do is look at the whole series of important legislation that we have passed. All too often, we have to get 60 votes to invoke cloture on relatively unimportant matters. Even to bring up a bill that is duly on the calender and duly brought up by the majority leader, we have to sometimes get cloture, even to bring the bill up for discussion.

That, more than anything else, I think, indicates the deterioration of what is going on in the U.S. Senate, which I think does not bode well for the future for either the Democratic Party or the Republican Party. Certainly, the people of America are sending that message very loud and very clear today. Therefore, I reiterate today what I said on Thursday last, and that is, notwithstanding, my strong support of the constitutional amendment for a balanced budget. It is nonsensical; it is a waste of time; it is irresponsible politics for the Senate to be bringing up the balanced budget amendment. There is no way, in my opinion—although I am not and do not claim to be an expert on the House of Representatives—that even if it would pass here that the House would act favorably. And I am not sure that we should be here directly or indirectly criticizing those who at one time were cosponsors and supporters of the constitutional amendment for a balanced budget in the House because, after listening to debate, they share their minds, and that is the reason for debate.

I am somewhat of an expert, though, in counting noses in the United States. I am confident beyond any question of a doubt that when the amendment comes up it is not going to carry by two-thirds in the U.S. Senate either, which is a further conviction on my part that we would be wasting the time of the U.S. Senate, the supposedly pre-

cious time of this great body, if we took it up and, even if we passed it through some miracle, which I predict could not and would not happen, then I suspect that it would very likely fail in the House of Representatives once again.

I am afraid that what we are about once again is hard-ball, irresponsible politics, to get people to cast votes that could be used against them with those clever 30-second commercials back home in the upcoming election.

The people of the United States I think are fed up with politics as usual. I would certainly say that I hope that everyone will understand that my vote against the constitutional amendment, if it comes up at this time, will not be because I am not totally dedicated to it, but with my vote I would hope that I would be sending a signal that it is time for us to get down to business, and real business, serious business, and, as much as we can, put aside partisan politics with all of the other problems that face our Nation today.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Florida [Mr. MACK].

THE BALANCED BUDGET AMENDMENT

Mr. MACK. Thank you, Mr. President.

Mr. President, I cannot help but respond to a couple of comments that were made by the distinguished Senator from Nebraska. One of the points he made was that it is time to get on with the business of America. I would suggest that according to polling information 77 percent of the people in the country indicate that the business of America is a balanced budget amendment.

This is a particular issue that I have talked about and one which I felt strongly about when I made the decision to run for the Congress back in 1982. The first piece of legislation that I introduced as a new Member of the House of Representatives in 1983 was a balanced budget constitutional amendment. But in the 10 years that I have been in the Congress, I have yet to have the opportunity to vote on a balanced budget constitutional amendment. And, yes, I would say to the distinguished Senator from Nebraska, we are experiencing hard-ball, election-year politics. The majority leader has made the decision that he wants to protect the Members of the Senate that have stated they support the constitutional amendment for a balanced budget, but they do not want to be stuck having to vote for it if it comes to the floor of the U.S. Senate.

Will the House switch its vote? Let me remind the Senate that not too many years ago—I believe 1984—President Reagan's crime reform package came up for a vote in the House of Representatives and it was defeated. Six hours later it was brought back and 64 Members of the House changed their vote. So I would make the claim that if we can get the constitutional amendment up for debate and a vote here in the Senate and passed according to the rule that was read by Senator GRAMM earlier, it would be guaranteed that it would be brought up on the floor of the House of Representatives. And we believe that, yes, there is election-year pressure, and it will be on those 12 individuals who not only said that they were supportive of the constitutional amendment but cosponsored the legislation and then turned around and voted against it. We believe those 12 people will find it difficult to again vote against something they had cosponsored when it only failed by nine votes the first time.

I say to the Senator from Nebraska we do not feel that this is wasting time. Senator GRAMM has already indicated a willingness to limit the debate.

I would also make a second point. It is very, very clear that the majority leader has the right to bring up legislation. Senator GRAMM or any other Senator is not talking about attaching this amendment to the aid bill for Russia. We are talking about attaching it to the Government sponsored enterprises bill. If the majority leader does not want to deal with that bill, he does not have to bring it up. He can bring up the Russian aid bill; we are not blocking that measure. But we are saying we want to have an opportunity to debate the issue of a balanced budget amendment to the Constitution here in the U.S. Senate.

Let me reiterate my point: I feel very strongly about the balanced budget constitutional amendment and have been denied an opportunity to vote on and to debate that issue for almost 10 years. I think the time has come. And again, 77 percent of the American people support a constitutional amendment for a balanced budget. It is America's business and the majority leader of the U.S. Senate is keeping this Senate from dealing with America's business.

I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho [Mr. CRAIG].

THE BALANCED BUDGET AMENDMENT

Mr. CRAIG. Mr. President, I will be brief. I appreciate my colleague from Washington who has been here a long time waiting to address this issue. I am one of those Senators who over the last several weeks worked very closely with House Members to craft a final constitutional amendment so that both the House and the Senate would have common language and both would have the opportunity to vote on a constitutional amendment for a balanced budget this year.

I, too, was extremely disappointed when colleagues of ours from the House chose to vote against it in the final analysis, and it did not pass. But, as you have heard my colleagues from Texas and Florida say, in working together with representatives of the House we crafted a rule that allowed the Senate to act independently and for the House to be able to react to it, just in case it might be such that the House would not pass in the first instance the amendment. That gave the Senator clear opportunity, and today it gives the Senate clear opportunity to vote on this amendment. It is not holding things up. That has been well described by my colleague from Texas.

We have an opportunity, and I do believe the American people want the U.S. Senate to express their opinion on this issue. And I would hope that we could move forward. This is not the avenue I would have chosen. I would have much preferred that we could have debated this independently, freestanding of any other issue, that we could have focused our attention on it other than the route that we have now been given by the majority leader. There is no alternative for us than to force the issue. I would hope we could move expeditiously to do so.

I yield back the remainder of my time.

The PRESIDING OFFICER. The chair recognizes the Senator from Washington [Mr. GORTON].

THE BALANCED BUDGET AMENDMENT

Mr. GORTON. Mr. President, I start by expressing my admiration for my good friend and colleague, the distinguished junior Senator from Texas. I commend that Senator not only for his thoughtfulness, for his logical pursuit of vital social and political goals, but for his courage in being willing to say that this, the balanced budget amendment proposal, is a vital and central national issue and that he will take on the establishment here in the Senate itself in order to see to it that it is debated, and he hopes and I hope along with him it will be voted on by all of the Members of this body.

It would be difficult in this election year to think of an issue which is more central to the concerns of the American people and to their lack of trust and confidence in the Congress of the United States than is the condition of our budget and our ever-increasing budget deficit. To say, as my friend, the senior Senator from Nebraska, did that it is a waste of time to take on this issue now is a peculiar statement of political philosophy. As I reflect back over most of this session of the

Congress, a tremendous amount of time has been spent on issues which were certain losers, issues designed to be vetoed by the President of the United States and not to become law.

While I have opposed most of those proposals, it has never occurred to this Senator that it was a waste of time to debate them. They have created issues. They have shown differences between the majority party in this body and the President of the United States which are important for the American people to understand as they approach the November elections.

But if it was not a waste of time to debate a dozen different issues in connection with bills that were destined to be vetoed and those vetoes destined to be upheld, it is certainly not a waste of time to debate an amendment to require a balanced budget on the part of the United States.

Mr. President, I say this not only because of the obvious centrality of that issue to this Congress and to our future, but I say it as a recent convert to the amendment.

On two previous occasions, I have opposed an amendment to the Constitution to make it more difficult, at least, to have an unbalanced budget. And I have done so for precisely the reasons which so many of its opponents put forth at the present time: that Congress ought to accept the responsibility for a balanced budget itself; that it ought to provide by statute for a more sober and conservative political philosophy.

I voted enthusiastically in favor of Gramm-Rudman in the early or mid-eighties for just that purpose. And then I saw Gramm-Rudman, once it began to pinch, for all practical purposes repealed by a Congress, which was unwilling to submit to its discipline.

I watched for a debate over a budget in 1990, a budget which promised to be in balance within 5 years. I felt that that specific proposal would fail and I opposed it, unlike my support for Gramm-Rudman. But I was certainly correct in my view that it was not only not going to balance the budget, but would lead to a worse deficit than the one it was designed to correct.

As a consequence, Mr. President, I have had literally trillions of reasons since 1985 and 1986 to change my mind on the balanced budget constitutional amendment, and I have done so. As recently as April in this Senate, we debated a statutory proposal to put such controls on entitlement programs that would have balanced the budget by the end of the century. That proposal got exactly 28 votes on the floor of this Senate.

To call for courage and discipline on the part of Members of Congress without putting some rules, literally, at this point, into the Constituton is a hopeless call, indeed. Until we are forced by our constituents and by the discipline of the Constitution to balance the budget, Mr. President, I regret to say that I doubt very seriously that we should do so.

That it should be debated can hardly seem beyond debate at this point; that it is more important than a bill on Government-sponsored enterprises goes without saying; that the majority leader has total flexibility for scheduling such a debate is one of the powers of the majority leader. He has the choice to allow this amendment to be debated and voted on, and I am certain everyone on this side of the aisle is willing to agree to a time limit on that debate. He has the right to say that he wishes this bill to be voted on today, that we will deal with the balanced budget constitutional amendment at some time in the future. He has a right to move directly, or at any time he wishes, to the proposal to aid the Russian Federation.

But the most important issue which is now or will come before this body is the issue of the future of the United States, our responsibility to our children and grandchildren, our seriousness with respect to dealing with a terribly unbalanced budget and a fiscal crisis which has not only hurt our economy, but has hurt the confidence of the people of the United States.

It is time for that debate to begin, Mr. President, I believe that the Senator from Texas is owed the undying gratitude of all us for insisting that we do, in fact, debate this most important of all issues.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. KERRY). The Senator from Oklahoma.

THE BALANCED BUDGET AMENDMENT

Mr. NICKLES. Mr. President, I wish to rise in support of the comments made by my colleague, Senator GORTON, and also previously by Senator GRAMM. It certainly is the right of any Senator to offer an amendment to a bill. That is one of the things we enjoy about the Senate. We do have a great deal of flexibility; some would say too much. But it happens to be in the rules of the Senate, and we do have a right to offer an amendment.

This amendment calling for a constitutional amendment to balance the budget, in this Senator's opinion, is the most important issue that we will have before us this year, maybe this decade, maybe in the last 100 years.

Thomas Jefferson said this was the one provision he thought should have been included in the Constitution that was not. And so this Senator and many others have been pushing for some time to make it come to the floor.

As a matter of fact, the Senate passed a resolution on April 9, that I sponsored, by a vote of 63 to 32, that said we would vote to adopt the constitutional amendment to balance the budget by June 5. In conference, that was amended to July 2. I think that makes sense. It is vitally important that we do so.

Some people say, well, we are wasting our time because the House has defeated the amendment, at least for this time. The House also passed a resolution, and included in that resolution it said if the Senate passed it, they would take another look; they would try again.

So I think there is hope. I think there is an opportunity to pass the amendment in the Senate, and likewise for the House to reconsider their action. And by a change of just a handful of votes, they could possibly pass the amendment. I think it is worth doing.

Some people say that we do not have time. Well, the Senate just recently completed 5 days on the so-called striker replacement bill, a bill that is going nowhere, a bill that everyone knows the President will veto and that we have the votes to sustain that veto.

The Senate just finished, in May, 5 days on the national voter registration bill. Again, 5 days on a bill everyone knows the President will veto, and again, he has the votes to sustain the veto.

We spent 8 days on campaign reform; 8 days on a bill that no Republican supported—or maybe one or two—and again, everyone knows the President has the votes and we can sustain that veto as well as on the tax bill. We spent 5 days on the tax bill, and the President vetoed it. And his veto, of course, was sustained.

So I think it is awfully important that we take the important issues up. It was this Senator's intention to offer this amendment on a bill that Senator GRASSLEY was managing early last week, and he persuaded me not to do so. And then I notified a few of our colleagues that I was going to offer it on the Government-sponsored enterprises bill.

Senator GRAMM announced it on the floor. I was not going to announce it. So I think maybe the majority leader should thank Senator GRAMM. He told him of his intention. It was my intention just to drop it in as an amendment. We have that right. Both sides of the aisle have done that.

It is this Senator's intention to offer it at some point. GSE happens to be the bill that is before us at this point, and so it is our intention to offer the amendment. I think it is important that the amendment be offered. I think it is important the amendment be debated.

I hope that the Senate will concur and pass the amendment. It takes two-thirds to pass. So it is not an easy obligation, but it is a very important one, and one that I hope and pray will be successful.

I know that Senators have a right to discuss it at length. And I understand

one or more Senators may be willing to filibuster it. Well, that is just one of the obstacles we have to undertake. This Senator has no desire whatsoever to obstruct anything, whether it be the passage of the unemployment compensation bill or the supplemental bill that the President signed. We let those bills go forward. We also said that we would be happy to allow the bill to go forward dealing with Russian aid. So if the majority leader wants to schedule Russian aid, he can do so.

But the GSE bill is before us. We certainly have the right to offer an amendment, and I think it is a most important amendment. It is one that the people all across the country are excited about. They want to see the Senate vote. And frankly, I think by a margin of 8 or 9 to 1, people want to see it passed.

I think it needs to pass. Many of us in the Senate are going to do all we can within the rules to make sure the Senate has the opportunity to vote on this as soon as possible.

The PRESIDING OFFICER. The Senator from Mississippi.

THE BALANCED BUDGET AMENDMENT

Mr. LOTT. Mr. President, I would like to join with and associate my remarks with those the Senator from Oklahoma has just spoken, and the Senator from Florida, and the Senator from Washington, and certainly the Senator from Texas [Mr. GRAMM]. I feel very strongly that we should take up and consider and debate at length, if necessary, a constitutional amendment for a balanced budget.

I find it very curious that this body, which has been described as the world's greatest deliberative body, would not find it in its heart to have the time to debate, even for a little while, this question of a constitutional amendment for a balanced budget. I think that is something, certainly, we should do. The American people have responded repeatedly in polls and in surveys that this is something that they support by overwhelming numbers. Yet this great deliberative body does not have time to even take it up.

When I look back over the accomplishments of the Senate this year, it seems to me we have had plenty of time when we could have been doing something very important like debating this issue instead of trying to find ways to develop conflicts between the House and the Senate, between the Congress and the President.

The majority leader in the Senate has extraordinary powers, supported by the majority and the minority, that allow him, basically, to call up legislation any time he sees fit. He can call up today, and I presume he will, this Federal housing enterprises bill referred to commonly as GSE, S. 2733. If an amendment that he does not like is added to it or offered, he can pull that bill and go to something else. He can go to the Russian aid today if he wants to, or later if he chooses. He has these extraordinary powers. So I am unimpressed when I hear the argument: Oh, how could you possibly offer a constitutional amendment for a balanced budget to this GSE bill and hold up other important bills, whether it is Russian aid or anything else? It does not have to be that way. He can call up whatever he wants to.

Thank goodness, I guess, that any one Senator can offer just about any amendment to just about any bill he chooses. I am one who still thinks maybe we have too much latitude in that area. But that is the way it is. That is in the rules. I just do not believe it is right for the media, or his colleagues, or the administration, or anybody else to say that Senator GRAMM cannot or should not offer this amendment. I think he has that right under the rules, and I support his decision to do that, certainly, on this bill.

I think the American people will ask questions. I mean, last week the Senate had time to take up the supplemental appropriations bill for $1.1 billion; $500 million of it not going for disaster aid for Los Angeles, but for summer programs when the traditional summer is at least one-third over. But, yes, we had time to pass, by a voice vote, $1.1 billion for a bill that was supposed to be dire supplemental emergency appropriations that had been delayed at least 6 weeks.

We also had time to pass a $5.4 billion extension of unemployment compensation. These bills total $6.4 billion, I presume all of which will just be added to the deficit. And we have time to take up this GSE bill—I am sure it is important and maybe it is a worthwhile bill—but I certainly do not think it is much of an emergency. And, also, we want to rush right over to do the Russian aid bill, which will cost, heaven knows, I do not think we even know exactly how much yet. A lot of that money will go through the IMF before it gets, supposedly, to Russia. I have my doubts about that. I have not seen anything about IMF I have liked in years. We are going to give, what, $12 billion of the American taxpayers' money, through IMF, to Russia? Oh, yes, we can do that.

But let us not pause to have a little debate on the constitutional amendment for a balanced budget. The House at least had the courage to stand up and vote. It did not pass with the necessary required votes. Well over a majority voted for it, but they fell shy 9 votes. I wonder, maybe, if they would screw up their courage again and try it again if the Senate showed a willingness to take up this issue and vote on it and pass it.

The American people really care about a balanced budget. They are going to have to get involved. When we go home, the American people say to us, "Yes, balance the budget, but, by the way, can you get us more money for this, more money for that, it is OK for Los Angeles, OK for unemployment compensation." I do not know quite yet what they think about the aid to Russia, but they say balance the budget.

You cannot have it both ways. A statistic I saw the other day was very interesting. Over the past 30 years we have had 56 revenue raisers. That is another name for tax increases. Fifty-six tax increases and one balanced budget. Is there a message there? Is it maybe true that by raising taxes you do not reduce the deficit? Somebody might say, what is the rush? What is the hurry? Why must we slow things down now to take up a constitutional amendment for a balanced budget?

I have some ideas. How about a budget this year that is going to be almost $400 billion in the red? How about a $4 trillion deficit?

I think it is time we do debate this issue. If the majority leader wants to take up Russian aid, if the administration wants it to be brought up immediately, that is fine. But when this GSE bill or some similar bill comes up shortly, I think the Senate ought to take a little time to talk about a constitutional amendment for a balanced budget.

The House voted. Now it is time for the Senate to at least debate it. I think we ought to vote. Why is it necessary? Because we are not going to balance the budget with the present mechanisms. It is not going to happen.

I have been involved in the budget negotiations. I was in the so-called gang of 17. I was involved with the leadership meetings in 1987 when we thought we were going to come up with ways to reduce the deficit. It did not work.

I knew the 1990 agreement was not going to work. When you have a package that raises taxes in such a way that you actually get less revenue, you cut defense but you allow spending overall to go up, you do not have to be real bright to figure out we were adding to the deficit with that 1990 agreement, not reducing it. So we tried it throughout the eighties. We tried it again in 1990. It does not work. Until there is a mechanism to make us cut spending, it will not happen. I think it is appropriate that we debate the proposed amendment, and I think it is one of the few things we should seriously consider adding to the Constitution.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

PRESIDENTIAL POLITICS AND USED OIL

Mr. BAUCUS. Mr. President, when President Bush paid a campaign visit

to a used oil recycling company in California last week, we saw another example of how his political team tried to substitute flashy pictures for fundamental policy.

But try as they might, they cannot conceal this administration's dismal environmental record. And that record shows, clearer than any picture, that this President is no friend of the environment.

To paraphrase my good friend, the senior Senator from Texas, "I know the environment. I've worked on the environment. And believe me, this is no environmental President."

The President's political handlers apparently believe that a quick visit to a recycler can, like the alchemists of lore, turn a leaden policy into a golden vision. I think the American people are smarter than that. I think they will not be fooled by photo opportunities masquerading for public policy.

As we all know, this is not the first indication of a hollow policy. For instance, while the President publicly proclaims his support for the new Clean Air Act, privately he encourages the Vice President's Council on Competitiveness to dismantle it, piece by piece.

Two weeks ago at the Earth summit, the President refused to sign a treaty protecting biological diversity that over 100 countries signed, including all our major trading partners. While he talked about United States leadership on environmental issues in Rio, his demonstrated lack of leadership was on display for the world to see.

But the real irony in his visit to the Evergreen Oil Co. in California is that this is the same company that has challenged the administration on its unwillingness to regulate used oil. Perhaps the quick visit will change the President's mind. But I, for one, will not hold my breath. Despite the photo opportunity, the President continues to oppose efforts in both the House and Senate to establish a national oil recycling program.

While I am critical of the cynicism displayed by the President's use of Evergreen's environmental coattails in an election year, it has nevertheless helped to highlight the need for greater controls on used oil.

There is widespread agreement of the hazards of used oil. It is a potent carcinogen. In addition, it contains very high levels of lead, a potent neurotoxin. It is so harmful, in fact, that cans of virgin motor oil carry a warning about the risks from handling used oil.

But it is also widely accepted that used oil that is safely recycled can provide real benefits. Unfortunately, what the President saw at Evergreen is the exception, not the rule. Most used oil is poorly managed.

Almost 1 billion gallons of it are generated each year. Over 40 percent of that, some 400 million gallons, is dumped in landfills, sewers, and storm drains. The rest is burned, re-refined, or sprayed on roads for dust control.

When it is not properly treated, used oil can be a veritable Pandora's box of threats to human health and the environment. In addition to lead, it can contain high levels of cadmium, arsenic, and chromium. It may also contain chlorinated solvents and PCB's. And it is frequently mixed with hazardous wastes.

While properly operated recycling programs can remove these dangers, improper or sham recycling spills millions of gallons of used oil into surface water and ground water. And it takes just 1 quart of used oil to contaminate 250,000 gallons of drinking water.

There is ample evidence of past dumping, recycling, and road oiling operations that have resulted in Superfund sites. In fact, the Environmental Protection Agency has classified 63 locations that handled used oil as Superfund sites.

And there is also evidence that uncontrolled burning of used oil may cause a significant number of cancer cases each year. The EPA estimates that used oil burning will cause 3,094 cancer cases across America.

Burning used oil is a particularly troublesome problem. It puts some 600,000 pounds of lead into the air each year. In fact, burning used oil puts more lead into the air than any other stationary source, even more than the entire primary metals industry.

And, sadly, exposure to lead, especially for children, is a serious health problem, whether it is learning impairments, growth defects, mental retardation, seizures, or even death.

With this demonstrated level of harm to the environment and public health, it is baffling why the President opposes taking action.

Despite the administration's opposition, Congress is trying to change this situation. One of the provisions of the Resource Conservation and Recovery Act reauthorization recently reported by the Environment Committee directly addresses the problem of uncontrolled used oil.

It requires EPA to set stringent standards for the collection, storage, transport, processing, and recycling of used oil within 18 months from the date of enactment. And any used oil not managed in accordance with these regulations must be treated as a hazardous waste.

Moreover, the bill recognizes the specific problem of lead in used oil. It directs EPA to reduce the amount of lead allowed in used oil that is burned. And if EPA fails to set such standards the bill sets it at a safe level.

Mr. President, used oil is just one environmental problem that is being neglected by President Bush. In this time of public frustration with Government, I would hope that the President could work with the Congress to resolve this pressing issue.

Frankly, with the campaign drawing ever closer, I am not optimistic. But I, and many of my colleagues, do not intend to let the administration have the last word on this.

Rather, the record should be set straight. We in the Congress are very assiduously trying to address the problems of used oil, and the President's visit to Evergreen, while being a good photo opportunity, really is an example of chutzpah because his administration is doing just the opposite, it is preventing, in the Congress, the adoption of legislation which will very directly address the problem associated with used oil.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

INTRODUCING U.S. DEPARTMENT OF JUSTICE'S PUBLICATION "ATTACKING FINANCIAL INSTITUTION FRAUD"

Mr. THURMOND. Mr. President, there are few issues today that generate more public anger and distrust than the looting of our Nation's financial institutions. To many, the most troubling aspect of this crisis is that this greed and plunder by a white-collar criminal element in our society has left the taxpayer holding the bag.

President Bush has committed to making effort to put the S&L crooks in jail. In addition, every reasonable effort should be made to recover the ill-gotten gains in these cases. While in many cases the illicit proceeds will have been squandered by these crooks, they should nevertheless be pursued. Still, the number of cases referred for criminal investigation continues to grow. The projected failure of even more banks and thrifts compounds the problem. Despite the sheer size of the problem, the Department of Justice and special counsel Ira Raphaelson have diligently pursued those responsible.

In this regard, a guiding principle for recovery should be the amount of loss faced by financial institutions. The General Accounting Office has been critical of the Department's recovery rates. The GAO's criticism stems from a belief that the controlling factor in restitution determinations is the present ability of these crooks to pay. Thus, the rates appear low because prosecutors are actually pursuing loss-based restitution. Someone who is con-

victed for the financial demise of an S&L may someday have assets and those assets should be fair game for Federal prosecutors.

Finally, as Congress continues to consider ways to assist the Department in its efforts I would suggest that my colleagues review the Department of Justice's recent report to the Congress. This publication, "Attacking Financial Institution Fraud," contains the most recent information on prosecution of financial institution fraud. The focus of this report is to review and analyze the Department's efforts to collect court ordered restitution. I hope that it will be helpful to you in providing your constituents with the most up-to-date analysis of this national dilemma.

Mr. President, I ask unanimous consent that the entire publication be printed in the RECORD immediately following my remarks.

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

[From the Office of the Attorney General]

A SPECIAL REPORT ON MONETARY ENFORCEMENT IN FINANCIAL INSTITUTION FRAUD CASES

FOREWORD

To the Senate and the House of Representatives of the United States of America in Congress Assembled:

In this, the Second Quarterly Report of Fiscal Year 1992 by the United States Department of Justice under Section 2546 of the Crime Control Act of 1990 (CCA), Public Law 101-647 (November 29, 1990), the Department presents an unprecedented amount of information about the various monetary enforcement aspects of our efforts to combat financial institution fraud (FIF). Much of the material here comes from a Report by the Special Counsel for Financial Institution Fraud to the Acting Deputy Attorney General. That Report, in turn, contained materials gathered by the Priority Programs Team of the Executive Office for United States Attorneys. Highlights of that Report are set forth later in a Special Report by the Special Counsel.

I am also pleased to continue to include statistics on our efforts in the prosecution of major thrift, bank, and credit union cases between October 1988 and March 31, 1992. During that period, almost 3000 defendants have been charged, 2300 defendants convicted (a 96 percent conviction rate) and more than $37 million in criminal restitution recovered.

For those who have followed the progress of our reporting efforts closely, there has been a steady and, I believe, remarkable improvement in the quality and quantity of the information that we have been able to provide. This information both underscores and confirms our commitment to the mission set by the President in June 1990—we are putting the crooks in jail and we are recovering assets wherever they can be located.

In an effort to flesh out the statistical information, this Report includes anecdotal material and case studies. It also provides information supplied by the regulatory agencies as well as the law enforcement components. The Report reflects the intense efforts of this Department and the Special Counsel to achieve an unparalleled degree of cooperation in prosecuting these cases.

Highlights of this quarter include:

Adoption of the Special Counsel's proposed policy guidelines by the Senior Interagency Group to enhance our collection and reporting efforts.

The entry of a $550 million forfeiture order against BCCI.

A $41 million OTS civil settlement with a law firm reached with the assistance of the Department's Civil Division.

2942 defendants charged in major FIF cases since October 1, 1988.

2300 defendants convicted in major FIF cases in that same time period (a 96.1 percent conviction rate).

76.9 percent of those convicted sent to prison.

1115 major S&L crooks charged between October 1, 1988 and March 31, 1992.

819 major S&L crooks convicted in the same period (a 93.2 percent conviction rate).

Allocation of additional support resources to the eight pilot civil FIF programs to facilitate the forfeiture and collections work and enhance tracking.

Continued implementation of an ambitious training program for newly acquired and applied resources.

I am proud of the record of accomplishments outlined in this Report and the dedicated efforts of the many professionals within this Department, as well as those in the Treasury Department and the law enforcement and regulatory agencies who helped bring this record about. We remain committed to consistently improving that effort in the coming year.

Respectfully submitted,

WILLIAM P. BARR,
Attorney General.

INTRODUCTION

(By Ira Raphaelson, Special Counsel for Financial Institution Fraud)

During my testimony on February 6, 1992, before the Senate Subcommittee on Consumer and Regulatory Affairs, a senior representative[1] of the General Accounting Office (GAO) intimated that the Department of Justice was not doing everything it could to collect court-ordered fines and restitutions. After reviewing a small sample of financial institution fraud (FIF) cases, he said: "We [at GAO] think there is money here to be collected." In a period of tight budgetary constraints, these remarks understandably sparked substantial criticism and concern.

Because no empirical or anecdotal support was offered, the Department had to undertake a substantial study to answer the concerns that were raised. While the charge was groundless, the Department had been put in the unenviable position of having to prove a negative, which is that the Department was not overlooking or, worse yet, ignoring cases that involved fines or restitutions that were "ripe" to be collected.

In an effort to allay concerns in Congress and the general public that followed in the wake of the hearings, I decided it might be helpful to put together a primer of sorts, a Special Report, that would outline how fines and orders of restitution come about, how they are collected, some of the problems prosecutors encounter, and what the government has really accomplished overall. The heart of this Report is made up of highlights of a more extensive Report that I had prepared for the then Acting Deputy Attorney General by the Priority Programs Team (PPT) of the Executive Office for United States Attorneys (EOUSA). We have already shared this Report with the Senate Subcommittee and GAO.[2]

In the process of gathering information for that Report, PPT conducted three studies to analyze our collection performance. The first study was also designed to improve the accuracy of the database for all "major" FIF cases.[3] The second and third were designed to provide a clearer understanding of the recovery rates in our most serious S&L prosecutions. In addition to these studies, two groups of cases were selected for analysis: (1) the so-called "Top 100" priority cases,[4] and (2) a group of 59 cases which were chosen for review by the staff for the House Banking Committee from a pool of cases with the largest restitution orders.[5]

The materials in this Special Report reveal four key points to keep in mind when looking at current collection and recovery rates:

(A) that by aggressively pursuing loss-based restitution regardless of the defendant's present ability to pay, the Department has created an inevitable gap between that which is ordered and that which is collected,

(B) in most cases, there is little or nothing left to collect or recover at the conclusion of the criminal process when sentencing occurs,

(C) a significant portion of cases involve fines and orders of restitution that are not legally collectible, and

(D) considering all of the circumstances surrounding debt collection, and debt collection in FIF cases in particular, the recovery of $37 million in court ordered restitution is not an insignificant accomplishment.

Read together, the results of these studies confirmed that our collection rates are within the range predicted by government officials and others at the time Congress gave the Department enhanced resources to deal with these cases. Also, as expected, the results attest that the overwhelming majority of S&L crooks not only squandered the money they stole, but they also frittered away their own money in the process. Having virtually nothing left at sentencing, most are generally unable to pay their fines or make any meaningful restitution.

Nonetheless, the various entities with monetary enforcement responsibilities have devoted substantial effort to collecting everything they can. Further, our Second Quarter Report includes, for the first time, data supplied not only by the Department and the law enforcement agencies but all the regulatory agencies involved in the FIF effort.

Hopefully, the following question and answer format will anticipate and address many of the major questions raised by the GAO comments about the Department's efforts and, in the process, demonstrate the Department's commitment to try to collect every dollar possible.

DISCUSSION

1.—How does a court determine the amount of a fine or an order of restitution?

Traditionally, restitution was a sentencing aspect left to the discretion of the sentencing judge. Judges imposed restitution using a myriad of factors, including loss to the victim, gain to the defendant, ability to pay and the severity of the prison term. More often than not, when restitution was ordered, it was ordered as a condition of probation and, thus, not enforceable until completion of the defendant's jail term. After the Victim Witness Protection Act and Sentencing Guidelines, though, the procedure for setting of restitution became more routinized; still, a number of factors were still considered.

Under 18 U.S.C. §§3572 and 3664, a court must now consider a number of things in de-

[1] Footnotes at end of article.

termining, first, whether a fine or an order of restitution is appropriate and, if so, what the amount(s) should be. In deciding these questions, courts must look at a number of "financial" factors, such as the defendant's financial condition, the loss to the victim, and the hardship either type of order would cause the defendant's family. In reality, the amount of restitution is usually determined first[6], and it is usually based upon the size of the victim's loss rather than the defendant's ability to pay.[7] Then, if anything remains, the court will usually turn to the question of whether a fine should be imposed.

2.—Who is responsible for collecting fines and orders of restitutions?

A number of governmental entities have collections responsibilities. Fines are usually payable through the United States Clerks of the Court who are often assisted by United States Probation Office personnel. As illustrated in the graphics that follow this report, restitution is usually ordered payable directly to the victim. In the 59 cases, restitution was ordered to be paid as follows: to the appropriate regulatory agency [as victim] (44 percent), directly to victim institutions (35 percent), to the court or probation office (11 percent), and, to the Department (USAOs) (10 percent).

On March 20, 1992, in order to ensure coordinated collection and enhanced reporting of the collection efforts, the Senior Interagency Group adopted the proposals of the Special Counsel to develop a protocol on collections which is presently being drafted by the Interagency Bank Fraud Enforcement Working Group.

3.—How are fines collected and restitutions recovered?

Usually, defendants who can afford to pay comply with court orders by voluntarily making payments to the Clerk of the Court, unless the court ordered otherwise—i.e., make payments directly to the victim, the victim's attorney, the probation office, a regulatory agency or the USAO. If a defendant does not abide by a court's order, there are a host of ways losses and restitution payments can be collected:

(1) Joint Civil and Administrative Actions—The Department and the regulators can jointly pursue civil and administrative collection remedies. A recent example of a particularly successful effort is the $1.3 billion settlement with Michael Milken by the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC). The agreement was built on an earlier successful criminal prosecution of Milken.

(2) Civil Actions by the Department—Using statutory tools Congress has provided, as well as the provisions in the Financial Institution Reform, Recovery and Enforcement Act of 1990 (FIRREA) and newly-negotiated memoranda of understandings with the regulators, the Civil Division and its counterparts in the USAOs join with the regulators to pursue creative efforts to obtain recoveries.[8] A recent example of their success is the $41 million settlement with a large law firm, "Kaye-Scholer."[9] There, the Office of Thrift Supervision (OTS), with the help of the Civil Division, brought a civil damages case against the law firm which was associated with the largest S&L collapse ever, the Keating-Lincoln Savings and Loan case.

(3) Agreements to Disgorge—Some defendants, anxious to minimize their potential criminal exposure or to demonstrate remorse, voluntarily disgorge what is left of their ill-gotten gains. For example, in the Northern District of Texas, Edwin Cox, a former director of InterFirst Bank Dallas agreed to pay off a $75 million loan prior to his sentencing on federal banking law violations related to the loan. Later, he was sentenced to six months in prison, a $250,000 fine and 1,000 hours of community service. In another case in the Southern District of Mississippi, a former president of Worldwide Purchasing Inc., Randy A. Braswell, volunteered to pay $4 million to the financial institution he defrauded as a part of his plea agreement concerning a fraudulent scheme involving the Small Business Administration.

(4) Criminal Forfeiture—In the Bank of Credit and Commerce International (BCCI) prosecution, aggressive use of the RICO statute resulted in a record half-billion dollar criminal forfeiture, half of which was earmarked to safeguard American financial institutions. In another case, in the Northern District of Oklahoma, Gary Hobbs, a former mortgage banker who worked for the now-defunct First Security Mortgage Co., agreed to forfeit $672,000, his house, its contents, a $17,000 Cadillac, a Mercedes-Benz, a station wagon, and jewelry which included a $41,000 diamond and sapphire ring. In addition, he agreed to plead guilty for his part in a scheme to defraud Ginnie Mae of $2.5 million. As part of his sentence, he was banned for life from participating in the savings and loan industry, given a 7½ year prison term, and ordered to pay $10.2 million in restitution.

(5) The Inmate Financial Responsibility Program (IFRP)—The IFRP was developed through the cooperative efforts of the Bureau of Prisons (BOP), EOUSA, and the Department's Justice Management Division (JMD). The purpose of the program is to collect money from debtors incarcerated in BOP correctional institutions. Using the IFRP, debtors can satisfy their obligations to pay criminal fines, assessments and restitution. If debtors elect to enter the program, they tell the correctional institution's financial office how much to withdraw from their accounts on a regular basis.[10] The funds are then collected from all of the institutions around the country and sent to JMD which serves as the central accounting office for the program. JMD then provides for disbursement of the funds and sends the payment information to the appropriate USAO for posting to individual debtor's account.

(6) The Internal Revenue Service (IRS) Tax Refund Offset Program (TROP)—Title 31 U.S.C. Section 3720(A) established TROP which allows federal agencies to refer debts to the IRS for collection by offset against tax refunds owed to named individuals. USAs participate in the program under which judgment debtors in non-pay status are identified by USAs for submission to IRS. A "notification of offset" is then sent to each debtor, and once the required 60-day notification period and the debtor's response period have run, the name and the amount owed by each debtor is sent to IRS. Information on any tax refund offsets the IRS actually makes is sent to JMD which, again, notifies the appropriate USA.

4.—What legal barriers interfere with collection attempts?

One potential problem involves certain restrictions in state laws regarding such things as homestead exemptions and holding property as tenants by the entireties (T/E). In states which allow T/Es, each spouse has an *indivisible* interest in the property. What that means for us is that criminal acts of one spouse cannot be used as a basis to sever a T/E. At times, this can be a problem when, for instance, the government attempts to forfeit or seize T/E-held property from a defendant to satisfy a debt. In a recent case, *United States v. 1500 Lincoln Avenue*, CV-89-1251 (W.D.PA 1991), the court held that T/E-property could not be seized even though the husband had pled guilty to committing felonies involving the property, acts which, we argued, made it legally forfeitable. The court said the government could not take any part of the property by dividing it from the innocent spouse's interest.[11]

The most the government can hope to get in a T/E case then is a future interest in the property should the T/E be severed by death of the innocent spouse (in which case the government would get the entire property) or by divorce (in which case the government would get the interest left to the guilty spouse after the distribution of the marital property). If the guilty spouse dies first, the government would not receive anything because its interest in the property dies with the spouse.

Fraudulent transfers can also be a potential problem. 28 U.S.C. §§3303-3308 (the Federal Debt Collection Procedures Act of 1990) was designed to deal with transfers of a debtor's property which are fraudulent. Under section 3304, if the debtor: (1) transfers or incurs an obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor is insolvent at the time or becomes insolvent because of the transfer obligation, or; (2) transfers property to an insider for a previous debt and the debtor was insolvent at the time and the insider had reasonable cause to believe that the debtor was insolvent, that transfer is fraudulent as to the debt owed to the United States.

Throughout this comparatively extensive judicial process, the United States has the burden to prove by a preponderance of the evidence that the transfer was fraudulent, and that can, sometimes, be a problem. If it succeeds, the government can get (1) avoidance of the transfer to the extent of the debt, (2) recovery of the asset from the transferee, and/or (3) any other relief that the circumstances require.

Bankruptcy can be also a practical concern. Under 18 U.S.C. §3613 and 11 U.S.C. §1328(a), fines and restitution are generally *not* dischargeable in bankruptcy. However, whether a specific order of restitution may be discharged in bankruptcy depends on the type of bankruptcy proceeding the defendant files. Moreover, a defendant who declares bankruptcy, unless he/she does so fraudulently, is penniless as a practical matter.

5.—Why do collection rates and recoveries appear relatively low?

There are four points one must keep in mind when looking at current collection and recovery rates:

(A) that by aggressively pursuing loss-based restitution regardless of the defendant's present ability to pay, the Department has created an *inevitable* gap between that which is ordered and that which is collected;

(B) in most cases, there is little or nothing left to collect or recover at the conclusion of the criminal process when sentencing occurs,

(C) a significant portion of cases involve fines and orders of restitution that are not legally collectible,

(D) considering all of the circumstances surrounding debt collection and debt collection in FIF cases in particular, the recovery of $37 million in court ordered restitution is not an insignificant accomplishment.

(A)

In an effort to enhance the Department's resources and statutory tools available to

cope with fraud against financial institutions, Congress passed FIRREA and the CCA. In combination with the Victim Witness Protection Act (VWPA) and the Federal Debt Collection Procedures Act (FDCPA),[12] prosecutors were given broad new powers to accomplish their mission of putting the crooks in jail and recovering assets wherever possible. We were told however, to prioritize the criminal over the civil enforcement effort,[13] and the underlying rationale was aptly captured by Congressman Pickle:

[W]e are not going to make much money off these cases. About the best we can hope for, we might send some of them up the river.[14]

Why then, one might ask, if it was known at the beginning of the enhanced effort that recoveries would be small, has the Department fought so hard to convince courts to order restitution of the total loss? Because it had to choose between Scylla and Charybdis. Faced with a penniless defendant, prosecutors must contend with a fundamental dilemma: they can settle for what little pocket pittance defendants have left or they can ask the courts to order restitution of the entire loss in the hope that a defendant's financial lot will improve in the future.

The easy course for most of the parties involved in the process—the prosecutor, the defense team, the defendant, the defendant's family, and the courts—is to elect the former, take whatever a defendant has left. There are a number of benefits that flow from this choice. The collection process is quick and relatively painless. There are no loose ends, and from the prosecutors perspective, the collections "track record" would be excellent—virtually 100%. But there is a serious downside: the prosecutor will be roundly, though fairly, criticized for not seeking full compensation for the victim. The expedient road ignores the prosecutor's responsibilities to the victims—those who insured the accounts and, ultimately, the American taxpayers themselves.

If, on the other hand, the decision is to press for total restitution, the prosecutor is again doomed to fail, for the most the prosecutor will end up with is, as is the case here, a large cache of uncollectible accounts leading to, again as here, a barrage of criticism and indignation from some critics. Either choice then is undesirable, but one must be chosen. The Department has elected the latter, if only because by using it we will always recover more money—e.g., what a defendant has at sentencing and what a defendant may have in the future.

The rationale is simple. Should not the government at least try to punish the defendant and make the victim whole? Prosecutors have concluded that a settlement based on what is in hand serves neither to compensate nor to punish. At their annual conference in March of this year, the 93 United States Attorneys unanimously agreed that, as a matter of enforcement policy, restitution should be sought on the basis of loss to the victim—Justice will not simply settle for the money in the defendant's pocket at the time of sentencing—notwithstanding the type of criticism that had been leveled at the inevitable collections rate gap that such a policy would create.

The policy being pursued seeks to bring as much money as we can into the Nation's Treasury. So, while it may be more comfortable to lower the heat of criticism by taking a new tack of settling for what is in hand, the Nation's prosecutors have determined to stay the course. As we do, we ask only that our decision be viewed in the context of the goals of law enforcement and punishment and not simply in accounting terms.[15]

(B)

If there is one major source of confusion about fines and restitution, it centers around the expectations some people have about how much money the government can realistically hope to collect, and this is particularly true in FIF cases. Today, many (including, apparently, GAO) believe that, when a court orders a defendant to pay a large fine or restitution, the decision means the money is really there, and all the government has to do is collect it. Unfortunately, that is rarely the case.

When our prospects for recovery were first discussed in the context of FIF cases, there was general agreement that the most we could ever hope for was to recover only a small portion of the overall losses. Notwithstanding the state of the record, GAO suggested otherwise in February of this year. After analyzing the testimony, the questions that followed, and reading a number of congressional letters they generated, it was clear something had to be done to set the record straight. To begin that task, some of the history which led to our current expectations for recoveries needed to be re-visited.

No one can seriously dispute that historically there was always near unanimity among all who had an interest in the subject—prosecutors, members of Congress, pundits, and regulators alike—that only a fraction of FIF losses could ever be recovered. Why? Most often because the money was lost through speculative investing in such things as collapsing real estate markets or junk bonds; sometimes it was dissipated because of land and loan flips which distorted the value of the collateral; in still others it was squandered on lavish lifestyles; and in some cases, the money was simply never there to begin with—it was only "on the books". Whatever the reason, by the time the criminal investigators arrived on the scene, the assets were gone, and that was why almost everyone in the past felt we would be lucky to recover anything.

And just who felt that way? For openers, William K. Black, the Deputy Director of the Federal Savings and Loan Insurance Corporation and a former Director of the Litigation Division of the Federal Home Loan Bank Board. In June of 1987, he told the House Committee on Government Operations that things did not bode well: "* * * obtaining a judgment against a particular individual does not necessarily ensure collectability of that judgment. Dissipation of assets through highly hedonistic life styles, . . . bankruptcy law protections, homestead exemptions, trust arrangements, . . . holding [property] jointly with the spouse, and the costs of litigation are all factors limiting net recoveries."[16]

Mr. Black's sentiment was echoed by a number of others:

Members of Congress and Congressional Committee Reports

In two reports from the Committee on Government Operations, the Department was instructed:

The FDIC, the FSLIC (FHLBB), and the NCUA should advise their examination staff and fee counsel that criminal investigations must take precedence over supervisory actions and civil recovery efforts.[17]

Even if the criminal investigation does delay or otherwise get in the way of the civil case, timely criminal investigation and prosecution will deter future criminal misconduct more than the threat of civil liability and the very remote chance of full recovery.[18]

Civil cases must not be given priority over criminal cases.[19]

We commend such cooperation, but we are troubled by this philosophy, that the RTC's primary responsibility must be taxpayer recoveries, not criminal prosecution, and that its objective must have equal importance to criminal enforcement efforts. If conflicts do arise, which cannot be quickly resolved, then the RTC's and the FDIC's objectives must be subordinated to those of the Department. The objectives can never have equal weight when they come into conflict. Civil recovery efforts should never take precedence over criminal enforcement in producing documents.[20]

As for tracing during the course of a criminal investigation it is routine for investigators and prosecutors, using grand jury process and other investigatory means, to examine a putative defendant's financial profile. But such an examination provides no guarantee that all of the defendant's assets will be discovered, especially when sophisticated means have been employed to conceal them. An exhaustive tracing investigation could require months or years of investigative work, substantial numbers of investigators, and tens of thousands of dollars in investigative costs, and in the end the investigation might discover no recoverable assets. Moreover, such an investigation might divert investigators and prosecutors from developing criminal cases, with the result that criminals escape prosecution. This is not to say that asset recovery is not given serious consideration. It is. But not at the expense of convicting those who have victimized financial institutions.[21]

Senator Herb Kohl, a member of the Senate Judiciary Committee, accurately prophesied the reality we face today by saying on July 24, 1990:

Well, I think it's important to make that point. You know, we have now lost enormous credibility with the American people over this whole affair, and deservedly so, as a government, and I think to some extent there is still that feeling out there that there is an awful lot of money that we're going to get back as a result of these efforts that we're going through.

If it is not really the expectation that we are going to get back tens and tens and tens of billions of dollars of what we lost, *I think the American people need to know that so at least they will not be taken by surprise a year or two from now when they begin to hear about what has been accomplished over the past two years. When they find out that very little money has been recovered relative to what has been lost. I think that we need to make that point if we're going to be honest with the people out there.* (Emphasis supplied.)[22]

And, as noted in the Barnard Report of the House Committee on Government Operations (Barnard I):

The civil case [to recover losses] will drag on for years, and often the likelihood of substantial recoveries are minimal.[23]

In the same report, the Committee acknowledged the difficulty of substantial recoupment:

For failed institutions, the FDIC assessed $7.6 million in CMPs, collected only $163,000 (or 2.1%), leaving $7.446 million (or 97.9 percent) uncollected. The FDIC gave two reasons for this situation. First, recovery efforts are stayed in some cases because the penalty actions are on appeal, or other administrative matter are pending. Second, in many cases,

however, the individuals do not have the financial ability to pay the penalties; some have filed bankruptcy, and others are besieged by lawsuits, criminal investigations and creditors.[24] (Emphasis supplied.)

Senator Alan J. Dixon, a member of the Senate Banking, Housing, and Urban Affairs Committee and Chairman of the Senate Subcommittee on Consumer and Regulatory Affairs harkened:

Now a lot of this is fraud and corruption. I suspect in those cases most of those rascals have *empty pockets by the time you get to them.* A lot of them do at least. (Emphasis supplied.)[25]

Representative J.J. Pickle, Chairman, Subcommittee on Oversight, House Committee on Ways and Means opined:

Well, we are going to say then that we are not going to make much money off these cases. About the best we can hope for, we might send some of them up the river.[26]

Statements by Administration Officials

Attorney General Thornburgh also noted on many different occasions the difficulty of recovering money looted from savings and loans, including his initial congressional hearing on the subject before the Senate Banking Committee:

But I think we would be fooling ourselves to think that any substantial portion of these assets are going to be recovered, notwithstanding our best efforts to do so because of the problems that I indicated.[27]

I would mislead you if [I] were to indicate that any substantial portion of those assets are going to be recovered. I stated when I first appeare i before the Banking Committee in February of last year that I held out very little prospect that there were real assets to go after, and if there are not real assets to go after, then you're not going to recover them.

I wish it were otherwise, but as I said from the very beginning, since I first became involved with this process, it was apparent that the prospect of large scale recoveries was dim.[28]

Mark M. Richard, Deputy Assistant Attorney General, Criminal Division, Department of Justice declared:

I am suggesting to you that there is a difference between the court ordering restitution and literally getting the money in your pocket. A lot of these defendants first have to serve time in prison. They may be destitute at the moment. It may be monies to be forthcoming later on. So at this moment I would suggest to you that it is relatively small.[29]

On another occasion, Edward S.G. Dennis, Jr., Assistant Attorney General, Criminal Division, Department of Justice steered clear of any optimism by saying:

[W]e are confident that a major factor in determining loss is depreciation of assets. In other words, much of the loss is attributable to market conditions and is not recoverable by any means, much less through criminal prosecution. Next, it is not unusual to find that defendants have squandered their monies on vacations, trips, entertainment, and a variety of other items. Such monies are gone, not recoverable.[30]

James Richmond, the former Special Counsel for Financial Institution Fraud, Department of Justice agreed:

Let me just make one observation about the monies that we recover. When it gets to the point that the Department of Justice is considering the criminal prosecution of an individual, that beyond getting fines and restitution involved, I don't think anybody should hold out great hopes for the Department of Justice's ability on the criminal side to produce dollars from these defendants. This is the end of the line for these people.[31]

Marvin Collins, the USA in Dallas, spoke guardedly of the prospects for any recoveries when he said:

When it gets down to criminal prosecution, we find there's not a lot of opportunity of restitution. They spend a lot of money on lawyers to fight it, and then they're out of money. Their assets are dissipated and in some cases hidden.[32]

John V. Thomas, Associate General Counsel, FDIC, noted his agreement:

One of our great frustrations is many of the worst actors have little if any money from which a judgment can be collected. In many instances, that's because they never really had much money. In other instances, they invested most of the money in the institution's stock, which became worthless, or they invested in the real estate and oil booms and lost money. A fair number of them put their money in their relatives' names. We assume that some of them have hidden it places where it can't be found, though by definition, nobody knows how many.[33]

James Dudine, Director of Investigations, RTC, held a similar view:

There's no question that most of the money is gone. We're not going to recover a billion or two from Charlie Keating. It just isn't there.[34]

Statements by Policy Analysts

Robert Litan, Brookings Institution wrote:

This action is literally bolting the barn door after the horse left. The money is already long gone. This will join the many other cases in which they [the regulators] may get successful judgments, but not money.[35]

Peter B. Frank, Price Waterhouse & Company concurred:

Most of the money is spent in the American economy; it's in Mercedes-Benz sedans on Rodeo Drive, spent on fancy restaurants in Los Angeles and elsewhere. You don't usually find enormous cash hoards.[36]

News Reports

Editorial Page, The Washington Post:

As for recapturing the vanished billions, that looks unlikely. Some of it was spent buying property at values that later fell. Some of it was spent building houses for which there are now no buyers and shopping centers for which there now are no tenants. A lot of it went for high living by S&L officials, private planes, yachts and sumptuous entertaining. Perhaps some of it got salted away in Swiss bank accounts, and that's another reason for vigorous prosecution without budget constraints. But it's a matter of punishing the guilty rather than hoping to retrieve large caches of wealth.[37]

News Analysis, The Wall Street Journal:

What's more, no matter how many convictions the government piles up, little of the tens of billions of dollars lost in the nation's S&L debacle will ever be recovered. Criminal fines and court-ordered restitution in a given case rarely exceed several million dollars. And big chunks of the thrift industry's losses are sunk into failed shopping malls and empty condominium developments. Most failed S&Ls didn't collapse directly because of criminal activity; egregious mismanagement and feckless regulation were more often the culprits.[38]

News Analysis, The Washington Post:

And the government collects only about 2 percent to 3 percent of the restitution ordered, because most criminal defendants are insolvent.[39]

News Analysis, The New York Times:

Most experts estimate that only 5 percent to 10 percent of the losses can be traced and retrieved. Some former savings executives have stashed away millions, but most of the money has been squandered and spent, the experts say.[40]

That many cases offer slim prospects fines or orders of restitution will ever be paid has proven to be true in case after case. Not only do we find empty pockets but we also learn there is virtually no chance they will ever be full again. For example: Robert Snyder was ordered to pay $121,745.59 in restitution to the seven financial institutions he defrauded. Now, on probation, Mr. Snyder is indigent. He is making small monthly payments derived from his employment in lawn maintenance, and he has repaid a total of $915.00 to date.

Jay and Leif Soderling were ordered to repay $6.7 million in losses. A liquidation of their real estate property on which fraudulent loans were obtained realized $1.9 million. Their remaining funds are now in the hands of a bankruptcy court; their probations have been revoked; and, they are presently serving 6 year prison terms.

Jean St. Gelais was ordered to pay over $12 million in restitution which is highly unlikely because he has declared bankruptcy and is serving a 24 year prison term.

Richard Kukielski was ordered to pay $1,000,000. Partial restitution of $465,000 was made through the sale of his assets, and payment of the remaining $535,000 is not likely to occur soon because he is presently employed as a cashier at a gas station.

Anthony DiGeronimo was ordered to pay $1,592,882 in restitution, and after his discharge from prison, he began making regular monthly restitution payments at the direction of his probation office. The amount of his payments are based upon his financial circumstances. He currently pays between $50 and $100 per month, for a total amount to date of $1,300.

William W. Lilly was ordered to make restitution of $5,071,751.59. He is bankrupt and currently serving a five year prison term.

Eugene Unger was ordered to pay $6 million in restitution, $5 million of which he never received for it represents interest compounded since 1974. Recovery is unlikely, and Unger remains in prison.

But things are not always this bleak. Taking a chance that a defendant will come into a fortune sometimes pays off. In Los Angeles, Janet Faye McKinzie and her confederate drove their financial institution into ruin incurring losses along the way totalling $13 million. She was convicted and sentenced to 20 years in prison. The government initially recouped $3 million, some of it by returning her clothes for refunds. McKinzie's only other asset was a $10 million life insurance policy on her confederate who coincidentally, died. The government seized the proceeds to satisfy fully her $13 million restitution order.

(C)

In a number of cases, the Department cannot collect fines of recover restitution because they are not legally collectible. Usually, this happens when the courts enter stays barring us from attempting to collect these monies pending completion of appeals, administrative proceedings, or serving sentences of incarceration. More than 50% of the Top 100 orders (almost $39 million of $74.4 million) and 65% of the 59 case study orders ($140 million of the $214 million) was legally uncollectible to the PPT study.

(D)

GAO's recent criticism of the Department's effort seems premised on the following tautology:

(A) If a court considers a defendant's ability to pay restitution, and

(B) If a court enters an order requiring payment of restitution; then

(C) The court must have determined that the defendant had enough money to comply with the order.

While at first blush there is a superficial appeal to this notion, it founders in its leap to a conclusion. Regrettably, Associate Director Harold Valentine first announced on February 6, 1992:

We think there is money here to be collected. [Courts] don't set these fines and restitution orders in a vacuum. Courts receive pre-sentencing reports from the FDIC and the RTC estimating ability to repay. Later, GAO rejected this view when it reported to Congressman Schumer that: "* * *judges base their [fines and restitution] orders on presentencing reports from the Federal Deposit Insurance Corporation and the Resolution Trust Corporation on ability to pay."[41]

GAO's first error lies in its initial premise, the suggestion that courts take into account only one factor in deciding these types of cases—the defendant's "ability to pay." We are at a loss to understand how GAO could have arrived at this position, for presumably it took into account the statute which prescribes the procedures a court must follow before issuing an order of restitution.[42] That statute's mandate is clear: there are not one but five factors that must be considered, none of which, by the way, is a defendant's "ability to pay":

"(a) The court, in determining whether to order restitution . . . and the amount . . . shall consider (1) the *amount of the loss*. . ., (2) the *financial resources* of the defendant, (3) the *financial needs* and (4) *earning ability* of the defendant, and (5) *such other factors as the court deems appropriate*." (Emphasis supplied.)

When Mr. Valentine testified "there is money here to be collected," he was obviously referring to money that was, in GAO's view, presently available as contrasted with future ability to pay. Because the statute does not mention "ability to pay," we can only guess that GAO read the term into the statute by, perhaps, interpreting the terms "financial resources" and/or "earning ability" to mean a defendant's present "ability to pay." If so, that would be wrong. "Financial resources" cannot be synonymous with an "ability to pay," for they are only one half of one's personal financial equation; they must be counter-balanced with one's obligations. The same is true of "earning ability." In this sense, GAO appears to be either misreading the statute or relying on something the statute does not say.

GAO also appears to overlook two things the statute does say. First, the statute requires a court to look at the "earning ability of the defendant." For someone facing the prospect of incarceration, that can only mean—as many courts have found at the Department's urging—one's future "ability to pay." Second, the statute makes it clear that a court is not limited any one factor, such as a present "ability to pay," for the fifth factor allows the court to consider "such other factors as the court deems appropriate." Again, one such factor could be a defendant's future ability to pay. So, when an order to pay restitution is entered, particularly in cases where incarceration looms on the horizon, it is almost always predicated on a court's consideration of a defendant's future ability to pay.

The concept of ordering payments based upon a court's projection of a defendant's potential income is not new or unusual; indeed, it is expressly embodied in 18 U.S.C. 3572(d) (which governs fines) and 18 U.S.C. 3663(f) (1) and (2) (which governs restitutions). Both statutes allow a court to order payments on a date certain in the future or in installments.[43] Finally, and most importantly, it is clear from the variety of factors the statute requires a court to consider that a court must look at a defendant's total financial picture before it decides what to do. Congress wisely eschewed making "ability to pay" the sine qua non for determining whether to assess a fine or order restitution because that would effectively bar consideration of a number of equitable factors. For example, a court could well find that a defendant had a present ability to pay but nevertheless decide on equitable grounds that a fine or order of restitution would not be appropriate in light of the hardship it would cause other innocent family members or the defendant's chances in the future for rehabilitation.

GAO's reliance on FDIC or RTC reports to the courts as a talisman to bolster their position is also misplaced, for in all but a few cases, these reports deal primarily with the extent of the losses to the institutions. Rarely do these agencies have access to the records of a defendant's then existing financial condition which would allow them a basis to demonstrate to the court that the defendant had a present "ability to pay."

For all of these reasons, GAO unfortunately missed the mark when it seemingly read into the statute a phrase that is not there, "present ability to pay." It also erred in suggesting that the FDIC and RTC reports to the court are limited to the defendant's present ability to pay. And finally, GAO was wrong to suggest it necessarily followed money was "here" awaiting recovery simply because a court had considered a defendant's ability to pay and, afterwards, had entered an order assessing a fine or restitution.

In the face of all of these factors, how has the Department done? All things considered, rather well as it turns out. By one measure, our restitution collection rates are well within the predicted ranges; by another, we did even better. Before we describe our accomplishments, though, we need to define the standard by which we feel we should be judged. And, as one would expect, there are two basic schools of thought on the subject of what one should reasonably expect.

The Barnard Report assessed what the Committee felt could be recovered and concluded:

"The civil case [to recover losses] will drag on for years, and often the likelihood of substantial recoveries are *minimal*."[44] (Emphasis supplied.)

In the same report, the Committee acknowledged the difficulty of substantial recoupment and highlighted the actual collection rate at that time:

"For failed institutions, the FDIC assessed $7.6 million in CMPs, collected only $163,000 (*or 2.1%*)[45], leaving $7.446 million (or 97.9%) uncollected. The FDIC gave two reasons for this situation. First, recovery efforts are stayed in some cases because the penalty actions are on appeal, or other administrative matters are pending. Second, in many cases, however, the individuals do not have the financial ability to pay the penalties; some have filed bankruptcy, and others are besieged by lawsuits, criminal investigations and creditors."[46] (Emphasis supplied.)

A little over two years later, it was reported in a Washington Post news analysis that:

"[T]he government collects only about *2 percent to 3 percent* of the restitution ordered, because most criminal defendants are insolvent."[47] (Emphasis supplied.)

One assessment view of what we should expect to recover then is 2 to 3 percent. The other viewpoint is more optimistic.

As was mentioned earlier, when Attorney General Thornburgh testified before the Oversight Hearing on Bank and Thrift Fraud, Senate Committee on Banking, Housing, and Urban Affairs, on August 2, 1990, he said:

"[Our restitution recovery rate] is a very discouraging figure because the prospects of getting restitution from people who are in jail is not always that promising. But I would be misleading you were I to indicate that figure has produced any kind of significant recovery. . . . I agree with what Bill Seidman said, that if you get 5 to 10 percent ultimately of these losses recovered through civil or criminal proceedings, *you're going to be lucky*. But that doesn't mean that we're not going to pursue them just as diligently and relentlessly as we can." (Emphasis supplied.)

A year and a half later, The New York Times reported in a news analysis that:

"Most experts estimate that *only 5 percent to 10 percent* of the losses can be traced and retrieved. Some former savings executives have stashed away millions, but most of the money has been squandered and spent, the experts say."[48] (Emphasis supplied.)

The conventional wisdom of this other group was that, if our collection rate turned out to be between 5 to 10 percent, we would be lucky. Realistically, one would expect our actual recovery rate would fall somewhere in between these two assessments. And it does. Currently we are averaging collections and recoveries in the range of 4 to 6 percent. But that is not what GAO said, and therein lies the rub.

On February 6, 1992, GAO reported to Congress that in the so-called "Top 100 cases" the Department had obtained $83.6 million in restitution and fine orders but it had collected only $365,000 in 55 cases ". . . or less than one half of one percent of the total amount ordered."[49] Once again, by presenting only a part of the picture, a distorted view emerged.

First, GAO's sampling technique was flawed because the sample it relied upon did not reflect the whole. GAO should have known (or asked and learned) that recoveries would, almost by definition, be very low in their sample, the Top 100 cases, for those cases were deliberately selected by the regulators on the basis that they suffered the most egregious losses and, therefore, offered the least chances of any recovery. Thus, to limit one's review, as GAO did, to such a small, unrepresentative sample and then to conclude that we are not aggressively collecting money was both unfair and inaccurate.

Second, to compound the problem, GAO not only relied on only a sample of their sample,[50] but is also, in the process, placed too much emphasis on figures GAO had been told were "soft." When PPT gave GAO the figures it was later to rely on, GAO was told they were preliminary and likely to be inaccurate because we were not requiring all field offices at that time to send us their collections data, so the only figures we had on hand came from offices that had volunteered them. By definition, those figures would not

be a good sample, for they did not reflect the whole.

Third, GAO's analysis contained an even more fundamental flaw, in that it did not take into account the fact that many of the Top 100 cases have legal and realistic barriers which blocked any chance for successful collections—uncollectible fines and restitution orders[51]—something which fairness dictated should have been taken into account in their analysis. Subtracting those cases from the sample totals has a dramatic impact and, more importantly, it presents a more realistic picture of the "real" outstanding debts and our efforts to collect them.

After the hearings, PPT, at the direction of the Special Counsel, searched for ways to draw an accurate picture of our performance. This required them to analyze a larger sample—all restitutions ordered since October 1, 1988, in all major FIF prosecutions contained in our database—including the Top 100 and the 59 cases. PPT found a collection rate of approximately 5 percent, a performance level significantly higher than that GAO reported.

What then is the true measure of our efforts? For openers, PPT found that $214.8 million in restitution had been ordered to be paid, and that the Department has recovered to date $21.9 million——a 10.23 percent collection rate. PPT also discovered that more than $33 million in other recoveries had been made.[52] PPT also found that more than half of the fines and restitutions in the 59 cases GAO studies, specifically over 65% ($140 million) of the restitution orders, were currently legally unenforceable—debts we were effectively barred by law from even trying to collect. Considering what was collected against what was legally collectible, our "collection rate" was really quite good—29.4%. This then is, in our view, a clearer and more accurate picture of what we have really achieved.

The many notable successes USAOs have had in recovering FIF restitutions and collecting fines bear us out. For example:

C.D. California—United States v. Janet McKinzie.—To maximize a USAO's ability to collect fines and restitutions, civil FIF AUSAs are co-assigned to major criminal FIF cases at the investigative phase. The AUSAs assist in the search for and identification of assets, and they help in the formulation of the most efficacious method of recovering the assets. The *McKinzie* case, discussed earlier, is an outstanding example of this cooperation which resulted in a full recovery of $13,445,369

C.D. California—United States v. Michael Parker, et al.—Concurrent with the indictment of Michael Parker and Jeffrey Worthy for their part in the collapse of Columbia Savings and Loan, the USA brought civil asset forfeiture cases against Worthy's home and Parker's home and a condominium he had fraudulently transferred to his in-laws. The Parker house is expected to sell for $1.8 million, but equally important, the seizure has been instrumental in the RTC's and OTS's ability to fashion a global settlement with Parker. Similarly, the USA's actions against Worthy have served as a linchpin in settlement of the RTC and OTS actions against him. A global settlement has been negotiated that provides he will disgorge all of his ill-gotten gains well beyond the value of the seized property. This is expected to be approximately $100,000 in excess of the $550,000 value of the property (including liens). Finally, a third defendant, Brian Fink, has pled guilty and the USAO intends to forfeit $400,000 that Fink obtained through the fraudulent scheme.

Massachusetts—United States v. Peter Regan.—The former Vice President of Shawmut Bank recently pled guilty to embezzling over $2.5 million, and he has agreed to make restitution to Shawmut in the amount of $2.568 million and to pay civil monetary penalties in the amount of $125,000.

S.D. Texas—United States v. Robert Cartwright.—A $500,000 fine was imposed and restitution in the amount of $842,310 was ordered to be paid by the defendant, who was convicted of submitting bogus mortgage application-packages to Williamsburg Savings Bank. As a result of a civil forfeiture proceeding, the defendant's house, valued at approximately $800,000, was seized by the government.

New Jersey—United States v. Wong.—Wong, an immigrant from Guyana, was employed as a low-level supervisor at First Fidelity Bank. In January 1992, the Bank discovered that Wong and others had embezzled approximately $2.5 million from the bank over a period of three to four years. Realizing the proceeds of this offense might quickly be transferred out of the country, two civil FIF AUSAs were assigned to trace and if possible, seize those proceeds. Within less than a week, seizure orders were obtained which froze approximately $700,000 in assets. During that week, it was learned that Wong was indeed preparing to travel to Guyana to invest some of the embezzled funds. An additional $330,000 in assets has been seized since that time.

South Carolina.—The USA initiated the first bank fraud forfeiture action in the country in which the proceeds were returned to the aggrieved financial institution. On April 8, 1991, $108,164 was transferred to Republic National Bank as a result of these forfeiture actions.

C.D. California—United States v. John Rollo—Rollo was used as a straw buyer by insiders to defraud the now-failed Brookside Savings and Loan Association. Rollo sent the USAO a check for $175,000 for restitution to the RTC at the inception of discussions regarding criminal prosecution. This money equaled the amount he received for his participation in the fraud. The check was forwarded to the RTC. Criminal prosecution has since been declined but the USAO is about to file a civil penalty against Rollo.

M.D. Florida—United States v. Carlos Yepes, et al.—Carlos Yepes and Robert Guzzo pled guilty in January 1992 to charges of submitting false statements and representations in commercial loan applications. Twelve properties purchased with these loan proceeds, valued at approximately $11,700,000, were seized by the USA in October and December 1990.

6.—What reporting systems exist to track collections of fines and restitutions?

One frustration managers with oversight responsibilities have experienced over the years is the absence of a Department-wide case management system that can efficiently and rapidly report on our performance.[53] Trying to develop this type of system within the Department has been a long-sought goal over the years, and presently EOUSA, the Civil Division and JMD are working through the Office of Special Counsel with the Office of Management and Budget (OMB) to develop just such a system.

Meanwhile, this need for such a system has resulted in a number of Departmental and Congressional initiatives over the past 10 years culminating in 1987 when Congress authorized a National Fine and Restitution Center (Center) within the Administrative Office of the Courts. Unfortunately, the Center was not funded until 1990, and then only partially. Once operational, it will be a giant leap forward both in standardization of collection methods and generating data. We in the Department have worked on the national level with the Administrator of the Courts on this project and locally with courts and probation authorities to ensure proper collection of debts owed the United States.

We are pleased to report that, notwithstanding its short life thus far, the development of the National Fine Center is proceeding apace in the first pilot district and is expected to be operational in all five pilot districts in May 1992. Space has been allotted in the building housing the United States District Court in the Eastern District of North Carolina, a staff hired, computer equipment purchased, and most of the software required completed.

In addition, a task force made up of representatives from five USAOs, the United States Probation Offices and the Clerks of the Court of the five pilot districts met regularly throughout the past year to discuss various aspects of the operation, such as recordkeeping, interest calculation procedures, notices to criminal-fine debtors, and various other reports which will be required. The representatives also met to establish procedures which would enhance criminal debt collections and meet the needs of both branches of government. On October 23, 1991, the task force witnessed a demonstration of the center's systems, including an automated judgment and commitment order process. The headquarters of the Center in North Carolina is currently operating at an 80% level and it is expected to be totally online in May. The remaining pilot districts, the Western District of Missouri, the Eastern District of Pennsylvania, and the Southern and Western Districts of Texas will be brought on-line thereafter and the National Fine Center operation is projected to be expanded nationwide during 1993 and 1994.[54]

The Department is also working with the Administrator of the Courts, the Probation Department, the regulatory community and victims groups to develop and implement a standardized restitution order which we will ask the courts to adopt or Congress to require by statute for use once the Center is fully operational. Through the use of the standardized order, all restitution and fines will be payable through the Center which will then track and report on collections every month, in the aggregate and by case, and disburse the monies to the appropriate "victim."

Unfortunately, until the Center becomes operational nationally, there is currently no automated, centralized data collection system. In the meantime, improved coordination with the regulators has produced a more systematic, albeit admittedly incomplete, reporting mechanism.

Another factor affecting our record-keeping ability is the Criminal Fine Improvements Act of 1987, Pub. L. No. 100-185 which transferred responsibility for receiving criminal fine and assessment payments from the Department to the courts. In addition to receiving these payments, the clerks of the district courts are required to (1) include certain information in all judgments or orders imposing, modifying or remitting a fine of more than $100 (18 U.S.C. §3612(b)(1)), (2) transmit to the Attorney General a certified copy of all judgments or orders imposing, modifying or remitting a fine of more than $100 (18 U.S.C. §3612(b)(2)), and (3) notify the Attorney General of each receipt of a fine payment in a case in which the fine imposed

is more than $100 (18 U.S.C. §3612(a)). The 1987 Act also added 28 U.S.C. §604(a)(17) which requires the Director of the Administrative Office to establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments. Finally, to facilitate the payment of court-ordered restitution, the 1987 Act amended 18 U.S.C. §3663(f)(4) to authorize a person designated by the director pursuant to 28 U.S.C. §604(a)(17), to receive and disburse restitution payments.

7.—What other problems, if any, are encountered in tracking collections?

One problem mentioned in the PPT Report is the role of private counsel who represent private victims. A surprisingly high percentage of the cases surveyed by PPT had restitution ordered directly to the victim. When private victims collect, there is no mechanism by which those collections are reported to *any* government source. Thus, restitution was ordered to be paid through or to USAOs in just 10% of the 59 cases reviewed and in 15% of the Top 100 cases reviewed. In the other cases studied as part of the Top 100 and 59 case studies, restitution was payable to or through the victim institution (35 percent of 59 Cases and 20.7 percent of Top 100 cases), the regulators (44 percent of 59 Cases and 32.08 percent of Top 100 cases) or the court clerks/probation department (11 percent of 59 Cases and 32.08 percent of Top 100 cases).

Historically and up until 1985, the Clerks of the Courts were responsible for receipting payments made by defendants on criminal fines and restitution. However, the Criminal Fine Enforcement Act, as enacted by the Congress in 1984, placed responsibility with the Attorney General for receipting payments on any criminal fines imposed on or after January 1, 1985. Further, the Act amended the 1982 VWPA to provide that restitution could be paid directly to the victim or to the victim through the Attorney General. Under the Act, however, responsibility for receipting payments on restitution ordered or fines imposed prior to January 1, 1985, remained with the Clerks of the Courts.

In 1987, statutory responsibility for receipting criminal fines again changed. The Congress, both through the Sentencing Reform Act, which was enacted in 1984 but not effective until November 1, 1987, and the Criminal Fine Improvements Act of 1987, returned responsibility for receipting payments on any criminal fines or assessments, regardless of the date imposed, to the Clerks of the Courts, effective May 1, 1989. Neither Act, however, specifically addressed responsibility for the receipting of restitution payments.

Another problem we face is that, when we try to calculate the amount a financial institution lost, we often find the "loss figure" is not a particularly "hard" number. For instance, as part of the ongoing refinement of its database,[55] the EOUSA's PPT recently discovered that the $10.7 billion figure we reported in our First Quarter Report included the *total* loss in the Lincoln Savings matter not once but twice. The $2.5 bilon loss associated with the failure of that institution had originally been reported as part of the Ernest Garcia prosecution but it was erroneously added a second time when the Central District of California indicted Charles Keating and his associates.

Thus, the corrected loss figure for S&Ls is $8.2 billion, with $4.7 billion of that figure in pending cases, that is, cases where no sentence has yet been imposed.

The Lincoln case is also an example of where the loss figures we report often include the regulators estimate of the total loss to the institution associated with the prosecution and not the figure which courts would legally base restitution upon—the loss or gain as a result of the charged crime(s). It goes without saying that the loss-charged figure is also not necessarily the same amount that a jury convicts on, particularly when a jury convicts a defendant on only a portion of the charges.

According to the latest figures available from PPT, the estimated loss for all sentenced S&L cases through March 31, 1992 totals $3,844,830,772. Restitution ordered in sentenced S&L cases through March 31, 1992 is $397,242,208 (this number also decreased from the December 31 database figure due to corrections regarding joint and several judgments). Therefore, restitution ordered amounts to roughly 10% of the reported loss figure in sentenced S&L cases. Again, one must keep in mind that the loss figures we report often include total estimated loss to the institution and not just the loss that was charged in the indictment or the loss attributable to criminal activity. While we enjoy a 96% conviction rate, we do not always obtain convictions on all counts. And even where we do, judges do not always impose the restitution we are seeking.

A dramatic example was the Don Dixon case. In *Dixon*, the prosecuting office reported a loss of $41 million. At sentencing, we sought $33.7 million restitution, based upon what we believed Dixon had cost the institution. However, the judge imposed only $611,200 in restitution, at a payment rate of $1,000 per month, based on his decision to limit restitution to the particular transactions charged and proven. The ratio between what was lost and what was recovered in that case is not what we wanted, but it is not for want of effort.

Another major reason there is presently no accurate method for calculating collections is because of the different ways courts order collections to be made. The Special Counsel is working with the regulatory community, the Administrator of the Courts, the Probation Department and OMB to secure full operations in the National Fine Center. The Senior Interagency Group recently adopted the Special Counsel's proposals for a Working Group effort to draft policy guidelines to enhance collection coordination and data collection. While we believe the "rates" will go up with improved reporting, we still believe as Congressman Pickle observed "[W]e are not going to make much money off these cases. About the best we can hope for, we might send some of them up the river."[56]

8.—What is being done to maximize the Department's performance?

We are currently exploring ways to use temporary "write-offs of bad debt" so we can measure our effectiveness more accurately. To do that, we are working with Associate Deputy Attorney General Judge Timothy Murphy[57] to coordinate with the Office of Management and Budget to enable us to issue guidelines for a system which would classify FIF debt into sub-categories of (1) legally and realistically collectable and (2) legally or realistically uncollectable debts. Then, as to those debtors in the latter category, after they are released from prison, or at the conclusion of an appeal and removal of any stay, or any other significant change in the defendant's financial status, the debt would need to be reviewed to see if it should be reclassified into the first category.

Without a national database, we would normally not be able to report on any collections that were made; however, in the summer of 1990, then Special Counsel Jim Richmond developed the first reporting system for major S&L prosecutions—a hand-count system—which proved to be a significant reporting breakthrough that was first published in September 1990. During the tenure of the present Special Counsel, we have greatly expanded the system he developed.

By June 1991, the FIF tracking system was able to track current year major bank and credit union prosecutions in addition to S&L cases beginning in fiscal year 1989. With our Fiscal year 1991 Report in September, we expanded the system again to report on all major FIF prosecutions for FY 1989–1991. Additionally, we have worked with the regulators to improve collection reporting. For instance, within the last year, the FDIC has begun computerized tracking of restitution and judgments owed, though collections data is not yet completely reliable because of the various accounting methods by which fee counsel transmit monies collected. The RTC is also working closely with EOUSA through the Core FIF Units to develop a comprehensive accounting system for its judgments and "collectibles." Preliminary studies by RTC reveal the amount collected on restitution orders payable to RTC in criminal cases to be approximately $4.2 million of $67.4 million ordered—or about 6.3 percent.[58]

Another problem we are addressing is the barrier to accuracy caused by the use of different accounting systems by various components of the FDIC and RTC. Even after we integrate their internal systems which are now in place, the risk of double counting recoveries reported to their central repository and ours prevents a statistically-reliable analysis of what has been recovered, and the problem will remain unless we can resolve it before our systems become operational.

Other efforts are underway to enhance collection efforts in all of the Department's programs, and in the FIF area in particular. In August 1991, then Acting Attorney General William P. Barr approved reprogramming of 30 civil slots to 8 field offices to establish pilot programs for application of affirmative civil litigation and collection techniques. Those offices are nearly fully staffed and we are beginning to see and report on the fruits of their labor.

Additional recent enhancements of our collection effort include (1) completion of the first round of civil FIF training seminars in mid-March, (2) reprogramming of ten support positions to augment the 30 attorneys reprogrammed last August—the support staff will implement improvements in collections and tracking of information, and (3) modification of our monthly FIF reporting form to gather more complete and accurate collections data.

As part of that effort, the Special Counsel asked the Senior Interagency Group to consider formalizing a national policy on restitution orders payable to the bank and thrift regulatory agencies ("regulatory agencies") which (1) gives the regulatory agencies input into the restitution-setting process, (2) attempts to give the regulatory agencies access to defendant asset information in the pre-sentence process to the extent courts will grant access under Rule 32 of the Federal Rules of Criminal Procedure pursuant to our joint motion, (3) develops procedures which aids the regulatory agencies by automatically reducing restitution orders to collectible judgements, (4) provides notice to the regulatory agencies of the release of prisoners to facilitate collections, and (5) provides for the uniform reporting of collections by the regulatory agencies back through the Department to Congress.

The policy was adopted, and the Interagency Bank Fraud Enforcement Working Group is developing the procedures within 60 days for review by the Senior Interagency Group. Once the procedures are approved by the Senior Interagency Group, the Special Counsel will ask EOUSA to distribute them to the USAs and the regulatory agencies to distribute them to their field offices and divisions, both for immediate implementation.

In addition to the very thorough and comprehensive collection techniques set forth in the USA districts' Financial Litigation Plans and Joint Procedural Guidelines mentioned above, a number of other innovative techniques have been developed by them to maximize recoveries:

Because pre-sentencing collections offer by far the greater potential for the actual recovery of funds or assets, the primary focus for many offices has been in that area. AUSAs responsible for the investigation of criminal FIF matters ensure that the investigating agencies make adequate efforts to ascertain what assets are potentially available for restitution and forfeiture. Where the potential for locating such assets is significantly great, a civil FIF AUSA is often assigned to the case at an early stage and is involved thereafter in all aspects of the case which bear on any potential recovery. This approach has been especially successful in securing assets which, in all likelihood, would otherwise have been hidden or dissipated.

Provisions are made in plea agreements for the payment of fines and restitution. As part of the plea agreement, a financial statement form is given to the defendant to complete, and it is then provided to the probation office and the Financial Litigation Unit. Failure to complete the financial statement and make it available can be held to be a breach of the agreement.

In plea negotiations with a FIF defendant who possesses meaningful assets, the government will often seek a provision in the plea agreement which obligates the defendant to surrender assets or to conserve assets which could be used to make restitution. This provision can take a variety of forms, such as an agreement to forfeit assets or an agreement not to oppose a subsequent restitution order.

The plea approval process must not only identify the defendant's assets, but must also include a plan for the collection of restitution. The focus of the plan must be on collecting as much of the restitution as possible between plea and sentencing and obtaining a secured interest in those assets which cannot be transferred easily. Only those defendants who have accounted for all their assets will have their offer to plead guilty accepted.

An inter-office plea bargain memorandum is presented to a screening committee before a plea is taken, and prosecutors are required to confer with the Financial Litigation Unit and/or the Affirmative Litigation AUSA regarding damages: (1) to negotiate the ultimate amount payable at sentencing, (2) to determine the best manner in which any remaining amount shall be paid, and (3) to determine whether restitution should be pursued in lieu of a civil action. Repayment terms are included in the plea agreement.

Polygraph examinations are to locate assets and to determine whether the defendant has lied about them.

All possible financial information is shared with the Financial Litigation Unit. In order to avoid an improper disclosure of grand jury material, AUSAs are directed to make this information a part of the record at the time of sentencing. The Attorney General's Guidelines on the use of Grand Jury information are followed in the process. The Guidelines include both a model motion and a brief that can be used to get grand jury information for use in a civil proceeding on the showing of a "particularized need."

A memo of understanding has been developed between the Collections Unit and Criminal Division which outlines the duties and responsibilities of all parties regarding the collection of restitution and fines.

Use of 18 U.S.C. §982(b)(1) allows the government to restrain property pending the investigation of the crime and enjoin the owners and possessors of it from removing it or obtaining it.

Use of 18 U.S.C. §982(b)(2) allows the government to get substitute property for the "proceeds property" that has previously been dissipated, used, hidden, taken or lost to forfeiture. Thus, property which may not be the proceeds of the violation but which could satisfy the debt can be restrained to be made available later for the government to satisfy any restitution.

Judgment and commitment orders are being written less restrictively by the courts, i.e., the payment of fines and restitution are not limited to repayment during the time of supervised release, but instead are due immediately so collection efforts can start right away.

Upon release of a defendant from incarceration, a letter is sent to the Probation Office to facilitate the Probation Office's responsibility to ensure the defendant is making payments of the ordered restitution or fine. A letter is also sent to the entity or person entitled to restitution notifying them that the defendant has been released and providing the name of the probation officer to contact for assistance in collection of restitution.

Where restitution is due, the U.S. Probation Office has instituted a policy whereby a defendant who has not satisfied a restitution order is to report to the restitution recipients before the termination of probation to enter into a promissory agreement which requires the defendant to continue making restitution payments past the probationary period. In certain instances, the Collections AUSA, at the request of Probation, drafts a Consent Agreement for the defendant to sign to enter into a payment schedule.

The use of a Temporary Restraining Order (TRO) under the provisions of 18 U.S.C. §1345(a)(2) will prevent the defendant from disposing of property obtained through the commission of the underlying violation or traceable to it. This can preserve assets for collection after a judgment is rendered.

Use of Sections 3303-3308 of the Federal Debt Collection Procedures Act allows for setting aside transfers of a debtor's property which may be considered fraudulent.

Establishment of a District Bank Fraud Working Group. A training program is being developed for local financial investigations from entities such as FDIC, OCC, RTC, OTS, FBI and IRS. The focus of the training is to provide instruction in discovery of potential fraud to those who would be most likely to uncover it initially, such as bank examiners.

Training seminars are conducted with the Clerk's Office and Probation Office. These joint seminars emphasize the need for a coordinated approach among the three agencies toward the collection of fines and restitution.

Creation of a Collection Working Group, composed of supervisory personnel from Pretrial Service and Probation offices as well as FIF and forfeiture attorneys, paralegals, and the head of the collection unit. As a result of the workings of this group, a number of actions have taken place. Prosecutors encourage agents assigned to their cases to make a written log of all assets uncovered during any investigation. This information, to the extent allowed by law, is then made available to the Pretrial Services Office and forfeiture personnel within the USAO. The Pretrial Services Office is asked to request that each defendant complete a personal financial form, like the financial statement form mentioned earlier, at the first meeting with a Pretrial Service Officer. The asset information developed in the course of the investigation and the personal financial form can be utilized by the Pretrial Service Officer to assist in making recommendations relative to bond. Pretrial Services is then requested to forward a copy of the asset information and personal financial form to the Probation Office. The Probation Office will then use this assets information and the financial form to identify assets in connection with preparation of the Presentence Investigation Report (PSI). The Probation Office will also look into the possibility of bringing to the attention of the prosecutor any questionable financial dealings uncovered while developing the PSI. Finally, the Probation Office has agreed to consider incorporating all asset information into the PSI so that the collection unit at the USAO will have it available for its collection purposes.

CIVIL PENALTIES

Another aspect of our collections efforts, this time involving civil penalties, began on October 1, 1991, when three districts established civil penalties enforcement pilot projects: the Middle District of Pennsylvania, the Western District of New York; and the Central District of California. The projects have been in operation for nearly six months and the districts have filed their first reports.

The Middle District of Pennsylvania set $2.25 million as a fiscal year 1992 goal. To date, it has collected over $3 million in affirmative civil enforcement claims. A total of $1.5 million was recovered from the Allied Services of the Handicapped and the John Heinz Institute for Rehabilitation which repaid fees totalling $1,525,347 they collected which were overpayments. Additional payments were received from the Lower Bucks Hospital ($58,000) and the Berwick Hospital ($41,000).

The district has 32 cases presently under consideration, investigation or in litigation; they include violations of the Clean Water Act, violations of the False Claims Act, defense procurement fraud, bank fraud, black lung benefits fraud, mail fraud, and a number of Medicare/Medicaid fraud cases.

The Western District of New York has 28 cases under consideration, investigation, or in litigation as of March 12, 1992, with a total possible value of $12 million. They involve health care fraud, defense procurement fraud, False Claims Act, and violations involving Transportation, Agriculture, Small Business Administration, Environmental and Defense Department programs. Although no money has been collected thus far, a settlement worth between $3 and $5 million may be forthcoming within the next few weeks.

The Central District of California has settled six cases for a total amount of $681,011.29. These settlements range from $5,000 to over $300,000. The district has two attorneys committed to affirmative civil enforcement litigation.

There are presently 18 cases under investigation or in litigation, and they involve DEA diversion of controlled substances record-keeping, retail fuel overcharging, Public Health Service loans, *qui tam* False Claims Act, and Small Business Administration loans.

9.—What legislative changes are needed?

USAO attendees at the February 26th meeting mentioned earlier were canvassed for any suggestions they had for legislative changes they believed would help them recover more losses. The following are some of their thoughts which we are considering:

1. Amend Title 18, United States Code §3615 to read:

(A) Whoever, having been sentenced to pay a fine or restitution, willfully fails to pay the fine or restitution, shall be imprisoned for not more than five years and fined not more than twice the amount of the original fine or restitution order.

(a) The obligation to pay a fine or restitution shall cease only upon the death of the defendant or satisfaction of the obligation.

(1) A prosecution for violation of Section (A) may be commenced by the United States at any time prior to death of the defendant or satisfaction of the obligation.

(b) Any person or organization designated in the judgment and conviction order as the recipient of restitution shall, upon such terms as are established by the court, be entitled to conduct citation of asset proceedings, including the taking of sworn testimony.

2. Amend 18 U.S.C. §981 to eliminate the "proceeds" requirement.

3. Amend 12 U.S.C. §1833(a) to provide for the issuance of a Temporary Restraining Order upon application of the United States and filing of a verified complaint.

4. Extend use of administrative subpoenas to investigations in contemplation of civil FIRREA forfeitures, similar to provisions of 12 U.S.C. §1833(a).

CONCLUSION

For all of these reasons, we disagree with the suggestion by GAO that we are overlooking or, worse yet, ignoring cases where there is money available to be collected. In the main, we have done the job we set out to do—by one measure even better than expected or forecasted—nevertheless the Department will continue to strive to improve our performance in the future. The Department is firmly committed to doing its level best to collect every dollar in fines and restitution possible, and Congress can be proud of the successes achieved thus far utilizing the tools that Congress helped provide.

FOOTNOTES

[1] Associate Director Harold Valentine.

[2] Several of the numbers in this Report are different than those in the Report to the Acting Deputy as PPT continues to refine the database and we wish to provide Congress with the most up to date and accurate information possible.

[3] "Major" is defined as a case where (a) the amount of fraud or loss was $100,000 or more, or (b) the defendant was an officer, director, or owner (including shareholder), or (c) the schemes involved multiple borrowers in the same institution, or (d) other major factors were involved.

[4] In the summer of 1990, former Special Counsel Jim Richmond worked with the regulators to prioritize the most significant regulatory referrals for stepped-up enforcement action. The effort produced a list of the "Top 100" savings and loans victimized by financial institution fraud. As of March 30, 1992, 62 of these institutions have been named as victims in prosecutions brought by the Department of Justice in cases against 289 defendants.

[5] These will be referred to herein as "the 59 cases."

[6] If restitution is not ordered, a court must explain why.

[7] Only three (3.7%) of the 59 cases and four (7.55%) of the "Top 100" were based, primarily, on the defendant's present ability to pay.

[8] One such undertaking is running "Reward: Information About Financial Institution Fraud" advertisements. Most recently, on March 9 and 10, 1992, advertisements were run in newspapers in Dallas, Houston, Chicago, New York, Los Angeles, and Boston.

[9] Kaye, Scholer, Fierman, Hays, and Handler.

[10] A number of prisoners are paid for working in prison industries while they are incarcerated.

[11] The case has been appealed to the United States Court of Appeals for the Third Circuit.

[12] Because of the way that Congress defined "debt" within this Act, it has generally been assumed that the Justice Department could facilitate the collection of private debt but could not invoke the procedures of the FDCPA to collect that debt. The legislative history seems to support that interpretation so that even debt payable to the bank regulators could not be collected by Justice through the Debt Collection Act.

[13] "Civil cases must be not be given priority over criminal cases." Barnard Committee Report on Government Operations, October 13, 1988, page 98.

[14] Representative J.J. Pickle, Chairman during "RTC's Operations and Progress in Resolving Insolvent Thrift Institutions," Hearing Before the Subcommittee on Oversight, House Committee on Ways and Means, February 27, 1990, p. 130.

[15] On February 26, 1992, FIF Coordinators, Criminal Chiefs, and Financial Litigation Unit Chiefs—prosecutors with, collectively, over 300 years of experience in prosecuting criminal cases—from districts in which the Top 100 and 59 cases and been indicted gathered in Alexandria, Virginia, to discuss the status of restitution collections in these cases. The attendees provided background as to the actual availability or, more frequently, the lack thereof of funds from convicted defendants, and they reiterated their support for requesting loss-based restitutions in the hopes that defendants will have the ability to pay in the future.

[16] "Fraud and Abuse by Insiders, Borrowers, and Appraisers in the California Thrift Industry," Hearing Before the Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, U.S. House of Representatives, June 13, 1987, p. 199.

[17] Barnard II, "The U.S. Government's War Against Fraud, Abuse, and Misconduct in Financial Institutions: Winning Some Battles But Losing the War," Report of the House Committee on Government Operations, November 15, 1990, p. 28.

[18] Supra at 97.

[19] Supra at 98.

[20] Supra at 91.

[21] Statement of Edward S.G. Dennis, Jr., note 21, *supra*, at p. 328. While we have attempted to carry out these mandates by focusing our efforts on the task of criminal prosecutions, the Office of the Special Counsel has, in response to expressions of congressional concern, also helped to begin to transform the relationship between criminal and civil forces to provide a new emphasis on monetary enforcement on a parallel track.

[22] He was speaking to former Attorney General Thronburgh.

[23] Barnard I, "Combating Fraud, Abuse, and Misconduct in the Nation's Financial Institutions: Current Federal Efforts are Inadequate," House Committee on Government Operations, October 13, 1988, p. 97.

[24] *Supra* at 84–85.

[25] "Problems of the Federal Savings and Loan Insurance Corporation," Part I of IV, Hearing Before the Senate Banking, Housing, and Urban Affairs Committee, February 9, 1989, p. 317.

[26] Hearing on Resolution Trust Corporation's Operations and Progress in Resolving Insolvent Thrift Institutions, Subcommittee on Oversight, House Committee on Ways and Means, February 27, 1990.

[27] "Problems of the Federal Savings and Loan Insurance Corporation," Part I of IV, Hearings Before the Senate Banking, Housing, and Urban Affairs Committee, February 9, 1989, p. 306. See Also, "Thronburgh Sees Thrift Fraud Epidemic," "The Washington Post," April 24, 1990, p. D56; "The Wall Street Journal," April 24, 1990, p. B4; Thornburgh News Conference, July 11, 1990; "Savings and Loan Fraud," Hearing of the Senate Judiciary Committee, July 24, 1990, pp. 42–44; "Fraud in America's Insured Depository Institutions," Hearings Before the Senate Banking, Housing, and Urban Affairs Committee, August 2, 1990, pp. 186–87, 222; Guest Editorial, "U.S. Government is Going After the Savings-and-Loan Cheats," "The Philadelphia Inquirer," September 2, 1990, p. 7.

[28] "Savings and Loan Fraud," Hearings Before the Senate Judiciary Committee, July 24, 1990, pp. 42–43.

[29] Hearing on Resolution Trust Corporation's Operations and Progress in Resolving Insolvent Thrift Institutions, Subcommittee on Oversight, House Committee on Ways and Means, February 27, 1990.

[30] Statement of Edward S.G. Dennis, Jr., Assistant Attorney General, Criminal Division, Department of Justice, "Federal Efforts to Combat Fraud, Abuse, and Misconduct in the Nation's S&L's and Banks and to Implement the Criminal and Civil Enforcement Provisions of FIRREA," Hearings Before the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations, March 15, 1990, pp. 327–28. See Also, "The Progress of Investigations and Prosecutions of Savings and Loan-related Fraud Cases," Hearing of the House Banking Subcommittee on Financial Institutions, Supervision, Regulation, and Insurance, June 28, 1990, p. 101.

[31] "Legislation Related to S&L Fraud Investigations," Hearing of the House Judiciary Criminal Justice Subcommittee, July 11, 1990.

[32] Ibid.

[33] "Chasing S&L Assets: A Frustrating Cat-and-Mouse Game," "The Washington Post," December 26, 1990, pp. A1 & A6.

[34] "Little of $100 Billion Loss Can Be Retrieved," "The New York Times," February 20, 1992, p. D7.

[35] "U.S. Acts to Learn if Keating Has Millions For Restitution Months After S&L Failed," "The Wall Street Journal," August 10, 1990, Page A12. See also, Litan, "Savings and Loan Crisis," Hearings Before the Senate Judiciary Committee, Chicago, Illinois, August 14, 1990, p. 30.

[36] "Little of $100 Billion Loss Can Be Retrieved," "The New York Times," February 20, 1992, p. D7.

[37] "S&L Fraud," "The Washington Post," April 15, 1990, p. A16.

[38] "U.S. Finds It Tough To Establish Crimes In Savings & Loan Mess," "The Wall Street Journal," June 26, 1990, p. A1.

[39] "Chasing S&L Assets: A Frustrating Cat-and-Mouse Game," "The Washington Post," December 26, 1990, p. A6.

[40] "Little of $100 Billion Loss Can Be Retrieved," "The New York Times," February 20, 1992, p. D7.

[41] Again, it is important to keep in mind when considering GAO's position that restitution orders were based primarily on the defendant's present ability to pay in only three of the 59 cases and in only four of the Top 100 cases.

[42] 18 U.S.C. §3664.

[43] Courts have held on a number of occasions that it is proper to order a defendant who is indigent at the time of sentencing to pay restitution. *United States* v. *Angelica*, 951 F.2d 1007, 1009 (9th Cir. 1991) and to consider future ability to pay. *United States* v. *Smith*, 944 F.2d 618, 623 (9th Cir. 1991). Courts are not required, though, to make any explicit findings as to a defendant's present ability to pay. *United States* v. *Barndt*, 913 F.2d 201, 204 (5th Cir. 1990). Rather, explicit findings must be made only in those cases where the court does not order restitution. *United States* v. *Arvanitis*, 902 F.2d 489, 496 (7th Cir. 1990) and cases cited therein.

[44] Barnard I, at p. 97.

[45] As explained later, we are currently doing better than this today.

[46] Supra at 84–85.

[47] "Chasing S&L Assets: A Frustrating Cat-and-Mouse Game," "The Washington Post," December 26, 1990, p. A6.

[48] "Little of $100 Billion Loss Can Be Retrieved," "The New York Times," February 20, 1992, p. D7.

[49] See Written Testimony, p. 17.

[50] In all fairness, I should point out that GAO was not alone in its practice. We were equally disappointed recently when we received a House Banking Committee Staff Report purportedly analyzing the 59 cases only to find that the Report was based on just 19 of the cases.

Like GAO, the Staff Report criticized the Department for having a low (1%) restitution collection rate when, if all the cases had been studied, they would have found we had a 10.7 percent collection rate, well above that predicted earlier. The Report also said we had collected only $368,775 when, if all of the cases had been reviewed, the staff would have discovered that we had collected almost $22 million in court ordered restitution and there had been an additional $33 million in other recoveries.

Also, in a number of the cases, restitution could not be recovered because payment was stayed as a

condition of probation and the defendant was still incarcerated or it was stayed pending appeal. Factoring those out, and looking at just those cases where restitution was legally collectible, the collection rate was actually 29.4 percent.

Despite what we believe to be this unfairness in the Staff Report, we are nonetheless in substantial agreement with the Recommendations of the Staff Report.

[51] As mentioned earlier, for purposes of this analysis, a legally uncollectible restitution order includes those that are stayed pending appeal or are stayed until probation and the defendant is incarcerated. Realistically uncollectible orders would include those cases where the defendant is a fugitive and those where the defendant has declared bankruptcy and attempts at collection would be expensive and futile for there are obviously no remaining assets.

[52] Civil recoveries in the Ramona case from co-defendants Don Mangano and John Molinaro include cash received from Mangano and related persons—$998,175.35, cash received from Molinaro and related persons—$4,026,502.98, cash received from others—$297,576.54, and 3 pieces of property recovered and sold—$20,563,000.00. There are also potential recoveries that need to be taken into account. They include 12 pieces of property recovered but not yet sold which are worth more than $2 million, a secured promissory note (Mangano)—$60,000.00, pending claims (bail for Mangano and an overpayment to his attorney)—$548,011.97, and pending litigation against (a) an accounting firm and (b) an insurance firm—$11,000,000.00.

[53] We face a similar problem when we are asked to generate accurate figures on the amount of fines and orders of restitution that have been collected nation-wide by all the components of the entire federal government.

[54] A relatively modest expenditure of funds could accomplish this within two years but the funding is contingent on our achieving certain cap levels in the VWPA. Funding alternatives are being explored by the Special Counsel and other Department components, in conjunction with the Administrator of the Courts and OMB.

[55] A number of members of Congress, and particularly Senators Dixon and Bryan, have helped to sharpen our focus on the kinds of information Congress would like us to provide. Their efforts have given us very helpful and constructive guidance on how our databases should be refined, and for that we are very grateful.

[56] Representative J.J. Pickle, Chairman during "RTC's Operations and Progress in Resolving Insolvent Thrift Institutions," Hearing Before the Subcommittee on Oversight, House Committee on Ways and Means, February 27, 1990, p. 130.

[57] After the Attorney General delegated authority for all Department-wide debt management activities to the Office of the Deputy Attorney General, Judge Murphy was appointed in December of 1990 as Associate Deputy Attorney General for Financial Litigation to establish Department-wide debt collection policy, provide appropriate oversight, coordinate statistical reporting, and monitor collection activity throughout the Department.

Judge Murphy works closely with the Department's program components, litigating divisions, and the Executive Office for United States Attorneys in activities such as implementing the FDCPA and addressing debt collections and affirmative claim litigation. He also focuses on providing Department-wide guidance in establishing the overall goals and objectives for the development of component and U.S. Attorneys Offices' Financial Litigation Plans and addressing key issues to facilitate debt collection management, particularly through coordination with client agencies and enlisting voluntary compliance.

Judge Murphy chairs a Financial Litigation Working Group, comprised of representatives from each Department of Justice component with affirmative claim litigation and debt collection functions.

[58] RTC's collection figure includes amounts collected by the Department of Justice and amounts paid directly to RTC. At the present time, these amounts are not tracked separately so that accurate totals cannot be drawn by adding amounts reported through Justice and those presently reported by the regulators. We are currently working towards a system that would separate the two so we can get an accurate, overall picture.

TRIBUTE TO BENJAMIN LAWSON HOOKS

Mr. SPECTER. Mr. President, on June 26, 1992, the Holsey Temple Christian Methodist Episcopal Church in the Germantown section of Philadelphia, PA, will pay tribute to Benjamin Lawson Hooks, executive secretary of the National Association for the Advancement of Colored People [NAACP].

This estimable church joins a long list of laurel-bearers for Mr. Hooks, who in his lifetime has established a tremendous record of public service. He has been a lawyer, a public defender, a judge, a Federal official, a pastor, and a civil rights leader. In all he has done and tried to accomplish, he has been a man of good will who has done the best he could, within the ambit of his considerable talents, for his fellow men and women. By any fair measure, he has succeeded greatly.

To someone who does not know Mr. Hooks, this praise might seem fulsome. To those who know him and are aware of his accomplishments, it is richly deserved.

He is one of whom the term, "Renaissance Man," may be aptly applied, that is, someone whose abilities are so diversified that he may enter many disciplines and succeed in all of them. So it has been with his efforts in the law, both in defending the accused and in judging them; in public and private administrative work; in the fields of civil rights, philanthropy, and social organization.

But Mr. Hooks' crowning achievement, I believe, has been as an eloquent spokesperson for those in our society who, for whatever reasons, have been neglected, left behind, left out or mistreated. He has championed their cause with all the energy and righteous indignation at his disposal. He has fought their battles, won many victories, suffered few defeats and continued to nobly espouse their cause over a lifetime of unstinting labor.

It is fitting, therefore, that the U.S. Senate join with the Holsey Church in paying tribute to a great American who has given his entire life to helping the less fortunate in our society.

THE 20TH ANNIVERSARY OF TITLE IX'S PROHIBITION ON SEX DISCRIMINATION IN EDUCATION

Mr. KENNEDY. Mr. President, today marks the 20th anniversary of the enactment of title IX of the Education Amendments of 1972, the law that prohibits sex discrimination in any education program receiving Federal funds.

This auspicious anniversary is a time to reflect on how far we have come—and how far we still have to go. The Nation has made a great deal of progress since that day in 1971 when a judge in Connecticut ruled that a high school student named Susan Hollander could not compete on the boys' cross country team because, as the judge said, "athletic competition builds character in our boys. We do not need that kind of character in our girls."

A year later, an outraged Congress passed title IX to stop that kind of unacceptable discrimination. In the years since then, title IX has been effective in rooting out sex discrimination in all aspects of education, but its impact on women's sports has been especially profound.

The past two decades have brought phenomenal growth and success for women's sports programs across this country. The number of women participating in athletics has risen dramatically, and so have the funds for women's athletic programs.

Women are also finally reaching positions of power in sports—and not just on the playing field. Judy Sweet is president of the NCAA and Susan O'Malley is president of the Washington Bullets.

Another significant legal milestone was reached earlier this year in the case of Franklin versus Gwinnett County Public Schools, when the Supreme Court ruled that monetary damages may be awarded in title IX cases where intentional discrimination is proven.

But there is still a large distance to go. Less than half the coaches of women's college teams are women. Less than 20 percent of women's athletics programs are headed by women. Ironically, title IX's success is partly to blame for that gap, by making those leadership positions more attractive to men. We need to do more to resolve that inequity. There is no more justification for a glass ceiling in women's sports than in any other profession.

The progress has not always been steady. Title IX suffered a setback at the hands of the Supreme Court in the Grove City College Case in 1984, when the Court, in an excessively restrictive interpretation, ruled that particular programs at a university could continue to discriminate if the particular program did not receive Federal funds, even though other parts of the university received such funds. It took Congress 4 years to pass a bill over President Reagan's veto to correct that mistake by enacting new legislation. That victory, in turn, was instrumental in inspiring us to pass the Civil Rights Act of 1991, which is launching a new era of equal opportunity in the workplace for millions of women and minorities.

An eloquent recent column by Judy Mann in the Washington Post describes the success of title IX. She quotes Tammi Reiss, a recent graduate of the University of Virginia and the second all-time leading scorer in women's basketball:

Athletics is part of me. It shapes my character. It contributed to me doing well in

school. It gave me determination and a sense of competition in the classroom where I could compete with my classmates. Athletics molded me, and it made me the young woman I am today in other aspects of my life.

Tammi Reiss speaks for millions of young women who have benefited from title IX and its prohibition on sex discrimination in education. In an era when many observers criticize Government for failing to come to grips with the serious challenges we face, it is worth pausing to mark the outstanding success of title IX.

I ask unanimous consent that Judy Mann's column and a recent article by Malcolm Moran in the New York Times, may be printed in the RECORD.

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

[From the Washington Post, June 19, 1992]

A LEG UP FOR THE UNDERDOGS

(By Judy Mann)

When Tammi Reiss was in the fourth grade, she got into trouble during intramurals. Her teacher sent her to the gym and introduced her to basketball, a game he had played in college. They ended up playing for hours every day.

"I fell in love with it," she recalled. "He said I could earn a scholarship and go away and play. And that's what I did."

By the time Reiss graduated from high school in Eldred, N.Y., she was the all-time leading scorer in the state. "All New York," she said. By that, she means girls and boys.

Reiss can remember her record easily because the "Welcome to Eldred" signs announce that the town produced a young woman who scored 2,871 points during her high school basketball career. What makes it all the more impressive is that Reiss is only 5 feet 6 inches tall.

My sex's answer to Spud Webb? Hardly. To compare Reiss to someone else does her a disservice. She is her own original, complete, together 22-year-old woman.

Reiss just graduated from the University of Virginia, where she was the second all-time leading scorer in women's basketball. I called her because Tuesday will mark the 20th anniversary of Title IX, the law that prohibits sex discrimination at educational institutions that receive federal money. The law has done more than anything to level the playing fields between men and women in education. It is the reason that Reiss, a point guard, went through the University of Virginia on a full athletic scholarship.

So I asked her the obvious question: If there had been no athletic scholarships for women, could she have gone to college?

"Yes," she replied. "I was valedictorian, so I would have had an opportunity to go on an academic scholarship. Many schools had offered me that.

"School was very important to me," she added, "but athletics is a part of me. It shapes my character. It contributed to me doing well in school. It gave me determination and a sense of competition in the classroom where I would compete with my classmates. Athletics molded me, and it made me the young women I am today in other aspects of my life."

Bingo. Title IX created a wide-open court for Reiss to play during the turbulent years of growing up. She emerged a star. Teammates and identical twins Heidi and Heather Burge turned their 6-foot-4¾-inch heights into assets and stardom. Twenty years ago, a 6-5 woman did not have the cachet of being on a nationally ranked college basketball team to rescue her from being "too tall."

From the soccer fields of elementary schools to the stadiums of college playoffs, Title IX has provided the legal netting for women to compete and taste the nectar of victory. In 1971, a mere 0.4 percent of high school girls participated in interscholastic sports. Today, more than 30 percent do. In the 1971–72 school year, only 16 percent of college athletes were women. Today about a third are. But even in 1990, only 16 percent of college athletic budgets went to women's sports.

The math doesn't add up to equity.

"It is against the law, [but] still women do not have equal opportunities with men," said former Stanford basketball star Mariah Burton Nelson, whose book, "Are We Winning Yet?," has just been named sports book of the year by the Amateur Athletic Foundation. "About 52 percent of the college population is female. In the Big Ten conference, they recently decided to make a 60–40 split," requiring that at least 40 percent of the schools' athletes be female, she said. "That this is being hailed as a tremendous gain shows me how far we have to go. If women had 60 percent of the athletic opportunities and men had 40, that would not be called gender equity."

Women athletes made most of their numerical gains in the first five years after Title IX was passed. Nelson foresees another wave of progress as a result of a recent U.S. Supreme Court ruling that allows students to seek monetary damages from institutions that discriminate.

Nelson recalls watching two of the top-ranked women's basketball teams, Maryland and Virginia, play last season. "I felt the exhilaration of a packed house cheering for women, including lots of men. Not just women gymnasts or skaters looking pretty, but tall, strong women pushing each other around and being powerful and united as a team. That was thrilling."

So raise a cup of coffee Tuesday morning to Title IX. And if you have a daughter, tell her why. It's still got a ways to go, to be sure. But Title IX still helped put young American women like Tammi Reiss at the center court of life.

[From the New York Times, June 21, 1992]

TITLE IX IS NOW AN IRRESISTIBLE FORCE

(By Malcolm Moran)

During one of the dozens of meetings that college athletic administrators have held in recent months to try to carry out a Federal law requiring that male and female athletes be treated equally, one state university athletic director made a blunt assessment. There is a train coming down the track, he said, and it's not going to disappear.

This recognition has been two decades coming. But attention has finally been focused on the issue of equal treatment of the sexes in college athletics as a seminal date approaches.

Tuesday will be the 20th anniversary of the enactment of Title IX of the Education Amendments of 1972, a law that prohibits discrimination by sexual identity in any educational program receiving Federal assistance and establishes the removal of Government funding as a penalty for a refusal to comply.

"It has always been an issue," James Delany, the commissioner of the Big Ten Conference, said of the law and the long, continuing discussion that ensued on equality and how to achieve it, "but it has never seemed to have the power as a principle that it seems to have now."

The reasons for the frenetic pace now are numerous, ranging from a new push by the Office of Civil Rights to a Supreme Court ruling this year permitting monetary penalties for Title IX violations.

"I suspect there is less of 'Do we have to?' and more of 'How do we?'" said Michael Williams, an assistant secretary for civil rights in the Department of Education, the office responsible for Title IX enforcement. "My conversations with athletic directors, coaches and a few presidents suggest to me that maybe 20 years ago the discussion truly was about the why, or 'Who cares?' But now it's about how do we do it."

Things have changed. Before Title IX, Williams points out, female athletes at the University of Michigan sold apples at football games so that they could compete for the school, which did not have a budget for women, and female gymnasts at the University of Minnesota had to rely on their male counterparts to provide them with leftover tape. Those days are past, but most college athletic officials admit they have a way to go before they achieve anything resembling parity.

"Gender equity may be the buzz-word of 1991, and 1992, and maybe longer than that," Richard Schultz, executive director of the National Collegiate Athletic Association, said last week.

Clearly, it has been a long time coming. At the time of passage of Title IX, women's college athletics, such as they were, were administered by the Association of Intercollegiate Athletics for Women, an organization that had been formed in 1970. The A.I.A.W. continued to provide a framework for college women through the 1970's, but it was disbanded when the N.C.A.A. began to conduct championship competition for female athletes in 1981.

A FEELING OF MOMENTUM

According to N.C.A.A. statistics, the total number of female athletic participants increased by 25 percent, to 92,778, from 1981–82, the first school year that the association conducted championships for women, through 1990–91, the last year for which figures are available. (The number of male athletes during the same period increased 4.3 percent, to 177,156.) But the number of women declined in three of the five academic years from 1986–87 through 1990–91.

Other statistics on the eventual response of college athletic programs to the legislation reflect progress that is dramatic at some schools, uneven at many and unlawfully inadequate at others. But after two decades of effort to define the imprecise law, a series of dramatic developments has recently provided advocates of equal opportunity and enforcers of Title IX with an unprecedented feeling of momentum, believed to be related to a few specific developments:

A Supreme Court decision in February, in the Georgia case Franklin v. Gwinnett County Public Schools et al., determined that monetary damages can be gained in a lawsuit to enforce Title IX.

A vote of the Big Ten Council of Presidents earlier this month established that conference schools would achieve a ratio of 40 percent female athletes to 60 percent male athletes within a period of just over five years.

After a lengthy period in which the number of athletic-related complaints to the Office of Civil Rights had reduced dramati-

cally, the office included "discrimination on the basis of sex in athletics programs" as one of seven priority issues in its enforcement strategy for the fiscal year 1991.

The N.C.A.A.'s Presidents Commission, formed several years ago to take a leading role in the association's legislation, quickly and successfully established a powerful reform movement that has challenged, and altered, traditional practices of big-time athletic programs. The reform was encouraged by Schultz, who became the association's executive director in 1987.

The Civil Rights Restoration Act of 1987, passed in March of the following year, reversed a Supreme Court decision in 1984 that had been seen as removing athletics from the influence of Title IX.

ALTERING THE BALANCE

The Big Ten's action has perhaps received the most attention. In the academic year that just ended, 70 percent of the 6,650 athletes on Big Ten teams were male. To alter the balance, Delany said, he expects the conference to introduce legislation at the 1993 N.C.A.A. convention to reduce the size of men's teams, a move that could threaten the future of the male walk-on, the non-scholarship player.

There have been other watershed moments in recent months. Donna Lopiano, who had been director of women's intercollegiate athletics at the University of Texas since 1975, left Austin at the beginning of this year to become executive director of the Women's Sports Foundation, a nonprofit educational organization whose mission includes providing direction and assistance for those contemplating Title IX complaints.

Also, a sex-equality study by the N.C.A.A., released in March, revealed that the average Division I university has an average of 250 male athletes and 112 females; the average college spends $849,130 on men's scholarships to $372,800 on women. An N.C.A.A. task force on sex equality, established in March, is expected to produce legislation for the 1994 convention.

'A DIFFERENT ENVIRONMENT'

"I don't think the association has dealt with an issue that is more emotional than this one is," said Phyllis Howlett, assistant commissioner of the Big Ten and co-chairwoman of the N.C.A.A. task force. "We're trying to create a different environment for intercollegiate athletics."

That altered environment, created in part by the added financial strain of increasing the number and size of women's teams, could reduce the level of opportunities for men and dramatically reduce the amount of financial aid athletes receive.

Delany said that the elimination of men's teams at some schools is inevitable. "And anybody who says it's not is not being honest with themselves," he said.

And Schultz said financial pressures have revived talk of awarding athletic scholarships on the basis of a family's financial need, a far less generous practice than the normal offer to scholarship athletes.

Among the earliest tasks for the task force will be determining a working definition of equity of the sexes. "I guess it's like defining love," Howlett said. "I'm not sure I have a definition, but I know it when I see it.

The decision by the Office of Civil Rights to list discrimination in athletic programs as a priority issue followed more than two months of discussions initiated by Williams. "In every one of those conversations," he recalled, "I would ask, 'Give me some idea of what you think are high-priority issues that we as an agency ought to be addressing.'"

Williams said Title IX was not the most often-mentioned issue in the discussions he solicited, "but it was an issue that was mentioned not infrequently and with some degree of fervor."

The debate on how genuine that fervor is continues and cuts to the heart of the issue: Is there a good-faith effort under way?

Delany answers with a qualified yes. "I think it has been a good-faith effort within the confines of the status quo," he said.

Lopiano, in her office at the Women's Sports Foundation in midtown Manhattan, laughed at the question.

"No," she said. "Not at all."

Lopiano maintains that the Big Ten's 60–40 formula within five years is too little over too much time, particularly when the University of Iowa, a Big Ten member, has committed to a 50–50 balance within the same period.

Howlett, the co-chairwoman of the N.C.A.A. task force who was also involved in the Big Ten discussions, said the 60–40 balance should be seen as a compromise step in the process. "It was going to affect everyone," she said. "It was not going to destroy anyone."

"To have it any longer," Howlett said of the time frame, "you're really not going to get much significant change very quickly. To make it sooner than that would probably put institutions in too much of a bind to make the adjustment that was going to require."

Lopiano is angered by what she thinks is an implication that the production of high revenue justifies violations of the law. "That's what it all means when they say, 'You can't touch football,'" she said. Lopiano questions the need for an average Division I-A football squad size of 117, including non-scholarship players.

The overall football scholarship limit of 95 will be reduced to 92 for the next academic year, 88 for 1993–94, and 85 for 1994–95. Conference limits on travel squads range from 60 to 70, but there is no ceiling on the size of a team. The University of Nebraska, which has thrived in part because of its sophisticated development program for non-scholarship talent, brought all of its 191 players to the Orange Bowl game in January, even though many of them sat in the stands.

"We're giving scholarships to tackling dummies," Lopiano said. "Are we saying it's more important to give a full scholarship to a tackling dummy than it is the first-string women's soccer player for a team you don't have? God forbid you should take the tackling dummy's opportunity away. It's crazy."

"I think most of the Division I-A schools are in deep trouble," she added. "They have long ago lost sight of controlling costs. It's going to be tough for them to pull back. It makes sense for them to pull back, but they've got million-dollar coaches who are living the good life.

"My feeling is that equity for women in sport may be the salvation of intercollegiate athletics because it creates a need for reform. It is focusing attention on collegiate budgets which have been a reflection of considerable abuse. It's going to be good for everybody. Everybody is going to have to put the cards on the table."

Whether the changes are the result of evolution or revolution, they seem to be coming quickly. "I wouldn't worry about the motives," Williams said. "See, at the end of the road, what we want is equal athletic opportunity. Does it really matter how they get the mind-set to get there?"

Figures from a survey conducted by the Chronicle of Higher Education. Schools are listed according to current basketball affiliation, but figures are for all sports for the 1990–91 academic year. Some colleges declined to respond citing the sensitivity of their data, while others did not take part in the N.C.A.A. study on which the Chronicle's survey was based.

	Distribution of full-time undergraduates		Distribution of athletes		Spending on athletic scholarships				Athletic operating expenditures [1]				Athletic recruiting expenditures [2]			
					Men		Women		Men		Women		Men		Women	
	Men	Women	Men	Women	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
Atlantic Coast:																
Clemson	57.3	42.7	74.4	25.6	1,547,655	74.6	527,879	25.4	(3)	(3)	(3)	(3)	420,652	87.6	59,300	12.4
Duke	56.2	43.8	65.1	34.9	2,779,194	78.4	767,065	21.6	1,530,496	83.4	304,095	16.6	324,600	88.1	43,800	11.9
Florida State	46.4	53.6	72.3	27.7	916,942	63.2	533,838	36.8	802,139	75.1	266,600	24.9	272,498	80.1	67,643	19.9
Georgia Tech.	76.1	23.9	76.3	23.7	1,366,184	80.1	399,108	19.9	1,483,400	82.7	310,600	17.3	712,000	92.5	58,000	7.5
Maryland	51.9	48.1	62.7	37.3	1,689,361	71.7	667,209	28.3	1,588,895	87.0	237,347	13.0	(3)	(3)	(3)	(3)
North Carolina	42.5	57.5	62.8	37.2	1,506,500	64.5	828,700	35.5	1,021,161	81.6	230,734	18.4	453,104	87.8	63,200	12.2
North Carolina State	62.6	37.4	75.4	24.6	1,241,778	69.2	552,622	30.8	1,627,022	87.1	240,015	12.9	370,257	81.0	86,807	19.0
Virginia	50.1	49.9	57.9	42.1	1,801,960	67.2	878,130	32.8	1,402,447	78.4	386,666	21.6	292,325	81.2	67,662	18.8
Wake Forest	53.7	46.3	73.0	27.0	1,974,936	84.5	363,475	15.5	665,000	79.8	168,000	20.2	375,000	92.1	32,000	7.9
Atlantic 10:																
George Washington	48.5	51.5	57.7	42.3	999,189	51.2	951,204	48.8	350,268	72.8	131,200	27.2	76,270	64.4	41,670	35.6
Rhode Island	47.1	52.9	63.5	36.5	974,575	66.5	490,807	33.5	377,815	63.9	213,855	36.1	51,866	59.6	35,200	40.4
West Virginia	54.3	45.7	72.5	27.5	1,227,451	71.4	492,192	28.6	1,524,750	83.5	301,000	16.5	272,000	83.2	55,000	16.8
Big East:																
Connecticut	47.6	52.4	73.7	26.3	1,054,424	65.3	559,975	34.7	718,042	69.6	319,191	30.4	156,385	82.2	33,768	17.8
Miami	47.1	52.9	75.6	24.4	1,363,877	70.5	570,091	29.5	601,307	80.0	170,020	20.0	87,496	78.7	23,716	21.3
Pittsburgh	51.8	48.2	75.7	24.3	1,668,308	74.9	59,281	25.1	6,170,295	97.2	179,010	3.8	402,840	95.3	26,340	4.7
Providence	47.8	52.2	54.9	45.1	910,536	52.9	810,451	47.1	518,500	71.3	208,500	28.7	167,000	82.3	36,000	17.7
Syracuse	49.6	50.4	70.4	29.6	(3)	74.9	(3)	25.1	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Big Eight:																
Colorado	54.2	45.8	67.2	32.8	1,461,444	72.3	559,013	27.7	1,124,295	79.0	298,226	21.0	407,137	83.7	79,218	16.3
Iowa State	58.6	41.4	70.2	29.8	1,198,730	66.2	611,830	33.8	1,471,422	78.6	399,674	21.4	340,022	82.9	70,050	17.1
Kansas State	52.9	47.1	74.8	25.2	729,479	73.2	267,363	26.8	645,111	78.8	173,114	21.2	285,719	88.4	37,338	11.6
Missouri	49.9	50.1	67.8	32.2	918,485	69.3	406,936	30.7	554,025	72.6	209,539	27.4	212,000	79.3	38,163	20.7

	Distribution of full-time undergraduates		Distribution of athletes		Spending on athletic scholarships				Athletic operating expenditures [1]				Athletic recruiting expenditures [2]			
					Men		Women		Men		Women		Men		Women	
	Men	Women	Men	Women	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
Nebraska	55.4	44.6	74.3	25.7	1,168,541	68.8	528,869	31.2	1,161,550	76.4	358,550	23.6	503,500	87.7	70,500	12.3
Oklahoma	54.7	45.3	72.7	27.3	1,022,073	65.8	530,058	34.2	1,180,696	73.6	424,197	26.4	295,551	78.4	81,650	21.6
Oklahoma State	53.5	46.5	76.9	23.1	886,966	76.1	278,241	23.9	854,500	85.2	148,700	14.8	387,000	90.4	41,000	9.6
Big Ten:																
Illinois	56.5	43.5	71.1	28.9	1,492,613	68.3	692,104	31.7	1,049,282	72.9	389,763	27.1	364,500	83.6	71,500	16.4
Indiana	47.2	52.8	72.1	27.9	1,491,456	69.2	664,060	30.8	810,483	73.7	289,843	26.3	305,649	86.3	48,654	13.7
Iowa	48.3	51.7	64.1	35.9	1,691,651	67.4	818,494	32.6	904,250	63.7	515,270	36.3	354,595	64.8	192,700	35.2
Michigan	53.1	46.9	65.6	34.4	3,085,400	67.8	1,464,800	32.2	1,308,400	73.3	476,300	26.7	481,200	83.9	92,100	16.1
Michigan State	48.1	51.9	67.2	32.8	1,639,388	70.8	674,520	29.2	1,036,314	75.4	337,771	24.5	(3)	(3)	(3)	(3)
Minnesota	51.7	48.3	70.6	29.4	1,437,410	69.6	627,831	30.4	2,412,437	81.9	534,476	18.8	480,500	82.2	104,286	17.8
Ohio State	53.3	46.7	73.7	26.3	1,451,376	64.3	806,686	35.7	1,768,616	76.4	545,835	23.6	407,064	79.5	104,946	20.5
Purdue	56.1	43.9	69.6	30.4	1,373,601	70.4	577,866	29.6	1,004,808	71.7	396,583	28.3	208,126	79.2	54,617	20.8
Wisconsin	49.4	50.6	69.8	30.2	850,749	72.2	326,925	27.8	1,173,693	73.8	417,700	26.2	400,070	82.8	82,828	17.2
Big West:																
Cal State Fullerton	44.9	55.1	69.0	31.0	665,810	70.9	272,947	29.1	617,082	81.8	116,968	18.4	71,218	83.0	14,638	17.0
New Mexico State	50.6	49.4	68.2	31.8	819,891	73.0	302,774	27.0	417,512	70.8	172,533	29.2	136,295	84.8	24,438	15.2
San Jose State	52.0	48.0	69.7	30.3	602,281	67.7	286,761	32.3	353,628	70.7	146,302	29.3	97,478	73.9	34,437	26.1
U.C. Irvine	47.5	52.5	68.5	31.5	350,572	64.4	193,760	35.6	498,818	74.2	173,607	25.8	32,012	74.9	10,747	25.1
U.C. Santa Barbara	49.6	50.4	69.6	30.4	401,610	61.8	248,556	38.2	831,033	77.6	239,462	22.4	17,988	66.4	9,100	33.6
U.N.L.V	49.3	50.7	69.8	30.2	1,239,536	69.4	545,929	30.6	724,822	75.7	233,185	24.3	234,643	84.5	42,908	15.5
Pacific-10:																
Arizona	51.7	48.3	66.9	33.1	1,553,349	65.2	827,324	34.8	921,663	72.0	359,132	28.0	435,359	80.0	108,900	20.0
Arizona State	51.6	48.4	70.8	29.2	1,754,652	64.9	950,940	35.1	941,096	78.2	261,786	21.8	373,662	83.0	76,653	17.0
Oregon	47.4	52.6	66.8	33.2	1,159,855	72.2	446,339	27.8	2,088,903	86.6	318,897	13.4	416,612	90.3	44,856	9.7
Oregon State	55.8	44.2	63.9	36.1	937,880	72.9	349,303	27.1	1,105,812	68.2	515,657	31.8	173,714	72.6	65,467	27.4
U.C.L.A	49.4	50.6	65.5	34.5	1,576,826	69.8	682,349	30.2	1,929,454	61.6	436,469	18.4	404,500	88.4	53,300	11.6
Washington	51.1	48.9	64.4	35.6	1,361,588	69.9	585,265	30.1	917,225	70.9	375,601	29.1	259,992	71.9	101,447	28.1
Washington State	54.5	45.5	55.7	44.3	1,154,566	68.0	542,237	32.0	993,629	70.3	420,751	29.7	289,099	76.5	88,652	23.5
Southeastern:																
Alabama	50.0	50.0	66.7	33.3	1,123,162	65.0	603,526	35.0	859,095	72.0	334,119	28.0	376,260	82.9	77,358	17.1
Arkansas	55.1	44.9	75.4	24.6	1,122,926	75.2	370,185	24.8	817,204	78.5	223,510	21.5	251,172	85.5	42,535	14.5
Auburn	54.6	45.2	72.9	27.1	961,239	67.2	468,597	32.8	803,216	72.9	298,989	27.1	300,676	82.4	64,104	17.6
Florida	53.1	46.9	71.1	28.9	803,162	63.5	460,701	36.5	968,726	72.5	368,235	27.5	531,570	84.7	96,245	15.3
Georgia	47.1	52.9	74.0	26.0	1,264,486	67.6	606,798	32.4	651,512	82.1	142,392	17.9	566,929	83.0	115,752	17.0
Kentucky	48.3	51.7	70.7	29.3	1,848,786	74.3	639,508	25.7	1,058,526	77.3	310,389	22.7	480,255	85.7	79,871	14.3
Louisiana State	50.0	50.0	73.1	26.9	1,199,761	66.2	613,170	33.8	2,848,651	81.1	663,399	18.9	110,754	73.6	39,642	26.4
Mississippi	50.7	49.3	76.4	23.6	1,124,357	80.6	270,134	19.4	917,942	79.0	244,377	21.0	361,873	89.4	482,781	10.6
Mississippi State	58.2	41.8	74.0	26.0	821,672	71.2	333,102	28.8	754,807	85.6	126,949	14.4	274,990	84.6	49,409	15.2
Tennessee	51.7	48.3	78.7	21.3	1,114,803	69.6	488,013	30.4	1,646,121	82.2	357,015	17.8	530,911	87.4	76,448	12.6
Vanderbilt	51.4	48.6	62.0	38.0	2,446,837	76.5	752,125	23.5	869,976	83.9	167,205	16.1	317,712	93.8	20,904	6.2
Southwest:																
Baylor	45.8	54.2	76.1	23.9	1,698,949	81.0	398,941	19.0	962,258	83.2	194,456	16.8	165,240	88.7	20,968	11.3
Texas	52.8	47.2	77.2	22.8	1,178,000	72.4	449,454	27.6	975,500	71.3	392,761	28.7	298,400	76.0	94,228	24.0
Texas A&M	56.5	43.5	70.7	29.3	844,310	66.4	427,851	33.6	885,200	75.0	294,300	25.0	273,800	74.4	94,100	25.6
Texas Tech	52.6	47.4	80.7	19.3	738,618	72.8	275,625	27.2	754,854	79.5	194,180	20.5	195,416	88.3	25,989	11.7

[1] Operating expenditures include only those cost associated directly with games, including lodging, meals, transportation, officials, uniforms, and equipment.
[2] Recruiting expenditures include the cost of off-campus contracts and evaluations and of paid on-campus visits by athletes. They do not include telephone and postage costs.
[3] Did not provide this information.

Source: The Chronicle of Higher Education.

THE 25TH ANNIVERSARY OF JOHN A. BURNS SCHOOL OF MEDICINE

Mr. INOUYE. Mr. President, 1992 marks the 25th anniversary of the John A. Burns School of Medicine at the University of Hawaii. The school began as a 2-year program of basic medical sciences in 1967. It expanded into a 4-year school in 1973 and graduated its first class of 62 M.D.'s in 1975, including 4 physicians of native Hawaiian ancestry. The major purpose of the school was to provide an opportunity for medical education previously unavailable to residents of Hawaii and other Pacific islands. Since then, 1,086 physicians have graduated with the school's mission of providing primary care to improve the health of the people of Hawaii and the Pacific.

I believe that the John A. Burns School of Medicine is the only genuinely multiracial medical school in the world. The student body is made up of men and women of many ancestries: Caucasian, Chinese, Korean, Japanese, Hawaiian, Filipino, Samoan, Micronesian, and Chamorran. Named after Governor Burns, a vital force behind the establishment of the school and its subsequent expansion, the goals and philosophy of the school epitomize his public career and his visions for Hawaii and its people.

Our State has been blessed to have had three outstanding individuals as the medical school dean, Dr. Windsor Cutting, Dr. Terrence Rogers, and Dr. Christian Gulbrandsen, each of whom have truly been visionary leaders.

An unusual aspect of the school curriculum is that it bases clinical instruction in affiliated community hospitals and clinics. The benefits of this approach are several: It is more economical; students from the start are thrust into the real world of day-to-day clinical activity; and their working directly with the community involves extensive participation of community physicians and other health professionals in the training of future physicians.

Another innovation is that the entire medical school curriculum is problem based. This somewhat unconventional aspect of the school has attracted outstanding faculty and students from the U.S. mainland. For example, for the entering 1992 class, there were over 1,400 applicants who competed for 48 slots.

In addition to broad-track research, the school fosters research in areas for which Hawaii has special advantages such as studies being conducted in the physical problems of human activity underwater; malaria vaccine development; programs in cancer and genetics; and sociobehavioral issues in cross-cultural psychiatry made possible by Hawaii's multiethnic population.

Finally, the school participates extensively in the international arena at locations outside Hawaii, and expects that its involvement in the Pacific and Asia will continue to grow. For example, in the scattered islands of Micronesia, the school has trained health assistants, physicians' assistants, and medical officers to bring primary care to a widely dispersed population. In addition, training of other health professionals has been conducted in New Guinea, Costa Rica, Africa, and Okinawa.

TRIBUTE TO UNITA BLACKWELL

Mr. KENNEDY. Mr. President, I would like to recognize today the remarkable accomplishments of Mayor Unita Blackwell of Mayersville, MS.

Mayor Blackwell has served as mayor for 26 years, but she has served humanity her entire life. Born to sharecropper parents on a plantation in Mississippi, she overcame extreme adversity to serve the civil rights movement, her home State, and large numbers of people in Mississippi and many other States who have benefited from her commitment and her example.

Mayor Blackwell's first responsibility is to rural Mississippi, and her most

cherished role is serving the 500 citizens of Mayersville. Under her leadership, the town has gained new public housing, modern firefighting equipment, paved roads, and a high degree of interracial cooperation among its citizens.

This past week, Mayor Blackwell was named as one of 33 recipients of the MacArthur Foundation's "genius" awards. Her plan is to finish her current term and then use the award over the next few years to write a book about revitalizing rural communities. I have no doubt that one day we will all be using her study as a textbook for a better understanding of rural America.

I commend Unita Blackwell for her remarkable spirit, courage, and accomplishments, and, I ask that the attached article from the June 19, 1992, New York Times be printed in the RECORD.

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

A MAYOR AND TOWN PULLED UP

(By Peter T. Kilborn)

Mayor Unita Blackwell runs the tiny Mississippi settlement of Mayersville from a creaky one-room City Hall that was a white Baptist church until about 10 years ago. The community, about 80 percent black, is made up mainly of old people and children. Unemployment is high, especially in the months when there is no farm work.

This week, Mayor Blackwell became one of 33 recipients of a five-year grant from the MacArthur Foundation. After completing her current four-year term next year, she said she might use her grant of $350,000 to support herself while writing a book about resuscitating rural communities.

It is a subject the 59-year-old Mayor knows quite a bit about. While rural Issaquena County, of which Mayersville (pronounced MY-ers-ville) is the seat, lost 25 percent of its population during the 1980's, Mayersville grew a bit, to a little more than 500 people.

Ms. Blackwell said she has achieved some of her goals but not the most vital; luring an industry that will hire people.

But while the Mayor waits for the jobs that may never come, she has kept her community intact. And residents tick off her achievements since she became the state's first black Mayor 26 years ago; incorporation of the city, a water system that reaches every home, a sewer system that reaches most and paving of all dozen or so streets in town.

WORK FOR PUBLIC HOUSING

Public housing was a tougher goal to achieve. In the 1970's the Federal Government agreed to finance a housing development and sent the money for it. But the cost of the land rose above the amount the Government had agreed to pay. Ms. Blackwell returned the grant with the exception of $50,000, which she used to buy a fire truck that had been part of the project. The Government complained, but she kept the truck.

It was not until 1987 that the Mayor was able to open the housing development, a Government-financed complex of 20 units for elderly and disabled people. Since then, two more subsidized complexes of 16 units each have opened, one for the elderly, one for families.

Ms. Blackwell is convinced that her tiny town about 50 miles north of Vicksburg is a national resource.

"If I could help these small places to develop, we can become a model of what can happen," the Mayor said in an interview in Mayersville last week. "What's missing in the cities is the closeness you find here. You can walk the streets. You don't see fear in people's eyes.

"We can have 100 children going to the cities. Then you have 100 problems. You take someone from the land and stick them on concrete, you've got a psychological mishap. These people in Los Angeles. Where did they come from? They came from a lack of jobs, a lack of housing, a lack of their needs being met. They don't feel trapped here. They like it here. They just need a job. That's the reason I see we have to keep these small nothing towns."

WIDE ORBIT OF SERVICE

Ms. Blackwell, a freedom fighter in 1960's who organized voter registration drives, has since traveled in lofty circles. Born to sharecroppers on a plantation in Lula Miss., she has been on 16 diplomatic missions to China, the first in 1973. She has twice been president of the National Conference of Black Mayors. She was a member of the Democratic National Committee, was co-chairman of the Mississippi Democratic Party and is a cofounder of Mississippi Action for Community Education, a community-development organization in Greenville.

"You do where you're at," Ms. Blackwell said, explaining why she remains in Mayersville, where there is little to do beyond watching the cotton plants fill out and ducking the occasional drenching rains.

"A Chinese man said to me, 'Unita, you are like a phantom that nests in a place but flies out all over the world.'

"What I got out of that was, why not Mayersville? Mayersville has developed. It's a small piece, but it has developed. It showed people you can do it. I don't think I could have done any more in terms of a model for myself or for people."

Two women are sitting in the 82-degree, mid-afternoon sun outside their adjoining, ground-level apartments in the housing project. Each receives about $440 a month in Social Security payments. One, Anna Mae Dolley, a mother of five, is 67 and has lived most of her adult life in Mayersville. Her rent is $61 a month. The other, Grace Reynolds, 80, pays $50 in rent. Mrs. Reynolds, the mother of 15, has always lived in the town.

When the Mayor comes by, leading 20 Egyptian journalists on a tour of Mayersville and to eat lunch in the housing project's dining room, the two women join in extolling the changes she has made.

Mrs. Dolley: She done a lot for this town.

Mrs. Reynolds: O Lord, yes!

Mrs. D: She helped get all these houses in. I thought, 'I got to get me one.' Me and her, we were the first here. She moved here in the morning time, and I moved here in the evening time.

Mrs. R: She have a car up there, and she got a van.

Mrs. D: Carry us to the doctor. Carry us to shopping.

Mrs. R: She looks out for us every way she can.

Mrs. D: This was a dirt road. She brought that new road in.

WORKING IN THE FIELDS

Mayersville is the picture of a rural subsistence economy. Teen-agers and a few older people still work in the cotton fields. From now until mid-July or so, when the bolls form, they get jobs chopping weeds in the cotton. The pay is about $4.00 an hour.

The Mayor's budget is $30,000 a year. She has one regular employee, a clerk, Helen Reed, who is also the tax collector. Ms. Blackwell is paid $6,000 a year. Raising her 13-year-old grandson, Jermaine, she could qualify for the public assistance that most of her constituents receive. But she said she has never applied.

The town buys food in bulk with other communities in Mississippi and Arkansas, and once a month it sells big boxes of the food, chicken, sausage, vegetables and fruit, for $14 a box. On those days, the mayor said, 200 to 300 people come to City Hall to buy it.

Large families buy five or six boxes. Anyone can buy, but in return, they must put in two hours of community service per box. They can serve in the food distribution line, or baby sit or visit with elderly people who live alone.

"I have a list of everyone who gets a box," the Mayor said. "Then I can ask, 'What did you do?' It's an honor system. In a small community you can't get away with telling a whole lot of lies."

COTTON FIELDS TO COLLEGE

Ms. Blackwell went to high school in Arkansas and after graduation went to work in the cotton fields. In 1982 and 1983 she went to the University of Massachusetts at Amherst on a fellowship and received a master's degree in regional planning, even though she had no previous degree.

She settled in Mayersville 30 years ago in an ancestral home of her ex-husband. She has since built a brick ranch-style house on the adjoining lot, but the old place, an unpainted, unplumbed, unelectrified, two-and-a-half room shack, still stands.

In the 1960's Ms. Blackwell made the shack a regional cell of the Student Non-Violent Coordinating Committee. As a result of her civil rights work, she served time in jails, including an 11-day stint in Jackson.

The racism that Ms. Blackwell fought lingers, she said, though largely below the surface. Whites and blacks live in adjoining houses. When she started her monthly food line some months ago, Ms. Blackwell said only blacks participated. But then more and more whites joined, and now both blacks and whites work in the line.

Some white families send their children to the public school, 12 miles away, but more use an all-white, private academy in an adjoining county. Whites say they draw the line at intermarriage, and some blacks say the same.

Still, Deputy Sheriff Richard Jones said, "this is probably the most together city in the United States."

FINANCIAL REPORT OF SENATOR DECONCINI

Mr. DECONCINI. Mr. President, today, I ask unanimous consent that my financial report appear in the CONGRESSIONAL RECORD.

Under the rules of the Senate, it is the obligation of Senators to classify their income and property within certain broad income categories. For the most part, Senators do so with the utmost caution and are careful to include all properties in which they have any ownership, beneficial or otherwise.

It has been my practice since coming to the Senate in 1977 to go well beyond Senate requirements and to have a financial statement prepared by an ac-

counting firm showing the worth of total assets, total liabilities, and the net worth of both my wife and me. I have always made my financial statements available in this manner. This is in addition to all the requirements and fillings set forth by Senate rules and laws regarding disclosure.

I have elected to do this because I believe close scrutiny should follow public officials. The public must be assured that an official whose assets and wealth increase during public office if fully accountable. Public officials must meet the highest standards.

I urge all Members of the Senate to continue to make full public disclosure of their assets and income. This is not a pleasant experience for any of us, but it will help build the sense that elected public officials are credible and honest.

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

TIZZARD, KNUTTINEN,
DONNELLY & WRIGHT, P.C.,
Tucson, AZ, April 30, 1992.

DENNIS and SUSAN DECONCINI,
Washington, D.C.

We have reviewed the accompanying statement of financial condition of Dennis and Susan DeConcini as of December 31, 1991, in accordance with standards established by the American Institute of Certified Public Accountants. All information included in this financial statement is the representation of Dennis and Susan DeConcini.

A review of personal financial statements consists principally of inquiries of the individuals whose financial statements are presented and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying statement of financial condition in order for it to be in conformity with generally accepted accounting principles.

The historical cost/basis information in the accompanying statement of financial condition is presented only for supplementary analysis purposes and has been subjected to the inquiry and analytical procedures applied in the review of the basic financial statement. We did not become aware of any material modification that should be made to the supplementary information.

TIZZARD, KNUTTINEN,
DONNELLY, & WRIGHT,
Certified Public Accountants.

DENNIS AND SUSAN DECONCINI STATEMENT OF FINANCIAL CONDITION, DECEMBER 31, 1991

	Estimated current value	Historical cost/basis
Assets:		
Cash, checking and savings accounts	$115,543	$115,543
Certificates of deposit	534,494	534,494
Miscellaneous receivables and impounds arising from rental properties	25,815	25,815
Notes receivable (Note 2)	689,648	689,648
Investments:		
Marketable securities (Note 3)	76,659	52,177
Real estate (Note 4)	4,926,430	1,569,832
Monterey Water Company (Note 5)	124,388	3,000
Partnerships, closely held (Note 6)	5,972,909	185,549
Partnerships not closely held (Note 7)	290,640	125,344
Annuity	49,555	22,573
Vested interest retirement plans:		
Individual retirement accounts	64,856	
Civil service retirement fund	53,021	
Thrift savings retirement plan	13,867	
Cash value of life insurance (Note 8)	113,659	107,355
Residence (Note 9)	470,000	195,657
Personal property (Note 9)	165,000	65,000
Total	13,686,484	3,691,987
Liabilities:		
Miscellaneous payables arising from rental properties	17,624	17,624
Deferred gain (Note 2)	340,854	340,854
Income taxes—current year balance	28,593	28,593
Personal loans (Note 10)	31,154	31,154
Mortgages:		
Wraparound mortgages (Note 2)	341,108	341,108
Real estate investments (Note 4)	859,851	859,851
Residence (Note 9)	90,718	90,178
Subtotal	1,709,902	1,709,902
Income taxes:		
Estimated on the difference between the estimated current values of the assets and the estimated current amounts of liabilities and their tax bases (Note 11)	3,614,078	
Net worth	8,362,504	1,982,085
Total	13,686,484	3,691,987

Note.—See accountants' review report.

NOTE 1—BASIS OF ACCOUNTING

The accompanying financial statement includes the assets and liabilities of Dennis and Susan DeConcini. Assets are stated at their estimated current values and liabilities at their estimated current amounts.

NOTE 2—NOTES RECEIVABLE

	Receivable	Mortgage	Deferred gain
In 1985 a residence on Crystal Drive, San Diego, California was sold to a related party with the note receivable being "wrapped around" the underlying mortgage for the same terms and amount. The monthly receivable/payable is $589 per month including interest at 11 percent	$36,443	$36,389	
In 1989 a shopping center at Cave Creek & Bell Road, Phoenix, Arizona was sold to an unrelated party. The note receivable is for monthly payments of $7,168 including interest at 10 percent; the note receivable matures April, 1999. The note payable is for monthly payments of $7,996 including interest at 9.5 percent; the note payable matures December, 1991	526,205	304,719	$213,927
In 1989 vacant land on South 6th Avenue, Tucson Arizona was sold to a related party. The note receivable is interest only at 9 percent, with a balloon payment July, 1994	127,000		126,927
Total	689,648	341,108	340,854

NOTE 3—MARKETABLE SECURITIES

The estimated current values of marketable securities are either (a) their quoted closing prices or (b) for securities not traded on the financial statement date, amounts that fall within the range of quoted bid and asked prices. Marketable securities consist of the following:

	Number of shares or bonds	Estimated current values
Stocks:		
First National Corporation	1,585	$11,858
James Madison Limited	200	
Lasertechnics, Inc	1,000	2,000
National Education Corporation	50	463
Pacific Telesis	200	8,925
Southern Arizona Bancorp of Yuma, Inc	3,150	22,050
The Price Co	200	10,500
Valley National Corporation	700	19,863
Bonds: State of Israel	1	1,000
Total Marketable Securities		76,659

NOTE 4—REAL ESTATE

The estimated current values were determined by use of assessed value for property taxes, inquiries of realtors familiar with similar properties in similar areas, acquisition price of recently acquired properties and appraisals of some properties. Ownership is 100% unless otherwise noted:

Property description	Estimated current value	Mortgage balance	Mortgage terms: Monthly payment including interest	Mortgage terms: Interest rate	Mortgage terms: Maturity
JOINT INTERESTS					
Alpha Beta Shopping Center, 44th & Broadway, Phoenix, AZ (50 percent interest)	$600,000	$357,491	$7,854	9⅝	1995
Avra Valley/Pioneer Trust, Unimproved land, Pima County, AZ (3.125 percent interest)	5,630				
Grant/Oracle Circle K, Ground lease, Pima County, AZ (10.89 percent interest)	64,250				
St. Mary's & Silverbell Road, Ground lease, Pima County, AZ (10.89 percent interest)	200,000				
1122 S. 6th, vacant land (formerly Victory Outreach) Tucson, AZ	25,000				
Rancho Sin Vaca, lot 64, vacant land, Tucson, AZ	86,000	34,000	(1)	10	1995
12th & Ajo, Nat'l city annex, lot 23, block A (behind circle K), vacant land, Pima County, AZ	13,200				
COMMERCIAL PROPERTIES					
Action Suds & Ajo Bikes, 3812/3816 S. 12th, Tucson, AZ	200,000				
Drachman Building, 2345 E. Broadway, Tucson, AZ	150,000				
L & L Furniture, 1140–1150 S. 6th, 1133–1135 S. Russell, Tucson, AZ	112,000				
Oriental Express, 615 S. Ajo, Tucson, AZ	100,000				
Pizza Hut 12th & Ajo, 605 W. Ajo, Tucson,	162,850				
39 cent Hamburger, 625 W. Ajo, Tucson, AZ	125,000				
RESIDENTIAL PROPERTIES					
Canyon View Apartments, 381 Cedar Land, Sedona,	625,000	334,057	3,602	10.25	2018
House, Alta & San Carlos Street, Carmel By The Sea, CA	300,000				

Property description	Estimated current value	Mortgage balance	Mortgage terms: Monthly payment including interest	Mortgage terms: Interest rate	Mortgage terms: Maturity
House, 5686 Dolphin Street, La Jolla,	850,000	.....	.....	.....	.....
House, 1901 N. George Mason Drive, Arlington, VA	175,000	99,555	934	10.5	2117
Salem Court Apartments, 705 Salem Court, Mission Beach, CA	800,000	.....	.....	.....	.....
Sunset Cliff Apartments, 1961 Sunset Cliff, Ocean Beach, CA	332,500	34,748	554	9	1992
Total	4,926,430	859,851	.....	.....	.....

[1] Annual payment, $8,000 plus interest.

NOTE 5—MONTEREY WATER COMPANY

30 shares of a total of 430 shares outstanding (7%) were owned as of December 31, 1991. The Company primarily holds real estate investments. The estimated current value is based upon prior years appraisal as adjusted due to inquiries of realtors familiar with similar properties in similar areas. Net income of the Company for 1991 was a loss of $106,494. The unaudited balance sheet of Monterey Water Co. at December 31, 1991 is prepared on the accrual basis and is summarized below:

Cash	$66,007
Other current assets	.....
Notes receivable	193,093
Investment, partnership	465,190
Depreciable property	122,777
Accumulated depreciation	−15,684
Land	608,749
Other assets	16,310
Other current liabilities	291,023
Stockholder loans	366,326
Notes payable	271,684
Other liabilities	109,402
Capital stock	41,300
Capital in excess of par	10,750
Retained earnings	365,957
Total assets	1,456,442
Total liabilities and equity	1,456,442

NOTE 6—PARTNERSHIPS, CLOSELY HELD

Interests in the listed partnerships are as a general partner. Partnership activities are primarily in the area of real estate. The estimated current value of the partnerships is based upon their assessed value for property taxes, or inquiries of realtors familiar with similar properties in similar areas, or acquisition price of recently acquired properties and appraisals of some properties. Following are the unaudited condensed historical cost balance sheets and the net income or (loss) for the year ended December 31, 1991 for each partnership. The income tax method of accounting is used by the partnerships:

	2–D properties	3–D properties	4–D properties	Total
Cash	$1,573	$41,682	$80,841	$124,096
Receivables/loans	72,272	.....	52,879	125,151
Other current assets	.....	189,431	263,973	453,404
Investments	.....	129,125	4,048,537	4,177,662
Depreciable property	41,524	2,102,469	7,561,542	9,705,535
Accumulated depreciation	(18,223)	(855,170)	(2,699,005)	(3,572,398)
Land	21,726	167,999	12,292,143	12,481,868
Intangibles	.....	49,166	290,858	340,024
Accumulated amortization	.....	(15,400)	(93,344)	(108,744)
Other assets	.....	9,522	(14,238)	(4,716)
Total assets	118,872	1,818,824	21,784,186	23,721,882
Other current liabilities	208	6,023	371,045	377,276
Loans	.....	1,118,539	10,624,538	11,743,077
Deferred gains	71,992	.....	48,529	120,521
Other liabilities	.....	6,914	70,504	77,418
Capital	46,672	687,348	10,669,570	11,403,590
Total liabilities and equity	118,872	1,818,824	21,784,186	23,721,882
Net income for the year ended Dec. 31, 1991	32,372	58,492	77,535	168,399
Percent ownership of income	50	33	18	NA
Estimated current value of partnership interests	196,819	513,640	5,262,450	5,972,909

NOTE 7—PARTNERSHIPS AND S-CORPORATIONS, NOT CLOSELY HELD

Pinnacle Peak North Investors—2% interest in a real estate general partnership. Estimated current value was based upon the managing partner's estimated value of the undeveloped land	$183,600
Tonopah Partners I General Partnership—16.67% ownership in a real estate general partnership. Estimated current value was based upon a realtor's estimated value of the undeveloped land	82,300
Tonopah Partners II General Partnership—same as Tonopah I	12,090
W.M. Investments Partnership—13.33% ownership in a real estate general partnership. Estimated current value was based upon the managing partner's estimated value of the apartment and commercial buildings owned by the partnership	12,650
Total	290,640

NOTE 8—LIFE INSURANCE

The face value of thirteen whole life policies is $620,683. These policies have a cash surrender value of $131,659.

NOTE 9—RESIDENCE/PERSONAL PROPERTY

The estimated current value was determined by the good faith estimates of Dennis and Susan DeConcini. The residence mortgage is payable in monthly installments of $906 including interest at 8.5% through 2006.

NOTE 10—PERSONAL LOANS

Demand note from family member, unsecured, interest at 10 percent	$19,741
Demand note from closely held partnership, unsecured, interest at 10 percent	11,413
Total	31,154

NOTE 11—INCOME TAXES

Estimated income taxes have been provided on the excess of the estimated current values of assets over their tax bases as if the estimated current values of the assets had been realized on the statement date, using applicable tax laws and regulations. The provision will probably differ from the amounts of income taxes that eventually might be paid because those amounts are determined by the timing and the method of disposal or realization and the tax laws and regulations in effect at the time of disposal or realization.

NOTE 12—OTHER RELATED PARTY DISCLOSURES

Other family members and closely held businesses had the following amounts receivable from or payable the following entities at December 31, 1991:

	Monterey water	2–D properties	3–D properties	4–D properties
Individuals:				
Receivable	$39,323	.....	$102,631	$94,576
Payable	454,663	.....	122,520	1,595,009
Closely held business:				
Receivable	.....	.....	.....	31,469
Payable	.....	.....	31,469	.....

Note.—The notes all bear interest at prevailing interest rates.

NOTE 13–FUTURE INTERESTS

Remainder interests in trusts have not been presented because the rights are not for fixed or determinable amounts.

TODAY'S "BOXSCORE" OF THE NATIONAL DEBT

Mr. CRAIG. Mr. President, Senator HELMS is in North Carolina recuperating following heart surgery, and he has asked me to submit for the RECORD each day the Senate is in session what the Senator calls the "Congressional Irresponsibility Boxscore."

The information is provided to me by the staff of Senator Helms. The Senator from North Carolina instituted this daily report on February 26.

The Federal debt run up by the U.S. Congress stood at $3,933,120,076,770, as of the close of business on Friday, July 19, 1992.

On a per capita basis, every man, woman, and child owes $15,312.37—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

SAM ARCHIBALD—ADVOCATE FOR INFORMATION

Mr. WIRTH. Mr. President, today I wish to acknowledge the stellar career of Mr. Sam Archibald, who recently retired from the school of Journalism at the University of Colorado.

In a recent Denver Post profile, Sam was described primarily for two characteristics: his charming irreverence and his inborn stubbornness. With the first, he charmed his enemies, vexed his friends, and always maintained an impish demeanor that never let you relax or take yourself too seriously, especially if you were a politician.

On his stubbornness was built the imputant Freedom of Information Act, which he advocated, helped to draft, and steer through Congress. This landmark legislation may have done more to keep our democracy open and accountable than has any legislation since the first amendment provisions of the Constitution.

And the FOIA reflects another of Sam's characteristics, his idealistic belief in the potential of democracy. I

first met Sam in 1974, when he was heading the Campaign Fair Practices Committee. Trying to assure fair and open campaign procedures, Sam set a standard that in these later years, as our politics drift toward the negative, the abbreviated and the slick, would well be remembered and resurrected.

We all owe Sam Archibald a vote of thanks for his years of irreverent, stubborn idealistic pursuit of the ideal in our democratic society.

I ask unanimous consent that an article from the Denver Post be inserted to the RECORD.

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

[From the Denver Post, June 1, 1992]

RESPECTED COLORADO UNIVERSITY JOURNALISM PROFESSOR RETIRES

(By J. Sebastian Sinisi)

BOULDER.—At a time when nearly every breath, not to mention written line, has to be measured for its politically correct content, Sam Archibald is marvelously refreshing—as his friends are quick to point out.

And when Archibald, who's "seventh-and-a-half" by his own admission, retired recently from the University of Colorado School of Journalism after 16 years, not only his students lost something.

Whether they know it or not, media people everywhere—especially investigative reporter types—owe Archibald thanks for his work in removing many of the "classified" veils of secrecy government bureaucrats hide behind. Archibald began chipping away at government secrecy during the McCarthy era. He was among those responsible for the Freedom of Information Act in 1966 and major amendments in 1974.

Efforts to dilute the law have been under way ever since. But even conservatives defend it.

No less an observer than conservative columnist and former Nixon speechwriter William Safire wrote that it "has done more to inhibit the abuse of government power and to protect the citizen from unlawful snooping and arrogant harassment than any legislation in our lifetime."

Stirring words. But Archibald's friends prefer the lighter side with which he pokes fun at things lots of folks take terribly seriously.

At one of several retirement parties given in Archibald's honor in Boulder, former gubernatorial aide and Denver Post staffer Sue O'Brien—now a CU journalism professor—recounted the time she told Archibald she'd remarried.

Without missing a beat, he retorted "I didn't know you were pregnant!"

Nearly everyone hearing the story howled.

"It was vintage Sam," said O'Brien. "Something you could never say to a younger women in today's climate that has no sense of humor. But which Sam had no trouble directing at me—age 52, a mother of three and long single."

Archibald's instant retort, she said, was "a classic example of Sam's rampaging irreverence and sexism that he usually gets away with. He's been a one-man crusade against anything that even smacks of political correctness."

"Which is one of the reasons he's so wonderful."

At that particular soiree, "Sam stories" flowed like the ale this Boulder crowd was quaffing freely.

The barstool named for Sam at the Walnut Brewery was mentioned. A former student told how Sam "had taught me to be a royal pain in the ass." Tales of faculty-student romances were offered, with details unsuitable for the polite journalism that Archibald would be the first to blast.

Archibald, with shaggy white hair and eyes that usually hold a mischievous glint, can—of course—speak for himself.

If pressed, he'll tell about taking visiting military brass on tours of Burmese brothels during World War II, "under the guise of an 'educational' tour," while he was a U.S. Army public relations liaison in the China-Burma war theater.

"I had two years of journalism school at CU before enlisting," related Archibald, who grew up near Tejon Street and West 41st Avenue in northwest Denver and attended North High School. "I later covered the Japanese surrender in Canton. Nobody cared."

After the war, "I went back to CU and found graduate school was better than being shot at." He was a statehouse reporter for the Sacramento Bee and then worked for the Associated Press and United Press International before joining California U.S. Rep. John Moss' House subcommittee on government secrecy.

"Our first office space was in a former men's room," Archibald recalled. "But we gathered a staff of former newsmen and lawyers to investigate old directives issued by Harry Truman to justify excessive secrecy ten years after the war. After eleven years of fun, which was definitely a high point in my life, we had the Freedom of Information Act."

As a journalism professor, the joys of assigning students to "dig through records and force people to give answers, to come up with a story the Denver Post should have had; even if it takes a whole semester," have not been unalloyed.

"The bad news is teaching most students simply to read and write at a time when maybe only 10 percent of journalism students are really qualified to go into this business," he said. "In the 16 years I've been here, students have gotten less interested in the hard work of this business and more interested in skiing, drinking, sex and making money; maybe not in that order. But, even if you plan to make money in public relations later on, you need to learn the basics.

His more somber colleagues have blasted one of the major journalistic innovations of recent years, the introduction of USA Today. Archibald disagrees. "It represents a hopeful sign," he said, "and I'm not being facetious for a change. . . . With its short takes that boil things down to essentials and colorful illustrations, USA Today at least gets people to look at newspapers.

We aren't going to change peoples' habits," Archibald said. "But we can get them to read something that looks interesting—and make something they should read into something they will."

As for the industry's future, "There'll always be newspapers. What else can you use to train a puppy or to line a bird cage?" Archibald said.

But his optimism is tempered by technology: "Once they figure a way to transmit newspapers electronically, I'll start to worry. Because, then, the government can try to control that mode with license regulation the way they control the air waves."

EXTENSION OF MORNING BUSINESS

Mr. NUNN. Mr. President, I ask unanimous consent that I be allowed to complete my remarks and that the Senate remain in morning business until I have completed my remarks.

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

FORGING CIVIL-MILITARY CO-OPERATION FOR COMMUNITY REGENERATION

Mr. NUNN. Mr. President, the end of the cold war has created a number of opportunities, as well as challenges, for our Nation. The collapse of the Warsaw Pact and the Soviet Union give us a chance to make significant reductions in the size of our military forces and our defense budget. Recent nuclear weapons agreements have diffused a portion of the world's arsenal of weapons of mass destruction. But tremors of instability and outright regional conflict are shaking many parts of the globe. These volatile situations, coupled with the changing nature of the world's balance of power, mean that we must still maintain a strong, and perhaps even more flexible military force.

Over the next few years, the Nation will continue the debate over what size the base force should be, what roles and missions it should undertake, and how it should be structured. There is considerable uncertainty at this time on just what kind of a military capability we will need in the future and what size force will be adequate.

We are leaving a security era that demanded large numbers of U.S. combat forces stationed overseas or operating in forward locations at high states of combat readiness in order to confront a large and quantitatively superior opponent. That era has ended. We are entering a security era that permits a shift in our overall strategy more toward smaller force levels, with fewer overseas deployments and lower operating tempos. The exact size and organization of this future base force is still taking shape. It will be a smaller force than we have today. We all know that. No doubt it will be smaller. It will have to be just as professional—and even more flexible. The force will still need a basic amount of combat and operations training to sustain maximum proficiency as well as readiness. But there will be a much greater opportunity than in the past to use military assets and training to assist civilian efforts in critical domestic areas.

Recent events in Los Angeles, with their terrible cost in life and property, should remind us that our society faces numerous domestic challenges that in many respects are as daunting as any potential foreign threat to our national security. While the Soviet threat is gone, at home we are still battling drugs, poverty, urban decay, lack of self-esteem, unemployment, and racism. The military certainly cannot solve these problems, and I do not stand here today proposing any magic

solution to the numerous problems we have at home. But I am convinced that there is a proper and important role the armed forces can play in addressing these pressing issues. I believe we can reinvigorate the military's spectrum of capabilities to address such needs as deteriorating infrastructure, the lack of role models for tens of thousands, indeed hundreds of thousands, if not millions, of young people, limited training and education opportunities for the disadvantaged, and serious health and nutrition problems facing many of our citizens, particularly our children.

There is a solid precedent for civil cooperation in addressing domestic problems. Army regulation 28–19, developed under the leadership of Secretary Howard "Bo" Callaway, in the Ford administration, and issued in 1975, authorized a Domestic Action Program. The purpose of the program was to authorize "use of Department of the Army human and physical resources to assist and support the continued improvement and development of society."

Under this program, local military commanders helped communities with activities such as fixing up recreation facilities and conducting summer programs for disadvantaged young people. The program, however, was decentralized, and, of course, it in many respects needed to be decentralized, but it had very little management emphasis from the Army's leadership. In the 1980's, as the Army increased its focus on military training, interest in the Domestic Action Program faded, and the regulation was rescinded in 1988.

As we restructure our Armed Forces over the next decade, the attention of DOD's civilian and military leadership must remain focused on training the Armed Forces for their primary mission, which is the military mission. That goal, in my view, is compatible with enhancing the military's ability to assist in meeting domestic needs.

Creative commanders have always devised numerous innovative activities for their units—beyond routine training—to build morale and also unit cohesion. Community service projects present an excellent opportunity for them to do so, while providing important services to our society. The military involvement in counter-narcotics activities is a good example of a mission that enhances military skills, helps to address an important domestic problem, and improves the morale of the people involved.

During markup of the National Defense Authorization Act for fiscal year 1993, I intend to offer a proposal to authorize the Armed Forces to engage in appropriate community service programs. I would like to outline the basic concept today in order to encourage comments and suggestions from my colleagues and from the Department of Defense before the final details are developed during the markup. In other words, Mr. President, I am not locked in concrete. I am throwing these concepts out for discussion today. I know Senator WARNER has been looking, on behalf of the minority, at a number of concepts, and I am hoping that by stimulating the thinking in this area, we can refine this proposal in the next 2 or 3 weeks.

Mr. President, I want to stress at the outset that any such programs must be governed by three essential principles:

No. 1: Any such project must be undertaken in a manner that is consistent with the military mission of the unit in question.

No. 2: The project must fill a need that is not otherwise being met, and must not compete with the private sector or with services provided by other Government agencies.

No. 3: The program cannot become a basis for justifying additional overall military expenditures, or for retaining excess military personnel.

Projects should be undertaken only with personnel, resources, and facilities that exist for legitimate military purposes.

Building on the Army's experience with its Domestic Action Program, I would envision a new Civil-Military Cooperation Program with the following objectives:

First, enhancing individual and unit training and morale through meaningful community involvement.

Second, encouraging cooperation between civilian and military sectors of our society.

Third, advancing equal opportunity in the Nation and helping to alleviate the racial tension and conflict and strife and misunderstanding in our Nation.

Fourth, enriching the civilian economy by transfer of technological advances and manpower skills.

Fifth, improving the ecological environment and economic and social conditions of the areas that are within the reach of our existing military base structure.

Finally, increasing the opportunities for disadvantaged citizens, particularly children, to receive employment, training, education, as well as recreation.

The program would be organized under the supervision of the Assistant Secretary of Defense for Force Management and Personnel. I believe we should give the military departments and the Department of Defense broad discretion to manage the program in a manner consistent with their military missions, who would in turn grant flexibility to local commanders in the implementation of the program. Every base will be different, different missions, different talents, different capabilities, and different geographic areas. There will not be one single model for the country.

To ensure that projects meet important community needs and do not compete with the private sector and other Government organizations, local installations would establish advisory councils on civilian-military cooperation. In these groups, officials from the military installations, representatives of appropriate local, State and Federal agencies, leaders of civil and social service organizations, and business and labor representatives from the private sector, would meet to provide advice to local commanders in planning and executing civilian-military projects.

Mr. President, if we commit ourselves to it, this plan, as I view it, can make a major contribution to community restoration and regeneration efforts across the country. The American taxpayers have invested in and have built a great stockpile of innovative ideas, knowledge, trained, talented people, and equipment in the military over the years. These resources, if properly matched to local needs, and coordinated with civilian efforts, can make a useful contribution to addressing the problems we face in blighted urban areas, in neglected rural regions, in schools, and elsewhere.

Depending on the capabilities and availability of specific units, and the needs of local communities, the Armed Forces can assist civilian authorities in addressing a significant number of domestic problems.

I put at the top of the list role models. One of the key strengths of the Armed Forces is developing role models. Hardworking, disciplined men and women, who command respect and honor in their very presence, can serve as a very powerful force among our young people, especially where family structures are weakened by poverty, drugs and crime. We should enhance the opportunities for good role models to interact with our young people.

Take, for example, the case of Sergeant First Class Lenard Robinson, stationed at Fort Bragg, N.C., who actively corresponded with learning handicapped children at a school in California, while he was overseas during Operation Desert Storm. Typically, learning handicapped children have great difficulty expressing themselves in writing. Sergeant Robinson's vivid descriptions of his experiences overseas, combined with photos and videos that he sent, has inspired many children to read his letters, and many of the children who never wrote more than a few words before they heard of Sergeant Robinson, now write long letters to him. We have thousands of Sergeant Robinsons in our military services today.

The YESS program in Michigan is a collaborative effort between the private sector, nonprofit organizations, and the Michigan National Guard, to provide disadvantaged young people with role models in specific educational skills. Young people live on a military base for 5 days, receiving

science and math tutoring, as well as exposure to military hardware and operations.

This provides an exciting, stimulating environment to not only enhance their educational skills, but also to provide them with role models that encourage these young people to set goals for their own lives. It enables them to look at others who have come from similar circumstances and say, "If they did it, I can do it, also."

Senator LEVIN brought this program to my attention. He is very familiar with the program and will be describing it in more detail when he speaks on this subject.

Why not expand this program so that it can benefit young people throughout our Nation?

The American people are familiar with our senior military leaders, many of whom are black, who served our Nation so well during Operation Desert Storm, such as Gen. Colin Powell and Lt. Gen. Calvin Waller. There are over 400,000 members of the Armed Forces who are black, and over 90,000 who are Hispanic, whose service, in Operation Desert Storm and elsewhere, is a model for every citizen in our country. These include marines such as Capt. Ed Ray, a light infantry company commander, whose testimony before our committee about combat in Operation Desert Storm demonstrated the professionalism and competence of our junior officers. Or Spc. Jonathan Alston, of the 2d Armored Division, whose heroism in Desert Storm earned him the Silver Star, and who is featured in the television docu-drama, "The Heroes of Desert Storm."

These individuals, not only those who have been in Desert Storm but thousands of those who attained great professionalism can serve as role models in community service programs throughout our country. But there must be a structured program to enable community organizations to benefit from the capabilities and qualities of military role models. Military leadership, at both the officer and enlisted level, is an example of unique national resources. Why not use this resource as an example to tens of thousands of inner city and rural youth who, for example, many have never had a father in their own home?

REHABILITATION AND RENEWAL OF COMMUNITY FACILITIES

All across this country, schools, public housing, and recreational facilities, as well as roads and bridges, need repair in areas where Government funds and private-sector involvement are simply not available. Active duty and reserve units, particularly those with engineering capabilities, could participate in restoring part of our infrastructure in this country. Military construction units may need to be beefed up and perhaps redistributed to ensure that capabilities exist in all geographic areas to meet this important need.

Bill Guilfoil of the Atlanta project at the Carter Center in Georgia has reported that at least 1,600 public housing units are boarded up and unoccupied in Atlanta because of their state of disrepair. Meanwhile, the city's homeless population numbers at least 12,000. And I think this story is repeated in city after city after city across our land.

There are dozens of engineering units that are located in Georgia that really need to do construction and maintenance training in order to keep up their proficiency because that is what they do, that is what they have to do, in any kind of conflict. I think it makes sense to put those domestic needs and our military engineering resources together. Army combat engineer units could be effectively used to repair dilapidated public housing, repair aging schools, and refurbish old recreational facilities. They could also provide temporary facilities to meet pressing public needs. As noted in an article in the Washington Post last week, the WIC [women, infants, and children] center that served the south central Los Angeles area was destroyed in the riots, leaving the area without the capability to ensure that children and pregnant mothers received vital nutrition. The military has the capability to provide temporary buildings on very short notice. Why not use this capability to deal with such an emergency?

Last year, in Operation Provide Comfort in Iraq, military maintenance and construction units built housing, laid cement roads, put in plumbing systems—and the list goes on—for the desperate Kurds. We have desperate people in America. Why not put those resources to work at home?

In many areas, these units are located right next door to blighted areas.

NATIONAL GUARD BUREAU FOR A NATIONAL GUARD YOUTH CORPS

The military should examine ways to refocus local reserve component training on local community support initiatives whenever feasible and operationally justified. I will be proposing a pilot program to be implemented by the National Guard Bureau for a National Guard Youth Corps.

Last year in the Department of Defense Appropriations Act for fiscal year 1992, Congress appropriated funds for the National Guard Bureau to develop a program designed to demonstrate how disadvantaged youth can be aided through a program, based on a military model, of education, personal and skills development, and work in service to their communities. This initiative was sponsored by Senator BYRD and I compliment him on his proposal.

The National Guard Bureau has since completed its work on designing a pilot program. It is very promising. As it is currently envisioned, the Chief of the National Guard Bureau would be authorized to enter agreements with the governors of 10 States to operate a military based training program to improve basic skills and employability of high school dropouts. In this regard, I will be working with Senator BYRD, and with Senator GLENN, who chairs our Manpower Subcommittee, to include a provision in our defense markup this year authorizing such a pilot program, which is really being enthusiastically requested by the Guard Bureau.

The program would require a relatively modest investment of the talent that is already available in National Guard units. I have also been informed that Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, is interested in expanding the Junior ROTC Training Program, an effort I applaud and which could benefit from the types of assistance and I have outlined in these remarks.

Expansion of the Junior ROTC Program, particularly in our inner cities, would be particularly beneficial, and I look forward getting that proposal from General Powell and others working with it.

If these plans are implemented, they could do much to help the young people of our country. Why not put our military resources to work on these projects?

SUMMER PROGRAMS

Our young people need other kinds of help. I believe we should investigate ways to refocus Department of Defense summer hire programs to recruit disadvantaged students where feasible. In areas where the DOD operates schools, teachers and perhaps facilities could be involved in summer school outreach to disadvantaged children. Why not put these resources to work in areas of great need?

JOB TRAINING AND EDUCATION

There is a dire need for job training and education—especially in the inner cities—to enable men and women to meet the needs of the evolving workplace. While our educational system and private industry must bear the primary responsibility for training and education, there may be opportunities in specific locations for civil-military cooperative use of military training facilities to assist in meeting these needs. Why not put our military resources to work on these needs? Why not look at our military resources as a resource for this kind of training and education?

MEDICAL TRANSPORT

Our ability to transport people to medical facilities in an emergency can never be fast enough, particularly for trauma victims. Every day, military medivac units must log certain hours of flight training.

That is what they are training for all year along, to be ready in a contingency; that is what they are in busi-

ness to do, to help evacuate people in a conflict situation. I submit that they should be allowed to do so while helping our citizens at the same time. Currently, 97 percent of the aeromedical evacuation units are in the Air National Guard and Air Force Reserve. These units provide long distance medical evacuation. In addition, 1 reserve and 17 active helicopter units in the Army, and 1 Air Force reserve helicopter unit, provide short distance emergency medical evacuation under the Military Assistance to Safety and Traffic Program in a number of States. In Georgia, for example, the 498th Medical Company at Fort Benning has provided critical emergency medical support to assist communities throughout southwest Georgia, particularly rural areas. I believe that these units can be more centrally integrated and managed as they train to provide even more assistance to our communities.

Communities that do not have access to current military or civilian medical transport services need these resources. Why not look at the inventory of our military resources, determine which areas can be matched up, determine where the private sector is not able to provide this kind of service, and use the military in meeting these critical needs?

PUBLIC HEALTH OUTREACH

In a similar vein, there are many citizens in both urban and rural areas who lack the very basics of health and medical services. There may be opportunities in specific locations to use DOD medical capabilities to assist civilian authorities in providing a public health outreach to these urban areas. The Centers for Disease Control in Atlanta estimates that fewer than half of all American children are fully immunized against diseases such as polio, diphtheria, tetanus, measles, and rubella. Infant vaccination and basic medical treatment are services that the military provides routinely in humanitarian missions abroad. Why not use these resources at home?

NUTRITION

There may be areas in which the military could play a useful role by assisting civilian authorities in addressing the serious problem of hunger in America. The Food Research and Action Center—which recently honored Senator LUGAR for his leadership on this issue—has estimated that 5 million children under age 12—1 in 8 in America—suffer from hunger.

An old military saying is that "the Army travels on its stomach." The military has extensive food storage, preparation, and distribution systems. Military units responsible for these systems, including those in the National Guard and Reserve, could play an important role in the distribution of surplus food. They could help provide transportation, storage, and preparation assistance to Federal, State, and local agencies while they are preparing for their basic mission. Where civilian agencies need this assistance, and military units are capable of providing it, why not put these resources to work?

AN OPPORTUNITY FOR POSITIVE CHANGE

The time to turn these ideas into action I think is this year during this window of change and flexibility. As we reconfigure our military forces for our future defense requirements, I believe that we can reduce some of the combat missions that have been assigned to the National Guard and Reserves. At the same time, because warning times will be much longer, we should realign more of the military's support missions to the National Guard and the Reserves. These support units must be distributed in a regionally balanced way to provide a more effective capability for each State, with the added benefit of facilitating the opportunities for civil-military cooperation. Pentagon officials should put greater emphasis on coordinating military training with the potential benefits that such training could have in improving our communities.

They need authority to do so. And they need expression from the congressional branch of Government to do so.

I am confident that this Civil-Military Cooperative Action Program can be structured in a manner consistent with our military needs, without competing with the private sector or other Government agencies. It is imperative that we not undercut private enterprise; but we can all look at cities of our country today; we can look at the problems in Los Angeles, the problems in Atlanta, the problems in Chicago, New York, Boston, and on and on, and we can easily say without fear of being repudiated that the private sector cannot handle the job that needs to be done. All we have to do is look at the Federal budget deficit and know there is not going to be an instant solution with billions and billions of dollars of new expenditure. We simply can't afford it. There are, however, many opportunities for the military to get involved. I do not pretend the military can solve all the problems. Projects would have to be carefully tailored to each individual base and unit's capability and keep our focus on the military mission first and foremost. But there are many opportunities for military assistance to community needs that cannot be met with current private sector or civilian public resources.

Mr. President, I watched the faces of people who fought in Desert Storm. I watched the faces of those who provided relief to people who were dying on the desert who they had been fighting a few minutes before, and I watched the young people and the satisfaction they had in helping people in need who were dying. I also talked to many people who came back from helping the Kurds.

I talked to people who came from helping in Bangladesh. Nothing gives military people more pride than carrying out a mission of humanity, a mission of peace, a mission of mercy. This is something they enjoy doing. It gives them tremendous satisfaction and it is something they do well.

By using the capabilities we have in the military, we can assist civilian authorities in addressing the critical fundamentals upon which a healthy society, a healthy economy, and a healthy military are built. I believe this is a sensible investment we can make in our future, and a vital one.

I look forward to working with my colleagues in receiving suggestions, additions, warnings, caveats, and so forth to this proposal. I look forward to working with the senior leadership of the Defense Department, Secretary Cheney and General Powell. I have already discussed this with General Sullivan of the Army. I have talked about it with several other individuals. I believe that working together we can develop a vibrant Civil-Military Cooperative Action Program to begin working on some of these problems that afflict our Nation.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized. The Senator from Michigan is advised that, under the previous order, the Senate was to have gone into recess 25 minutes ago.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be allowed to proceed for 4 minutes and that the Senate recess immediately thereafter.

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

Mr. LEVIN. Mr. President, first let me congratulate the Senator from Georgia. The imaginative program which he is describing for us is a very important initiative. It is consistent with the kind of leadership and imagination which the Senator from Georgia has shown as chairman of the Armed Services Committee, and I think he is going to find a great outpouring of support for his Civil-Military Cooperative Action Program in this body.

THE STARS PROJECT

Mr. LEVIN. The Senator from Georgia made reference to a very promising program that is called the YES Program which was begun under the auspices of the National Guard. YES stands for Youth Empowerment Support Program. It is ultimately aimed at 4th through 12th graders.

The first program under this rubric has begun already. It has begun in the State of Michigan. It is at Selfridge Air National Guard Base. It is helping youth in the metro Detroit area to learn the excitement of math and science as it relates to aerospace. And

it also teaches youth in this program to learn to set and to meet goals for their lives.

The particular program is called Project STARS or the STARS project. As I say, it began at Selfridge Air National Guard Base in Macomb County in Michigan. This is a program which takes advantages of the facilities, equipment, talent and caring people at Selfridge and brings in youth, including a large percent of youth at risk, to expose those children to the excitement of hands-on learning with science projects directly related to the activities at Selfridge—flying airplanes, charting the weather, and building and launching rockets.

The children who are participating in this program simply love the experience. We have seen their faces and the impact on their lives from that participation. It is a cooperative program which is supported by the National Guard, of course, by the Judson Youth Center, by the Kellogg Foundation, and by the Apple Computer Co.

The whole purpose of Project STARS—which stands for Science, Technology, Aerospace, Readiness School—is to bring fourth through sixth graders to the guard base to get them excited about math and science, to learn goal-setting and achieving skills and to get hands-on experience with the equipment that most have never seen, let alone dreamed of using.

Selfridge is the first base, but two more will open in the fall, and eight other National Guard bases are interested in opening in the future. This project hopes to place a Starbase in every State, at a National Guard base in every State. And it is supported by the National Guard Bureau.

We have to, each of us, imagine the experience of these at-risk youth who either go to visit the base for 5 school days or who live on the base for a week in the summertime. They find people who are excellent role models showing the kids that someone cares about them, shares their excitement about learning about jet aircraft and computers and launching rockets. It is an invaluable bridge across the gulf of hopelessness and disdain which is too prevalent in our cities. It is just a wonderful way to help youth trying to be their best. And it has, again, the support of private business and nonprofit foundations.

This program provides an opportunity for the military to play a very important role in our society and to help our youth to be ready for the future. It deserves the support of all of us, as we try to locate a Starbase at a National Guard base in each of our States, and we will be working to do exactly that in the defense budget as we proceed this year.

Again, I thank and congratulate the Senator from Georgia, the chairman of the Armed Services Committee for the many comprehensive initiatives he is announcing this morning.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 12:58 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The hour of 2:15 having arrived, morning business is closed.

FEDERAL HOUSING ENTERPRISES REGULATORY REFORM ACT

The PRESIDING OFFICER. The Senate will now proceed to the consideration of S. 2733, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2733) to improve the regulation of Government-sponsored enterprises.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I thank the Chair.

This is very important legislation we are bringing forward today, and I want to make a few additional comments and provide a formal statement to colleagues as to what is in this legislation.

Then I think it very important the ranking minority member, Senator GARN, likewise have an opportunity to make whatever opening comments he wishes to make.

I might say, too, we have developed with this legislation a significant bipartisan managers' amendment that has in itself items that are very important. I will not enumerate all those at this time but it is supported by the committee on both sides, and at an appropriate time I will want to offer that.

Let me say at the outset that Government-sponsored enterprises—there are several of these within our Federal Government structure. But the two biggest and the two that we focus on in this legislation are what we call Fannie Mae and Freddie Mac, the two institutions whose job it is to buy home mortgages that have been originated by other lenders out in the marketplace and either hold these mortgages for their own investment portfolio or to, in turn, securitize them by using them as collateral for mortgage securities and then selling those out to the private market.

In the process, Freddie and Fannie, as they are known, have issued some $900 billion of debt that they either owe directly or that they otherwise guarantee. And although there is no specific legal requirement in place, there is no doubt in my mind, and I think generally, that taxpayers are ultimately backstopping all of the $900 billion that is involved here.

Furthermore, because the GSE's jointly finance about half of all new home mortgages, their policies and decisions about which mortgages to buy can have a dramatic effect on who actually is able to obtain financing out among the citizens of our country, and in turn, then, who is unable to secure home mortgage financing; and also, then, on which houses and apartments get built and which do not.

Currently, the GSE's have no meaningful capital standards in the law. And little attention is paid to the adequacy of their efforts to finance what I want to call here affordable housing.

This bill, as developed by the committee, sets up a new regulatory office funded entirely by the GSE's themselves. That office is directed to issue new rules requiring the GSE's to hold more capital—in other words, to provide a stronger capital position—and also provide greater support for what we call affordable housing. And that means to direct more of their financing strength toward low- and moderate-income home buyers so that there is a greater flow of credit to people who otherwise have a very difficult time financing home mortgages.

The new office that the legislation would establish would technically be placed in the Department of Housing and Urban Development, but the HUD Secretary, as such, would have no authority to interfere in safety and soundness issues, supervision, and enforcement.

In the capital area, a minimum leverage ratio would be supplemented with a state-of-the-art, risk-based capital requirement designed to ensure that each GSE could survive a 10-year period of extraordinary mortgage defaults and adverse changes in interest rates. And that is to anticipate and overcome what is called the interest rate risk where you can have large swings in interest rates, such as we have seen over the last decade and a half where all of a sudden you can find a situation where fixed-rate mortgages that were at one level, all of a sudden become an unsound level in light of radical shifts up or down in interest rates over a relatively short period of time.

In the area with respect to inner-city lending, there is a very important part of this legislation that is directed at that issue and that issue, of course, arises in part because of the situation of what we have seen in Los Angeles and other cities where there is a tremendous urban distress from a lack of job opportunities and other problems, but part of it is the flow of credit and

capital into those communities and very particularly what is or is not available with respect to housing credit.

So over the next 2 years under this legislation, the new housing rules will increase to at least 30 percent, the portion of the GSE's mortgage purposes that would benefit families in the lower half of the income distribution. These new rules would also increase the GSE's purchases of mortgages in central cities to 30 percent, and that is an increase from where it is presently.

As I say, this is especially important in view of the deteriorating urban conditions that were highlighted in Los Angeles last month. After a 2-year period of time, the regulator would set additional requirements for lending in rural areas as well.

The bill also provides that at least $3.5 billion must be spent by the GSE's over the next 2 years to finance housing for poorer families in categories with earning less than 60 to 80 percent of area median incomes. The bill also strengthens laws prohibiting discrimination in housing and requires the GSE's to provide much more information about their activities so that their effects can be much more accurately judged.

I should say that a substantially similar bill to this one was approved in the House of Representatives by a vote of 412 to 8 last September. I think it shows clearly the need for this remedial legislation, safeguarding type legislation, and also the overwhelming bipartisan consensus that exists in this area.

I should indicate as well that this bill is supported by the administration, by the GSE's themselves, and by a broad coalition of low-income housing groups. This legislation comes about in large part because of the experience that we have had with massive financial system failures, failures that we have seen in the savings and loan system, failures that we have seen in the commercial banking system where we have had to have large-scale bailout legislation passed in both instances most recently for the banking system where we provided a $70-billion taxpayer loan to refinance the FDIC, deposit insurance fund, just last fall. We added, of course, to that a number of very significant banking reforms to prevent problems in the future that caused that fund to go into a deficit at the end of last year.

With the GSE's, it is fair to say that over their history that they have done I think quite a fine job and mortgage interest rates are generally thought to be probably a quarter or to a half a percent lower than they otherwise would be in terms of mortgage credit generally throughout the system because of the fact that we have established these Government-sponsored enterprises, Fannie Mae and Freddie Mac, and because of the enormous role that they now play in helping to facilitate the flow of credit into home mortgages and, in turn, the placement of those credits out into the debt-holding system throughout our country.

The reason that these problems are now being addressed, a different one than the GSE's in the early 1980's, is that we had experienced a problem that caused us to take a very careful look at the capital structure, to see what ought to be done to create actual capital standards in a kind of capital solvency test and margin that by any reasonable standard would be sufficient to protect against any catastrophic failure of the system. Legislation to improve the GSE's regulatory structure was strongly recommended in studies by the Treasury Department, by the General Accounting Office, by the Congressional Budget Office, and by the Administrative Conference.

And so the bill before us today works off those various recommendations in creating a new Office of Federal Housing Enterprise Oversight which will be housed within HUD but which, as I said earlier, will be funded entirely from assessments on the GSE's themselves. So these will be self-financing entities.

The new office will have a considerable degree of independence, consistent with other financial regulators, but at the same time the committee decided to keep the GSE regulations within HUD and recognition of the need to coordinate regulation of these critical housing entities with other aspects of national housing policy.

The director of the new office will be responsible for enforcing a new set of meaningful capital requirements to replace existing provisions that do not reflect the sweeping changes in mortgage finance markets over the past decade. The new standards represent a substantial advance over those currently used for banks and thrifts. They more accurately evaluate credit risks, explicitly account for interest rate risks, and include a significant amount to cover management and operations risks as well. For the first time, the regulator will have a specifically delineated, tough enforcement set of tools to ensure that the new capital standards are met.

But given the dominating role of these entities in mortgage finance markets and the large Federal interest rate subsidies they receive, it is not sufficient alone that we require them to be just safe and sound, but we need and must expect more than that. Their charters also must require them, and rightly so, to provide special assistance to low- and moderate-income families throughout the country in terms of carrying out an intelligent, meaningful, and fair housing policy. The bill requires the new regulator to set annual goals for the GSE's purchase of mortgages benefiting families with below-median incomes and for families in central cities, rural areas, and other underserved areas to assure this mission is achieved.

HUD has had similar regulations on its books for many years. Those regulations have been too weak and often have not been enforced. So the bill creates better standards with specific enforcement tools that will require the GSE's to increase their efforts to provide financing for those that need it the most.

I think it is fair to say that this legislation enjoys very broad support.

I ask unanimous consent to place into the RECORD letters evidencing the support in terms of this reform package which come from the GSE's themselves, from the National Association of Home Builders, from the U.S. Conference of Mayors, from many individual mayors, from the League of Cities, from the Low-Income Housing Coalition, from the National Neighborhood Coalition, from the National Housing Conference, from the National Conference of State Housing Agencies, the National Training and Information Center, ACORN, IRASA, LISC, and the Enterprise Foundation.

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

FANNIE MAE,
Washington, DC, April 1, 1992.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I would like to congratulate you and your staff on the bipartisan March 12 draft of the GSE bill. Enacting this legislation will ensure that a very important part of the American home finance system, a system that Congress created and that works extremely well for millions of American families at no government expense, will continue on that path well into the next century. The bill accomplishes this through a capital standard that is more sensitive, dynamic and tough than any in law today; a thoroughly modern and up-to-date system of regulatory oversight; and an extension and enhancement of the housing responsibilities of Fannie Mae.

The last ten years have, in some ways, been difficult ones for housing. Federal support for housing those at the bottom of the income scale has declined; high interest rates and high home prices over much of the period, combined with recession at its end, have kept many renters from becoming owners; and the travails of the thrift and bank industry have in recent years reduced funds for construction lending to build new homes. Through all this, Fannie Mae has been a critical link to housing millions of families, most in homes they own.

Without the secondary market, which brings investor dollars from around the country and around the globe to the thrifts, banks, mortgage bankers and credit unions who make loans to families, far fewer families would have had access to mortgages, and most would have paid more. Fannie Mae's and Freddie Mac's presence during the 1980s saved home buyers more than $30 billion in mortgage interest payments. In 1991 alone, Fannie Mae provided $140 billion of financing

for 1.7 million families. We will serve more than 10 million additional families during the rest of the decade; an increasing proportion will be low-income families, and others with special housing needs.

The GSE legislation now before you will guarantee that American families will continue to have the best access to mortgage funding in the world. And, because the bill tackles effectively the most difficult issues relating to Fannie Mae—capital adequacy and housing mission—you can be assured that we will expand our mission, serving those whose needs are not currently well met, while at the same time posing no risk to the taxpayers or the federal government. It is a combination at the heart of "a decent home and a suitable living environment for every American family," the goal of the Housing Act of 1949.

The effort of this bill will be to further expand Fannie Mae's commitment to serve the housing needs of low- and moderate-income families and those who, for reasons of geography, race, or gender, have been underserved by the mortgage finance system. The bill complements the requirements of the Community Reinvestment Act and fair lending laws.

Meeting the bill's requirements will not be easy. We will achieve the bill's goals by developing an understanding of why problems exist in the market and what needs to be done to respond to them, by creating new products and by reevaluating and revising existing policies and practices. I strongly believe this broadened mission is appropriate and fundamental given the persistence of the nation's affordable housing crisis and evidence of continuing discrimination in the home mortgage and rental markets. I also believe we can accomplish it while achieving a reasonable economic return to the corporation and without in any way endangering or undermining Fannie Mae's financial health or security.

The March 12 draft preserves and enhances this system while respecting and ensuring the continuation of the operation of the companies as private enterprises, managed to be market-driven, forward-looking, prudent businesses getting the best for home buyers, renters, the taxpayers and the shareholders whose investment bears the first risk of loss. The draft appears to affirm Congress' long-stated intention that the government not be involved in the day-to-day business decisions of the companies when they are well capitalized. We would like to work with you and your staff through conference to further refine this portion of the bill.

I urge you to proceed with markup of this legislation. It is a fine piece of work that meets its objectives, and will ensure that Fannie Mae will continue to meet ours, without any help from the taxpayers. We are prepared to support you fully.

Sincerely,

JAMES A. JOHNSON.

FEDERAL HOME LOAN
MORTGAGE CORPORATION,
McLean, VA, March 30, 1992.

Hon. DONALD RIEGLE,
Chairman, Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN RIEGLE: As you know, we have been working closely with the staff of the Banking Committee in recent weeks on proposed legislation to modernize the regulatory system applicable to Freddie Mac and Fannie Mae. I am delighted that remarkable progress has been made since the November 24 discussion draft was circulated. I support the March 12 draft and urge you to move the product expeditiously through the Committee.

The March 12 draft accomplishes your stated public policy objectives of balancing tough capital standards with enhanced affordable housing opportunities. Legislation passed the House of Representatives last year that would subject Freddie Mac and Fannie Mae to the toughest capital standards in the financial service industry. The current draft would build on that structure, enhance specificity and require us to hold more capital than mandated by H.R. 2900.

Further, the draft includes numerous statutory changes that will aid many in their effort to achieve affordable housing. Specifically, the proposal accomplishes, among other things, the following:

For the first time, specific affordable housing goals will be in statute, thereby preventing a regulator, who may be less committed to affordable housing than Congressional proponents from thwarting their intent in this important area.

The current low and moderate income test will be changed from a purchase price test to a borrower income test, thus targeting borrowers by income more directly. One effect of modifying the low and moderate income definition is to increase the housing goals beyond those proposed in the HUD regulations.

The draft will require extensive data collection by Freddie Mac and Fannie Mae. The reporting requirements will enable the regulator and Congress to better assess the GSEs' progress in meeting affordable housing needs.

Of course, as with any proposal, ambiguities need to be clarified through report language. For instance, issues concerning "prior approval" are a candidate for greater explanation. Notwithstanding, I urge you and the Committee to report the March 12 draft as soon as possible.

I appreciate your support for housing finance, and look forward to working with you and your staff in the future on issues of mutual interest and concern.

Sincerely yours,

LELAND C. BRENDSEL,
Chairman and Chief Executive Officer.

NATIONAL COUNCIL OF
STATE HOUSING AGENCIES,
Washington, DC, April 7, 1992.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN RIEGLE: The undersigned state, local, and nonprofit organizations strongly endorse the overall provisions of Title V of the Federal Housing Enterprises Regulatory Reform Act of 1992. Title V establishes a comprehensive framework of goal setting, data collection, reporting, monitoring, and enforcement which will compel Fannie Mae and Freddie Mac to significantly expand their commitment to affordable housing. We urge you to aggressively oppose any amendments to make optional or otherwise weaken these landmark housing provisions.

Legislation to ensure the safety and soundness of Fannie Mae and Freddie Mac must not ignore their Congressionally-mandated public purpose. Congress has entrusted Fannie Mae and Freddie Mac with the responsibility to assure low and moderate income families and other underserved sectors of the mortgage market broad access to housing credit. At a time of severe affordability problems for the very families Fannie Mae and Freddie Mac are intended to serve, these corporations must be directed to do far more than they are currently doing to increase low and moderate income housing opportunities.

The rigorous housing goals established under Title V challenge Fannie Mae and Freddie Mac to expand, diversify, and mainstream their affordable housing lending programs. Specifically, the legislation requires that in the first two years:

At least 30 percent of the corporations' mortgage purchases be secured by housing located in central cities annually;

At least 30 percent of the corporations' mortgages purchases be secured by housing serving families of low and moderate income annually; and

Not less than $3.5 billion be invested by the corporations in the purchase of mortgages securing single and multifamily housing serving families with incomes which do not exceed 80 percent of the area median income. More than half of these mortgages must be secured by housing for families with incomes of 60 percent of the area median or less.

In subsequent years, the goals would be established by the Director of the Office of Federal Housing Enterprise Oversight at HUD, and the central city goal would be expanded to include rural and other underserved areas.

Fannie Mae and Freddie Mac play a unique and vital role in the financing of our nation's housing. It is imperative that the public benefits conferred with these corporations' congressionally granted charters are made available for all income groups without regard to race or location of the residence. We believe this legislation takes reasonable and timely steps to assure that equal credit opportunities are available to all those who seek affordable ownership and rental housing.

We appreciate the opportunity to work with you in developing this crucial housing legislation. We look to you to reaffirm Fannie Mae and Freddie Mac's public mission through its adoptions. Thank you for your consideration.

Sincerely,

Association of Community Organizations for Reform Now (ACORN), The Enterprise Foundation, Local Initiatives Support Corporation, National Council of La Raza, National Council of State Housing Agencies, National Housing Conference, National League of Cities, National Low Income Housing Coalition, National Neighborhood Coalition, United States Conference of Mayors.

THE CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York, NY, April 3, 1992.

Hon. DONALD W. REIGLE,
Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR RIEGLE: On behalf of the City of New York, I express my support for your efforts to stimulate investment in central cities and low- and moderate-income neighborhoods by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). In addition, I urge your support for imposing and enforcing strict underwriting standards for the government-sponsored enterprises in order to avoid financial losses.

As you review legislation affecting the mission of Fannie Mae and Freedie Mac, I

ask that you carefully weigh the critical need for greater mortgage credit availability in the nation's central cities. Codifying and enforcing existing HUD regulations requiring Fannie Mae and Freddie Mac to purchase at least 30% of their mortgages from central cities is a necessary and important step in that direction.

Such a Congressional mandate would build upon the progress made in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989. Changes to the Community Reinvestment Act (CRA) and the Home Mortgage Disclosure Act (HMDA) in FIRREA provide for public access to CRA bank ratings and identification of the geographic location and racial identity of borrowers. These actions have laid a foundation for the expansion of the mortgage credit to low- and moderate-income inner city neighborhoods. Lending institutions are now compelled to aggressively seek profitable mortgage and small business credit opportunities in central cities. But these important measures are just a beginning.

"Redlining" continues to be practiced by many mortgage lenders through underwriting standards which discourage mortgage origination in central cities. Today, entire central cities are being deemed "less desirable" by financial institutions for credit purposes. The flight of mortgage and investment capital from central cities must be stopped if further erosion of the urban tax base and the federal abandonment of our cultural and intellectual centers is to be prevented.

I am concerned that recent investigations of the mortgage lending practices of both corporations, particularly Freddie Mac, revealed that extreme administrative laxity was exercised with regard to its multifamily loan portfolio, resulting in substantial losses. In New York City alone, this laxity resulted in the foreclosure of 35 properties located in low-income communities in the New York City metropolitan area. I urge you to impose and enforce strict underwriting standards for the government-sponsored enterprises in order to avoid further financial loss.

I commend you efforts to devise legislation to codify and enforce HUD's regulations governing these Congressionally-chartered corporations in order to insure that Fannie Mae and Freddie Mac respond to the desperate and growing need for mortgate credit in our urban centers, low- and moderate-income and minority neighborhoods. If you have any question or concerns, please do not hesitate to contact the director of my Washington office, Judy Chesser, at (202) 393-3903.

Sincerely,

DAVID N. DINKINS,
Mayor.

NATIONAL TRAINING AND
INFORMATION CENTER,
Chicago, IL, February 12, 1992.

KEVIN CHAVERS,
The Office of Senator Riegle, Jr., Washington, DC.

DEAR MR. CHAVERS: With the recent release of the new HMDA data, discrimination in lending is once again a popular topic of discussion. Hearings will be held and articles written on disinvestment in the inner city, the effect of race on credit availability, and on how best to revitalize communities. None of this discussion will amount to anything if the secondary market is not open to loans made to minorities, low- and moderate-income families, or urban dwellers.

All the discussion in the world will not alter the fact that banks and S&L's depend on Fannie Mae and Freddie Mac to provide an outlet for their loans and thus liquidity for further lending. Lenders know full well what does and does not sell on the secondary market. What Fannie Mae and Freddie Mac will not purchase, lenders will not originate.

The National Training and Information Center, together with our grassroots contacts nationwide, has 20 years of experience in promoting the Community Reinvestment Act. Through this experience we have learned that lenders cannot fulfill their CRA goals when the mortgages they wish to make are blocked from the secondary market.

If Title 5 of the Government Sponsored Enterprises legislation is cut from the bill, there will be no obligation on the part of these two privileged entities to serve the mortgage market fairly. Fannie Mae and Freddie Mac's status as GSEs confers very significant advantages on both corporations. Both were created to fulfill a public purpose, and both enjoy an astronomical rate of return on investment (33% in 1990). Despite these advantages, neither entity has opened its markets to loans made in urban areas, to minorities, or to low- and moderate-income families.

No other single factor in the American mortgage system has the impact on lending that the secondary market has. And because of this, it is critical that Fannie Mae and Freddie Mac have an explicitly stated obligation to serve the credit needs of all American homebuyers.

The National Training and Information Center advocates a requirement that at least 30% of Fannie Mae and Freddie Mac's purchases be of low- and moderate-income mortgages, and at least 30% be located in central city areas. Fannie Mae and Freddie Mac should also be required to report annually to HUD and Congress on their progress in fulfilling these requirements, and HUD should maintain regulatory authority over the two GSEs.

There is no justification for allowing two entities which enjoy such lucrative government favoritism to pick and choose the segments of the American public they wish to serve. And there is no reasonable public policy which would permit them to derive these advantages while constraining the fair and open function of the American mortgage market.

Sincerely,

GALE CINCOTTA,
Executive Director.

NATIONAL TRAINING AND
INFORMATION CENTER,
Chicago, IL, April 7, 1992.

Senator DONALD W. RIEGLE, Chairman,
Senate Committee on Banking, Finance, and Urban Affairs, Washington, DC.

DEAR CHAIRMAN AND MEMBERS OF THE SENATE BANKING COMMITTEE: I am writing to you today to urge you to support the committee print of the Government-Sponsored Enterprises Legislation in Wednesday's mark-up.

Fannie Mae and Freddie Mac were created by Congress to serve a crucial function in the American mortgage market. The secondary market provides liquidity which allows lenders to finance greater numbers of home buyers.

Not only do Fannie Mae and Freddie Mac enjoy substantial financial advantages as a result of their status as Government-Sponsored Enterprises, they also have an obligation to serve the whole American mortgage market fairly.

Through our two decades of experience in CRA lending and involvement in communities around the country, we know that the secondary market has not been serving all credit-worthy borrowers equally. The new HMDA data called for by FIRREA confirmed what was already a well-known fact in communities: that the secondary market has been redlining urban and low- and moderate-income neighborhoods.

Grassroots citizens' organizations understand that mortgages which cannot be sold on the secondary market are mortgages that can only be made in very limited numbers. Even with all the successful efforts being made under the Community Reinvestment Act, there is a bottleneck in the American mortgage market which perpetuates credit starvation in urban and minority areas. We need Freddie Mac's and Fannie Mae's full participation as conduits in our communities, as well, so that investment can flow into them.

The committee print of the GSE legislation takes everal measures to remove the blockage in the market, and to redress the inequities which have prevented lenders from serving all credit-worthy mortgage applicants. The legislation calls for Fannie Mae and Freddie Mac to purchase at least 30% of their mortgages in central city areas, and at least 30% of their purchases to be of mortgages held by families at or below the area median income. Data reporting is also called for, which will aid the new secondary market regulator within HUD, as well as interested citizens, to ensure that those goals are being fulfilled.

It is important that regulatory authority remain within HUD, the only federal agency mandated to serve the country's affordable housing needs.

It is time to put an end to the biases that have excluded qualified families from owning homes, and which have drained investment from urban, minority, and low- and moderate-income neighborhoods. The policies of the secondary market up to this point have contributed directly to the needless deterioration of communities. We must ensure that such enormously influential and crucial players in the American mortgage system fulfill their role for all of America's families, fairly.

Sincerely,

GALE CINCOTTA,
Executive Director.

DEPARTMENT OF COMMUNITY &
ECONOMIC DEVELOPMENT,
October 22, 1991.

Hon. DONALD W. RIEGLE, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: It is my understanding that the Senate Banking Committee has begun drafting legislation for the Federal National Mortgage Corporation and the Federal Home Loan Mortgage Corporation in a bill entitled "Government-Sponsored Enterprises" (GSE).

As it affects Flint's neighborhoods and home ownership opportunities, an important consideration of the committee should be to codify current HUD regulations which require these financial institutions to purchase at least 30 percent of their mortgages in central cities. This, with previous changes to CRA and HMDA, would greatly expand mortgage credit availability to inner city neighborhoods.

From your work on the FIRREA and the 1991 banking bill we have seen an increased willingness for the local private financial sector to meet with government and housing non-profits. As we continue these reinvestment meetings, I believe a targeted second-

ary mortgage requirement could further spur city revitalization.

Sincerely,

MICHAEL K. BROWN,
Director, Department of Community & Economic Development.

CITY OF ROCKFORD, IL,
OFFICE OF THE MAYOR
October 22, 1991.

Hon. Senator ALAN J. DIXON,
Hart Building, Washington, DC.

DEAR SENATOR DIXON: As the Senate Banking Committee begins drafting legislation that will determine the capital adequacy, regulatory structure and public purpose mission of the Federal National Mortgage Corporation ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), I would like to encourage you and other members of the Committee to be mindful of the need for Congress to guarantee the availability of mortgage credit in central cities. It is my understanding this can be accomplished by codifying the existing HUD regulations which require Fannie Mae and Freddie Mac to purchase at least 30% of their mortgages in central cities.

What we have found in Rockford, as we work with our home mortgage lending community, is that if Fannie Mae and Freddie Mac won't purchase the loans they generally do not get made.

I believe you have been supportive of the fundamental changes to CRA and HMDA made through the Financial Institutions Reform and Recovery Act of 1989; I see this issue as the important next step to encourage key participants in the mortgage finance system to expand the availability of mortgage credit in central cities.

We in Rockford are not asking for you to support direct grants from Fannie Mae and Freddie Mac. We are not asking you to support forcing them to enter new lines of work. We are simply asking that, as a first step, you support codifying and enforcing the existing HUD regulation.

Thank you for your continued interest in affordable housing.

Very truly yours,

CHARLES E. BOX,
Mayor.

CITY OF TALLAHASSEE,
October 24, 1991.

Hon. BOB GRAHAM,
Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR GRAHAM: The Senate Banking committee will soon begin drafting legislation important to the success of local efforts to comply with the Florida Growth Management Law and the Cranston-Gonzalez National Affordable Housing Act. As the committee determines the capital adequacy, regulatory structure and public purpose mission of the Federal National Mortgage Corporation ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), please keep in mind the need for the Congress to guarantee the availability of mortgage credit in central cities. This can be accomplished by codifying the existing HUD regulations which require Fannie Mae and Freddie Mac to purchase at least 30% of their mortgages in central cities, and particularly to target low and moderate income households.

Florida Growth Management Law has forced cities to address central city revitalization and the development of affordable housing in preparation of local government comprehensive plans. Tallahassee has responded through the means of regulatory reform, inclusionary zoning to encourage affordable housing, and financial commitment to housing programs arising form the objectives of the new comprehensive plan.

The housing programs developed under the Cranston-Gonzalez National Affordable Housing Act include leveraging of other public and private financing as an important component of local programs. Here in Tallahassee Fannie Mae has enabled the Housing Development Corporation to attract private financing to two new construction projects thus far, providing eighteen new homes for low income home buyers in Frenchtown, as an example of how these programs will leverage a variety of funding sources to address the inadequacy of affordable housing.

The GSE bill presently before the Committee presents an important opportunity for you to encourage key participants in the mortgage finance system to expand the availability of mortgage credit to low income families seeking affordable housing in support of local efforts.

Fannie Mae and Freddie Mac have been vital to the expansion of mortgage credit in America; however, they need to be made more responsive to the needs of the low and moderate income families seeking affordable housing in our central cities. We are not asking for direct grants from Fannie Mae and Freddie Mac. We are not asking you for force these establishments to enter new lines of work. We are simply asking that as a first step you codify and enforce the existing HUD regulation. Unfortunately throughout the 1980's HUD did not enforce this regulation and so it is imperative that the regulation be made part of the statutory law so that cities can ensure that Fannie Mae and Freddie Mac purchase mortgages in the central city.

Codifying this regulation will provide the means to leverage funds provided by Cranston-Gonzalez with private financing and create a tremendous amount of new, affordable, homeownership opportunities for city dwellers. With your help Urban America can further revitalize and return to an era of greatness and affordable housing can become a reality for many.

Sincerely,

BETTY H. RIVERS,
Administrative Supervisor, Community Development Section, Management and Budget Department.

OFFICE OF THE COUNTY
MANAGER, COMMUNITY AND
Economic Development,
Miami, FL, October 24, 1991.

Hon. BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: As the Senate Banking Committee begins drafting legislation that will determine the capital adequacy, regulatory structure and public purpose mission of the Federal National Mortgage Corporation ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), I would like to encourage the Committee to be mindful of the need for the Congress to guarantee the availability of mortgage credit in central cities. This can be accomplished by codifying the existing HUD regulations which require Fannie Mae and Freddie Mac to purchase at least 30% of their mortgages in central cities.

The GSE bill presently before the Committee presents an important opportunity for you to encourage key participants in the mortgage finance system to expand the availability of mortgage credit in central cities.

Fannie Mae and Freddie Mac have been vital to the expansion of mortgage credit in America; however, they need to be made more responsive to the needs of the Urban America. We are not asking you to force these establishments to enter new lines of work. We are simply asking that as a first step you codify and enforce the existing HUD regulation. Unfortunately, throughout the 1980's, HUD did not enforce this regulation and so it is imperative that the regulation be made part of the statutory law so that cities can ensure that Fannie Mae and Freddie Mac purchase mortgages in the central city.

Codifying this regulation will unleash a tremendous amount of new homeownership opportunities for city dwellers. With your help urban America can further revitalize and return to an era of greatness.

Sincerely,

ERNEST L. MARTIN, D.P.A.,
Director.

CITY OF TUSKEGEE,
Tuskegee, AL, October 22, 1991.

Hon. RICHARD C. SHELBY,
U.S. Senator, Senate Hart Office Building, Washington, DC.

DEAR SENATOR SHELBY: As the Senate Banking Committee begins drafting legislation that will determine the capital adequacy, regulatory structure and public purpose mission of the Federal National Mortgage Corporation ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), I would like to encourage the Committee to be mindful of the need for the Congress to guarantee the availability of mortgage credit in central cities. This can be accomplished by codifying the existing HUD regulations which require Fannie Mae and Freddie Mac to purchaser at least 30% of their mortgages in central cities as well as insure that at least 30% of their mortgages are targeted to low and moderate income families and individuals.

The GSE bill presently before the Committee presents an important opportunity for you to encourage key participants in the mortgage finance system to expand the availability of mortgage credit in central cities and for low/moderate income citizens.

Fannie Mae and Freddie Mac have been vital to the expansion of mortgage credit in America; however, they need to be made more responsive to the needs of the Urban America and America's less fortunate. We are not asking for direct grants from Fannie Mae and Freddie Mac. We are not asking you to force these establishments to enter new lines of work. We are simply asking that as a first step you codify and enforce the existing HUD regulations. Unfortunately throughout the 1990's, HUD did not enforce this regulation and so it is imperative that the regulation be made part of the statutory law so that cities can ensure that Fannie Mae and Freddie Mac purchase mortgages in the central city.

Codifying this regulation will unleash a tremendous amount of new homeownership opportunities for city dwellers as well as for low/moderate income citizens. With your help urban America can further revitalize and return to an era of greatness.

Senator Shelby, the citizens of Tuskegee, Alabama desperately need more housing opportunities and in this regard, we solicit your support.

Sincerely,

JOHNNY FORD,
Mayor.

OFFICE OF THE MAYOR,
Syracuse, NY, October 25, 1991.

Hon. ALFONSE D'AMATO,
Senate Hart Office Building, Washington, DC.

DEAR AL: I understand the Senate Banking Committee is beginning to work on legislation to improve regulatory control of government sponsored housing mortgage enterprises such as the Federal National Mortgage Corporation and the Federal Home Loan Bank Mortgage Corporation.

I urge the Committee to consider the need to guarantee the availability of mortgage credit in central cities. This could be accomplished by codifying the existing HUD regulations which require Fannie Mae and Freddie Mac to purchase at least 20% of their mortgages in central cities.

Through the Syracuse Housing Partnership Program, we have successfully created homeownership opportunities for over 150 low or moderate income families with a partnership of business community, banks, government, and neighborhood organizations. Participation of government sponsored housing enterprises in this effort would be welcome. Fannie Mae and Freddie Mac have been vital to the expansion of mortgage credits in America. By codifying the current HUD regulations a tremendous amount of new homeownership opportunities would be unleashed for city dwellers.

I urge you to support efforts to include this provision in the pending legislation.

Sincerely,

THOMAS G. YOUNG,
Mayor.

CITY OF ALBANY, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT,
Albany, NY, October 21, 1991.

Hon. ALFONSE M. D'AMATO,
U.S. Senate, Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR D'AMATO: As the Senate Banking Committee begins drafting legislation that will determine the capital adequacy, regulatory structure and public purpose mission of the Federal National Mortgage Corporation ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), I would like to encourage the Committee to be mindful of the need for the Congress to guarantee the availability of mortgage credit in central cities. This can be accomplished by codifying the existing HUD regulations which require Fannie Mae and Freddie Mac to purchase at least 30% of their mortgages in central cities.

The GSE bill presently before the Committee presents an important opportunity for you to encourage key participants in the mortgage finance system to expand the availability of mortgage credit in Albany.

Fannie Mae and Freddie Mac have been vital to the expansion of mortgage credit in America; however, they need to be made more responsive to the needs of the urban America. We are not asking for direct grants from Fannie Mae and Freddie Mac. We are not asking you to force these establishments to enter new lines of work. We are simply asking that as a first step you codify and enforce the existing HUD regulations. Unfortunately throughout the 1980's, HUD did not enforce this regulation and so it is imperative that the regulation be made part of the statutory law so that cities can ensure that Fannie Mae and Freddie Mac purchase mortgages in the central city.

Codifying this regulation will unleash a tremendous amount of new homeownership opportunities for residents of Albany and other cities across New York State. With your help urban America can further revitalize and return to an era of greatness.

Sincerely,

JOSEPH F. PENNISI,
Commissioner.

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, DC, April 7, 1992.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN RIEGLE: On behalf of the 151,000 member firms of the National Association of Home Builders (NAHB), I compliment you for your leadership and dedication, and that of your professional staff as well, in formulating comprehensive legislation to enhance the fiscal stability of the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae). The long-term stability of these Government Sponsored Enterprises (GSE's) is vital to the mortgage finance system.

Also of major importance to the financing of residential real estate is the future of the Federal Home Loan Bank System. We commend you for the inclusion of Title VII of the Committee Print of April 2, the "Regulation of Federal Home Loan Bank System," that calls for several studies with recommendations to Congress on various ways to improve the System.

We support enactment of this legislation, and would like to work with you in moving this bill to enactment.

Respectfully yours,

ROBERT "JAY" BUCHERT,
President.

CITY OF ROCHESTER,
Rochester, NY, October 29, 1991

Hon. PHIL GRAMM,
Senate Russell Office Building, Washington, DC.

DEAR SENATOR GRAMM: When the Senate Banking Committee considers the Government-Sponsored Housing Enterprises Bill (H.R. 2900), I urge you to support provisions that would guarantee the availability of mortgage credit in central cities.

The legislation can provide new homeownership opportunities in central cities simply by codifying an existing regulatory provision that requires the Federal National Mortgage Corporation (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to invest 30% of their mortgages in properties located in central cities as well as insuring that at least 30% of their mortgages are targeted to low- and moderate-income families and individuals.

Fannie Mae and Freddie Mac have been vital to the expansion of mortgage credit in America; however, they need to be made more responsive to the needs of central cities. Without requiring these organizations to provide direct grants or enter new lines of work, additional homeownership opportunities can be provided by including a thirteen year old regulatory requirement into statutory law.

It is unfortunate that the U.S. Department of Housing and Urban Development did not enforce these provisions. It is now up to Congress to ensure that Fannie Mae and Freddie Mac are providing needed mortgage financing to millions of would be homeowners living in America's cities.

Sincerely,

THOMAS P. RYAN, Jr.
Mayor.

Mr. RIEGLE. The Senate, I should say, has already recognized the need for this legislation previously by expressing the sense of the Senate that appropriate committees should report bills to improve the regulation of GSE's. We have taken that sense-of-the-Senate resolution seriously. This bill reforms the regulation of the largest and the most important GSE's, and I can fully recommend it to my colleagues.

I now ask unanimous consent that Senator GARN be recognized for the purpose of making an opening statement and, upon his conclusion, that I be immediately recognized again.

Mr. NICKLES. I object.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. NICKLES. I reserve the right to object.

The PRESIDING OFFICER. Is there objection?

Objection is heard.

Mr. RIEGLE. Then, Mr. President, I am sorry that Senator GARN cannot be recognized right now for his opening statement.

The PRESIDING OFFICER. The Chair did not state that. The Chair simply put the unanimous-consent request.

Mr. RIEGLE. I understand.

The PRESIDING OFFICER. The Senator from Utah was on his feet and seeking recognition, so the Chair will rule as to whether or not he can be recognized at this point.

Mr. RIEGLE. Mr. President, I do not yield my right to the floor in light of the unanimous-consent request.

The PRESIDING OFFICER. I understand. The Senator then has the floor still.

Mr. RIEGLE. I thank the Chair.

The PRESIDING OFFICER. What is the Senator's pleasure?

Mr. GARN. Will the distinguished chairman yield to me for purposes of my opening statement?

Mr. RIEGLE. Without losing my right to the floor, I will be happy to do so.

The PRESIDING OFFICER. Is there objection? Hearing no objection, the Senator from Utah [Mr. GARN] is recognized.

Mr. GARN. Mr. President, I am pleased to join Senator RIEGLE, chairman of the Banking Committee, in support of the Federal Housing Enterprises Regulatory Reform Act of 1992 (S. 2733). This legislation reflects more than a 2-year effort by the Banking Committee to examine and respond to the potential risk posed to the Federal Government by the three Government-sponsored enterprises established by Congress to facilitate mortgage credit for housing. The legislation incorporates many of the safety and soundness provisions contained in proposed legislation submitted by the administration and introduced by Senator RIE-

GLE and me last June. The legislation also responds to the directive in the Omnibus Budget Reconciliation Act of 1990 that the Banking Committee report out legislation enhancing the regulation of these GSE's.

The financial health and safety of the housing GSE's are of vital importance to our Nation. These GSE's have become the most successful Government housing programs in modern times because they have harnessed private capital and private sector ingenuity in order to fulfill a public purpose. Fannie Mae and Freddie Mac have been credited with lowering interest rates between 24 and 50 basis points for home mortgage loans throughout the country. They have accomplished their task while exercising prudent management and building a strong financial condition.

Due to the GSE's Federal charter, their public purposes, and the advantages given to the GSE's under Federal law, there is a strong perception by investors and other market participants that GSE securities are implicitly guaranteed by the Federal Government. This so-called implicit guarantee has helped the GSE's issue securities more cheaply and pass the savings on to homebuyers. However, it has also increased the importance of the Government supervision and regulation of the GSE's to ensure that the potential risk to the Federal Government is minimized. With almost $900 billion of securities outstanding, even the perception of an implied guarantee presents considerable need for strong oversight of the GSE's financial health.

This legislation establishes a new regulatory structure and imposes new capital standards on Fannie Mae and Freddie Mac to ensure that these GSE's maintain and enhance their sound financial condition. The major components of this bill include:

First, the creation of an independent office within HUD headed by a director appointed by the President and confirmed by the Senate with the primary duty of ensuring that these GSE's are adequately capitalized and safely operated;

Second, the establishment of tough new capital standards designed to ensure that Fannie Mae and Freddie Mac have sufficient capital to withstand an economic downturn more severe and more prolonged than has occurred at any time in our Nation's history, including the Great Depression and the deep recession following the collapse of oil prices in the early 1980's;

Third, the implementation of a system of prompt corrective action that requires the safety and soundness regulator to take steps to correct any decline in GSE capital as soon as capital levels begin to slide; and

Fourth, the grant of a complete arsenal of enforcement powers to the safety and soundness regulator, including the authority to issue cease and desist orders and impose civil money penalties for violations of the law.

While the core of the legislation is devoted to safety and soundness, title 5 of the legislation clarifies the public purposes of the GSE's. Despite the clear success of these GSE's in facilitating housing credit, the lack of available data on the conventional mortgage market has made it difficult to assess the success of the GSE's in fulfilling their purposes with respect to homebuyers in different income and geographic groups. As a result, this legislation: First, makes technical amendments to the charter purposes to clarify that the GSE's should facilitate mortgage credit for residential housing throughout the country consistent with earning a reasonable return; second, requires the collection of data to assess conventional mortgage activity and the GSE's fulfillment of their charter purposes; and third, clarifies the current goals of the GSE's with respect to serving those with low and moderate incomes as well as those living in central cities, rural areas, and other underserved areas.

I am pleased that the committee chose to maintain the GSE's current statutory role and rejected proposals to use the GSE's as surrogates for direct Federal housing subsidy programs to very low and low-income groups and to urban areas. Such an approach would have been a mistake for at least three reasons. First, the GSE's were established to ensure an unbiased and unimpeded flow of mortgage credit throughout the Nation, and to allocate mortgage credit to certain specific groups or areas.

Second, the purpose of this legislation is to ensure that the GSE's maintain a strong financial condition. Consequently, requiring the GSE's to engage in activities that do not provide a reasonable economic return or that would otherwise impair their financial condition would be inconsistent with the fundamental intent of the bill. Finally, there are inherent limitations imposed by the secondary mortgage market. Some mortgage products may not be suitable for conversion to mortgage-backed securities and others may entail risks investors are willing to assume.

Moreover, the committee addressed the potential conflict between safety and soundness, one the one hand, and fulfilling the housing credit needs of the country, on the other, by placing the responsibility for the formulation of housing goals with the safety and soundness regulator subject to the approval of the Secretary of HUD. This structure will ensure that the housing goals imposed on the GSE's provide them with a reasonable economic return and do not jeopardize their strong financial condition.

Mr. President, this is a sound well-structured bill designed to ensure the safety and soundness of these GSE's. It responds directly to concerns raised by the administration and the Budget Committee that enhanced supervision of these GSE's is warranted in light of their size, importance to housing finance markets, and the public perception of an implied Federal guarantee. The legislation enjoyed the overwhelming support of the committee. I urge my colleagues to support this legislation so that we may proceed to conference with the House and send a good bill to the President for his signature.

The legislation enjoyed the overwhelming support of the Banking Committee. I urge my colleagues to support this legislation, so that we may proceed to a conference with the House and send a good bill to the President for his signature.

Mr. President, I am aware that this bill seems to have now become the catch-all for a number of different amendments, some of which I support in principle. It appears that we may be tied up for a considerable length of time on several different issues beyond a possible balanced budget amendment.

I only say that to recognize the reality of the situation, and say that the GSE bill should not be ignored. It is important that we eventually pass it; and whatever happens procedurally on other issues that are not necessarily germane to this particular legislation, the leadership would eventually see that we do pass this bill.

For those of us who have gone through the S&L crisis over a number of years, and have seen the loss to the taxpayers, I hope that eventually we will be able to pass this legislation.

AMENDMENT NO. 2437

Mr. RIEGLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE] proposes an amendment numbered 2437.

Mr. RIEGLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

(At the request of Mr. DOLE, the following statement was ordered printed in the RECORD.)

• Mr. ROTH. Mr. President, Mr. Chairman, the Committee on Governmental Affairs, on which I serve as the ranking Republican member, has jurisdiction over the Paperwork Reduction Act as well as OMB's other reviews of regulations. The bill, as reported, contained some ambiguous language that could have been interpreted as absolving the Director of the Office of Federal Housing Enterprise Oversight of responsibil-

ity to OMB under paperwork-reduction and regulatory-review procedures.

The Senate Report 102-282 also contains similar language to that in the reported bill that could have been interpreted as amending or displacing these procedures. But, in fairness, it must also be noted that the report included a Congressional Research Service memorandum that specifically noted that the Director was in no way absolved from these responsibilities.

In order to make sure that the bill did not affect the application of these current review procedures to the Director, I asked that clarifying amendments to sections 103 and 107 be included in the managers' amendment. That has been done. It is now clear that the requirements of section 107 are additional to current OMB regulatory review and paperwork reduction procedures and not a substitute therefore. The independence of the Director in promulgating certain regulations under section 103 is from the Secretary of HUD and not from the administration.

I am pleased that these changes have been made to clarify the ambiguities in the bill I have noted. I thank the managers for their cooperation and support.●

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, as I understand it, this is the mangers' amendment?

Mr. RIEGLE. Yes.

Mr. DOLE. Is that subject to amendment?

The PRESIDING OFFICER. Yes; the managers' amendment is subject to amendment.

AMENDMENT NO. 2438 TO AMENDMENT NO. 2437

(Purpose: To express the sense of the Senate with regard to the effect of a possible rail strike)

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 2438 to amendment No. 2437.

At the appropriate place, add the following:

It is the sense of the Senate that Congress needs to act immediately to forestall a possible railroad strike to occur at midnight, tonight, since the economic ramifications of such a strike are devastating to the country, and congressional action could prevent that economic damage.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas loses the floor. The Chair recognizes the Senator from West Virginia.

Did the Senator from West Virginia seek recognition?

Mr. BYRD. Yes.

Mr. BYRD. Mr. President, parliamentary inquiry.

Mr. DOLE. Mr. President, parliamentary inquiry.

Does the President pro tempore have priority of recognition over the Republican leader?

The PRESIDING OFFICER. The President pro tempore does not have the right of prior recognition over the Republican leader. What occurred was an amendment was offered by the Republican leader, at which point the Republican leader lost the floor.

Mr. DOLE. Mr. President, I sought recognition, and I should have been recognized.

The PRESIDING OFFICER. The Senator from West Virginia sought recognition; and therefore, the floor having been relinquished, I recognized the Senator from West Virginia.

Mr. BYRD. Mr. President, does the distinguished Republican leader wish me to yield to him for a statement or further parliamentary inquiry, or anything of that nature?

Mr. President, is the amendment that has been offered by Mr. DOLE in the second degree to the amendment that was offered by Mr. RIEGLE?

The PRESIDING OFFICER. It is a second-degree amendment to the amendment of the Senator from Michigan.

Mr. BYRD. Mr. President, is either of the two amendments offered as a substitute amendment?

The PRESIDING OFFICER. Each of the two amendments are perfecting amendments.

Mr. BYRD. Then further amendments are in order; am I correct?

The PRESIDING OFFICER. On the disposition of the two amendments, further amendments would be in order.

Mr. BYRD. Mr. President, but only then?

The PRESIDING OFFICER. But only then, because this is an amendment to the bill, a perfecting amendment, and there is a perfecting amendment in the second degree to that.

Mr. BYRD. A motion to recommit would be in order, with instructions?

The PRESIDING OFFICER. A motion to recommit would be in order, and—if the Senator will pause for a moment—an amendment to the text of the provision proposed to be stricken by the Senator from Michigan would also be in order.

Mr. BYRD. That would be in order at this point?

The PRESIDING OFFICER. That is correct. The Senator from Michigan struck text, and that is amendable. The amendment that was placed in the bill—or the amendment to the bill proposed by the Senator from Michigan was pending. It was amended by the Republican leader as a perfecting amendment, so that tree is closed.

Mr. BYRD. My earlier question was whether either of the amendments offered was a substitute, or I should add, an amendment in the nature of a substitute. And as I now understand the Chair, the amendment offered by the Senator from Michigan was an amendment in the nature of a substitute for at least part of the bill.

The PRESIDING OFFICER. The amendment of the Senator from Michigan is a substitute for a portion of the bill, not for the entire bill.

Mr. BYRD. Yes. Therefore, that portion of the bill which would be subject to the amendment by the Senator from Michigan would be open to amendment. An amendment to the text of the bill, which would be stricken by the amendment of the Senator from Michigan, would be open to further amendment?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Would that amendment be subject to a second-degree amendment?

The PRESIDING OFFICER. That amendment would also be subject to a second-degree amendment.

Mr. DOLE. Will the Senator from West Virginia yield?

Mr. BYRD. Yes, I will.

The PRESIDING OFFICER. In other words, the amendment, as I understand what the Senator was inquiring about, was an amendment to the text that was stricken. That would be an amendment in the first degree. That would be subject to an amendment in the second degree. Yes.

Mr. BYRD. I will yield to the Republican leader. So at this point, an amendment is in order to the language of the bill, which would be stricken by the amendment of Mr. RIEGLE; an amendment to such amendment would be in order?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. I yield to the distinguished Republican leader, without losing my right to the floor. I yield to him only for the purpose of his making a statement or presenting a parliamentary inquiry.

Mr. DOLE. Mr. President, I thank the Senator from West Virginia. I will just take very brief time. Would it be possible to have my amendment read so I can make a brief comment on the amendment?

Mr. BYRD. I have no objection.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

It is the sense of the Senate that Congress needs to act immediately to forestall a possible railroad strike to occur at midnight, tonight, since the economic ramifications of such a strike are devastating to the country, and congressional action could prevent that economic damage.

Mr. DOLE. Mr. President, I would just point out what I propose I would hope would be a noncontroversial amendment. We have a choice to make

between now and 12:01 midnight. And if a strike occurs, as we are advised by the Secretary of Transportation is very likely to happen, it has been reported that some will say let the strike run 3 or 4 days or maybe 5 days or 6 days so Congress would have said to the unions: We at least create a lot of chaos. We did not settle anything. We stuck with you, the union members.

No question that this is going to cause immediate hardship on people all across America. Whether on commuter trains or whether it is shipping potatoes, wheat, or whatever it might be, this is going to have economic hardship on everybody in America and the economy is already struggling to recover.

The point I wish to make with this amendment, along with Senator KASTEN and others, is we ought to do something today. We can make a preemptive strike. I do not think this amendment is offensive to anyone. We could go ahead and proceed with this amendment and then do whatever else may be in mind as far as the overall bill is concerned.

I know there is concern on the other side about the possibility of offering a balanced budget amendment, and I think there will be an effort to do that by my colleagues Senator NICKLES, Senator SEYMOUR, Senator GRAMM, and others. But I do believe that this is of immediate significance. It is up to the Congress. The President cannot do any more. He has done all he can do. He did it in April, on April 9. So the ball is squarely in Congress' court.

What this Senator does not want to happen is let a strike go on 2 or 3 days and have the Congress trying to blame President Bush or the executive branch for not taking action. He cannot do anything. It is up to us.

So this says we can have it. We can take action now. We can send a signal in the remaining hours they better get busy and settle the strike. I think five unions have not agreed. Some have settled; some are in the process of maybe making some last bids for negotiated settlement.

But the point is I do not want to be standing on this floor next week at this time and hearing my colleagues on the other side saying: Where is President Bush? Why has not President Bush done something?

President Bush cannot do anything. He would like the strike settled; he said that today. So this is simply a sense-of-the-Senate resolution that we ought to act immediately to forestall a possible railroad strike because of the economic ramifications. That is all it is. It is not a balanced-budget amendment. I would have indicated earlier if I intended to offer that.

I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I did not mean to interrupt the distinguished Republican leader.

Mr. President, I have no problem with this amendment.

Could the distinguished Republican leader assure the Senator from West Virginia that until the matter is settled concerning the amendment which the Senator has offered, or some action agreed upon by the two leaders, that no constitutional amendment concerning the balanced budget will be offered?

Mr. DOLE. While this is pending.

Mr. BYRD. While that is pending. I have no problem with this.

Mr. DOLE. And nothing else would be offered.

Mr. BYRD. I think the Senator has offered something that perhaps needs to be done as well. But I must remind Senators that even if Mr. DOLE offers this particular amendment another amendment could be offered. It would be in order to offer an amendment to the amendment, and so I just want to protect myself and others who may feel as I do against the offering of a constitutional amendment concerning the balanced budget at this point. I would like to have a chance to enter the bidding if that time comes.

Mr. DOLE. Mr. President, if the Senator will yield, I think if it has language which is bipartisan that there will not be any amendments afterward from either side while this amendment is pending, I do not think I have any problem with that, and I do not think anybody has any problem.

Mr. BYRD. I do not have in mind to offer an amendment.

Mr. DOLE. There may be others, I understand.

Mr. BYRD. Until such time if a constitutional amendment on a balanced amendment is offered I might try then, but if I could be assured that no Senator will rise and offer an amendment to the Constitution concerning a balanced budget I will yield the floor.

Mr. DOLE. Then I would be happy to enter into a unanimous-consent agreement there be no other amendment offered until this has been disposed of.

Mr. MITCHELL. Mr. President, will the Senator yield?

Mr. BYRD. I yield to the majority leader.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. No; the majority leader is not recognized. I yield to the majority leader.

The PRESIDING OFFICER. The Senator from West Virginia retained the floor and yielded to the majority leader.

The majority leader.

Mr. MITCHELL. Mr. President, we now have a managers' amendment to the bill which relates to the substance of the bill now pending and a second-degree amendment by the distinguished minority leader relating to the possible railroad strike. We also have Senators who have stated publicly an intention to offer an amendment in the nature of a constitutional amendment to balance the budget. I believe we ought to accommodate everybody.

I suggest that we debate and dispose of Senator DOLE'S amendment, we debate and dispose of the amendment by the Senator from Michigan, and then permit any other Senator who wants to offer an amendment on a balanced budget to do so. That way we will proceed in an orderly and logical fashion and each Senator will have an opportunity to have his provision disposed of, and the Senator from West Virginia will then be on notice as we all will be that following the disposition of Senator RIEGLE'S amendment that Senator GRAMM or anyone else may be recognized to offer a balanced-budget amendment if that Senator wishes to do so.

Mr. DOLE. Mr. President, will the Senator from West Virginia permit me to ask a question?

Mr. BYRD. Absolutely, Mr. President.

Mr. DOLE. Mr. President, do I understand from the Senator that there will be an opportunity to offer the balanced-budget amendment?

Mr. MITCHELL. Yes, I believe under the rules of the Senate any Senator can offer any amendment he or she wishes. I have no desire to attempt to prevent a Senator from offering that amendment, if the Senator wishes to do so. What I suggest is we do this in an orderly fashion and if that is the desire of the Senators involved to go ahead and do it, and then we will have a debate on that.

Mr. DOLE. Would that be yet today?

Mr. MITCHELL. Pardon.

Mr. DOLE. Would that be yet today? If we dispose of this amendment it could be the following amendment or whatever.

Mr. MITCHELL. My suggestion is we deal with Senator DOLE'S amendment, and then Senator RIEGLE'S amendment, and then proceed to let someone be recognized to offer whatever amendment they want to the bill. That is the right of Senators under the rules. I think everybody ought to have that opportunity. I do not know the timing of it because I do not know whether there will be opposition to the amendment of the Senator from Kansas. I do not know whether there is objection to the amendment of the Senator from Michigan. I am unable to estimate the time. Perhaps we will get that in short order once the chairman of the relevant committee with respect to the railroad strike is either alerted, comes to the floor, has a chance to read the amendment, and make a decision at that time.

Mr. DOLE. It sounds almost too good to be true. I am thinking about what the majority leader may be thinking and what the distinguished Senator from West Virginia may be thinking about.

Mr. MITCHELL. I have no ulterior or other motive. My desire is simply to proceed in an orderly fashion and give every Senator a right to advance any amendment or argument that he or she wishes.

If the Senator wishes time to consider that I will be pleased to suspend. We can discuss this amendment or suggest the absence of a quorum.

Mr. DOLE. Would it be possible to get some agreement that the Senator from California and the Senator from Oklahoma be recognized following the disposition of the pending amendment to offer the balanced budget amendment?

Mr. MITCHELL. I have no objection to that. I do not know if anyone else does. I believe the majority leader also expressed the desire the amendment of the Senator from Michigan be in order.

Mr. DOLE. Yes; after disposition of the pending amendment and the amendment of the Senator from Michigan [Mr. RIEGLE].

Mr. MITCHELL. Mr. President, before I agree to a procedure with respect to the amendment, I would like to see the amendment.

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

Mr. BYRD. Mr. President, I do not yield for that purpose.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. MITCHELL. I just wanted to get a chance to read the amendment before I committed myself to a course of action.

Mr. BYRD. Mr. President, I do not want to stand in the majority leader's way, but I will not yield the floor until I am sure of the procedures that will be followed.

Mr. President?

The PRESIDING OFFICER (Mr. WIRTH). The Senator from West Virginia.

The Senate will be in order.

Mr. BYRD. I still have the floor.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. I ask the Chair to protect my rights to keep the floor until the distinguished majority leader and Republican leader can engage in a colloquy—and other Senators may, if they wish—in order to resolve the matter of procedure for the rest of the day.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, following on our earlier discussion I have now discussed the matter with the distinguished Republican leader, the chairman of the Appropriations Committee, and several other interested Senators, and I ask unanimous consent that, upon the disposition of the Riegle-Garn managers' amendment and any amendments thereto, Senator NICKLES be recognized to offer his amendment providing for a balanced budget constitutional amendment, provided that no such balanced budget constitutional amendment be in order prior to the disposition of the Riegle-Garn amendment, No. 2437.

Mr. DOMENICI. Reserving the right to object, and I do not know that I will, but I want to ask a question.

I have just discovered that in the underlying amendment, the so-called managers' amendment, there is a provision. First let me tell you what I thought was in it. I thought the Garn proposal, that has been around a long time, with reference to bank liability was in it. But I now find that, in addition, there is an amendment which will remove the liability of municipalities under the Superfund. I did not know that until just a couple of minutes ago.

If that is correct, might I inquire either of the Chair in a parliamentary inquiry, or of the proponent, when the Dole amendment is completed, will it be in order to amend the underlying amendment, the so-called managers' amendment, with reference to the provision of which I just spoke?

Mr. MITCHELL. Mr. President, it is my understanding and intention that the answer to that be yes. And I will yield to the Chair to see if the agreement, in fact, carries out my intention in that regard.

The PRESIDING OFFICER. When the amendment by the Senator from Kansas is disposed of, the underlying amendment then becomes the matter of business and is amendable.

Mr. MITCHELL. And if I may say to the Senator from New Mexico—and I believe the Senator from Rhode Island is in the same position—just so it will be clear, the consent request provided that upon disposition of the Riegle-Garn managers' amendment and any amendments thereto. That is intended to cover Senator DOLE'S amendment, which is now pending, and once that is disposed of, other amendments that would be offered in the nature of second-degree amendments to Senator RIEGLE'S amendment. That would include—I believe Senator CHAFEE may have an amendment in that regard; Senator DOMENICI, and others, with the proviso in the agreement that there would not be a balanced budget constitutional amendment until after disposition of the Riegle amendment and whatever amendments are offered to it. That will be offered by Senator NICKLES explicitly pursuant to this agreement.

Mr. DOLE. Will the majority leader yield further?

Mr. MITCHELL. Yes.

Mr. DOLE. Mr. President, it is my understanding this agreement applies only to this legislation. This would not preclude offering the balanced budget amendment to some subsequent pending legislation.

Mr. MITCHELL. The Senator's understanding is correct. If I might say, before Senators accede to this request, that I discussed the matter with Senator DOLE and Senator NICKLES. Under the Senate's rules, as majority leader, I have priority recognition and could, therefore, offer a second-degree amendment to the Nickles amendment.

I may get recognition for that purpose, priority recognition for that purpose. I have made no decision in that regard. I have asked Senator NICKLES, and he has agreed to notify me before offering his amendment, so I will be present on the floor.

It is my present intention to put in a quorum call following Senator NICKLES' offering of his amendment, and at that point make a determination whether or not I wish to use priority right of recognition to offer a second-degree amendment.

If I do not, then of course Senator DOLE, having next priority recognition, would be in a position to do so at that time should he so choose.

I want every Senator to understand that although that is not in the agreement as presented, that is the understanding which we have reached, so that there can be no misunderstanding by any Senator on the procedure to be followed once this agreement is reached.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. I have a parliamentary inquiry.

Mr. President, once the Riegle amendment and all amendments thereto have been disposed of, the playing field is going to be changed. There will not then be any amendment pending to the bill, as I understand it. Consequently, various substitutes would be in order.

Would the Chair inform me as to which of the tables would then be applicable; the one on page 66 or the one on page 70 of the book on Senate procedure?

The PRESIDING OFFICER. That would depend on whether the amendment offered at that time is a complete substitute for the pending measure.

Mr. BYRD. So it could be the chart on page 70, in which case——

The PRESIDING OFFICER. If the amendment is a complete substitute.

Mr. BYRD. In which case, up to 7 amendments or up to possibly 11 could be offered.

The PRESIDING OFFICER. The Senator is correct.

Mr. MITCHELL addressed the Chair.

Mr. BYRD. If I may pursue my inquiry just a little further.

I want Senators to understand that the playing field will be changed with respect to amendments. I do not want to agree—and I may say, the distin-

guished majority leader inquired of me as to whether or not I had any problem with the language of his request, and I told him I did not. But I want to explore this just a bit, and it will not take me but 2 or 3 minutes to do it.

I do not want to agree that the amendment by Mr. NICKLES will be in order unless we have the understanding that no points of order are thereby waived. The Senator will presumably be offering a constitutional amendment to a bill, a legislative bill, which requires only a majority for passage. The constitutional amendment would require two-thirds.

I do not want to waive any point of order that may be available to this Senator or to any other Senator with respect to the offering of a constitutional amendment to a piece of legislation that bears the heading of a bill.

So if the majority leader would allow me to suggest that no points of order be waived thereby, meaning that if this request is agreed to, points of order will not be waived, because the Senate will be giving the Senator from Oklahoma [Mr. NICKLES], the approval to offer his amendment, and I do not want someone later to say, if the point of order is raised against him, someone will say, well, by virtue of the fact the Senate agreed he could offer it, your point of order no longer applies.

I want to make sure my point of order, if I should or any other Senator should decide to make such a point of order, would not be automatically waived.

Mr. MITCHELL. Mr. President, if the Senator will yield.

Mr. BYRD. Yes.

Mr. MITCHELL. Mr. President, it was not my intention that this agreement would waive any point of order, and I believe that points of order would have been preserved had the agreement been accepted in the form offered. That being the case, I certainly have no objection and will be pleased to modify the agreement to state explicitly what I believe was implicit in the agreement, that no points of order be waived.

Mr. President, if I might further say with respect to the earlier question which the Senator from West Virginia posed to the Chair, I have a copy of the amendment which Senator NICKLES has given me, and I am advised that is the amendment he is going to offer.

So I believe it is possible to get a response to the Senator's question to the Chair by an examination of the amendment itself, which Senator NICKLES has already given to me and said this is what he is going to offer.

The PRESIDING OFFICER. On examination of the amendment to be offered by the Senator from Oklahoma, it is a substitute for the entire measure. Consequently, the more complex table on page 70 would apply.

Mr. BYRD. Which means that in addition to the amendments that are presented in the chart, there would be additional amendments via the motion to recommit with instructions, which would mean more than seven amendments, indeed, could be pending at one time.

The PRESIDING OFFICER. That is the possibility.

Mr. BYRD. Mr. President, I have no objection to the request now, as the majority leader has presented it. And may I say again that he did clear the amendment with me. But it had not occurred to me at that point, may I say to my leader, that a possible point of order with respect to a constitutional amendment might thereby have been waived.

That matter has now been clarified. Senators are on notice that the chart on page 70, if they would wish to turn to their book on procedure, will be the playing field and I may have an amendment.

Just one final point, Mr. President. If the leader is not on the floor at the time the distinguished Senator from Oklahoma offers his amendment, then I believe the majority leader has made provision in his request in the nature of a quorum call, that he would be put on notice so that he could come in and offer an amendment which protects this Senator, because this Senator might have an amendment. But if the Republican leader is on the floor at that time, the majority leader is not on the floor, then I would not be able to offer an amendment to the Nickles amendment at that point, but I am protected by the request.

Mr. MITCHELL. Mr. President, if I might respond, that is not included in the terms of the proposed agreement itself, but it is an understanding which I have reached with the Senator from Oklahoma and the distinguished Republican leader, that if this agreement is accepted by the full Senate, Senator NICKLES will be entitled to be recognized to offer his amendment upon the disposition of the Riegle-Garn managers' amendment.

He has stated to me, and he is present now and I assume will confirm, that he will notify me before he offers his amendment so that I will be on the floor for the purpose of putting in a quorum call, and at that time making a decision on whether to offer one or more amendments to his amendment.

Mr. BYRD. That protects the Senator from West Virginia, because if I decide to offer an amendment and I cannot get recognition, I will have my majority leader here to offer it for me.

Mr. MITCHELL. I would like to ask the distinguished Senator from Oklahoma to confirm that.

Mr. NICKLES. I would be happy to confirm the majority leader's statement. We did confer about it. When we did talk about a unanimous-consent agreement that would include the balanced budget amendment, the majority leader asked that he be notified prior to offering the amendment, and I said I would be happy to.

Mr. BYRD. Mr. President, I have no objection. I yield the floor.

The PRESIDING OFFICER. Is there objection to the modified unanimous-consent request offered by the majority leader?

The Chair hears none, and it is so ordered.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to oppose this amendment because I think it is very one-sided. The amendment says:

> It is the sense of the Senate that Congress needs to act immediately to forestall a possible railroad strike to occur at midnight tonight, since the economic ramifications of such a strike are devastating to the country and congressional action could prevent that economic damage.

That sounds good on its face, but there is also some economic damage that one has to be concerned about as far as the workers are concerned. If Congress is going to act, then there ought to be some understanding as to what terms are involved. Do we just slam the door and say that the people have to work, that they have no economic rights at all, they have no way of protecting themselves?

I do not know the details of this dispute. As a matter of fact, a couple of the company presidents are coming in to see me later this afternoon so I can learn more. I talked with one union representative the other day. But I am told that at this moment these people have been working for 4 years without getting any pay raises.

Now, I get confused as to whether it is the Amtrak people or the Conrail people, but let us be realistic. It has been 4 years without any increase in their pay. And if we, Congress, were to step in and say no way, you have to go back to work, what kind of equity would that be? Then I am told that under the PEB, a change is being made with respect to a substantial number of employees who work on the railroad—maintenance-of-way employees. At the present time there are camp cars in which they sleep, not deluxe at all—quite the opposite—and that is where they get their food as well, when they are off on the road. But under the imposed terms of this Board, they would get $35 a day.

Now, I ask my colleagues, is there anyone in this body who really believes

an individual can get sleeping accommodations and food for $35 a day? In the economy in which we are living, that is just totally impossible. But they are taking away the sleeping car and the car that provided the food in the past, and we would be putting our stamp of approval on what has transpired to date.

Then I am told, in addition to that, the company intends to cut back on health benefits. Now, that may or may not be right. This may be a subject of negotiation.

That may be called for economically, but the fact is Conrail is making good money, as I understand it. Amtrak is not. But would you then justify a cutback with respect to the health benefits? Could you justify taking away the sleeping car and the food car?

I am frank to admit I am not clear as to the specifics with respect to Amtrak and its employees and Conrail and its employees. There are different issues involved. But I do not believe we ought to come out here on a Banking Committee bill and put something on the bill that says we should take action. I recognize congressional action could prevent the shutdown But is it the right thing to do? Is it the fair thing to do? Is there another side to it?

Has there been some committee that took 2 hours to hear both sides of the argument to figure out how it should be done? Or do we just stand up here recognizing that there will be economic damage, recognizing that it will be hurtful if there is a strike. Do we come here and just say this is the position that should be taken and we are going to stop any chance of a strike, which would be a totally legal strike under the law at the present time? Nobody is arguing that it is an illegal strike.

I urge my colleague from Kansas not to go forward, not to press this amendment. My feeling is that there may be a time and a place, and if there is a time and place perhaps we could work it out in a fair manner to both sides of the issue.

I do not think it should be one-sided. I think this amendment, as proposed, is very one-sided and I would hope that he would see fit to withdraw it so that we might have further discussion to see whether or not we can be helpful in bringing about a settlement of the strike that is fair to both sides.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. This is only a sense-of-the-Senate resolution. It is not going to bind anybody. All this resolution says is it is the sense of the Senate that Congress needs to act immediately to forestall a possible railroad strike to occur at midnight tonight, since the economic ramifications of such a strike are devastating to the country and congressional action could prevent that economic damage.

Now, all this says is that we have gone through the one process, the one protective process that the law allows for, and that is three PEB's—PEB 220, PEB 221, and PEB 222—because there are three major situations here.

All this says is that the President can no longer call for a Presidential Emergency Board.

The President's hands are tied, and there is not much more he can do other than continue to encourage his Secretary of Transportation to work among the parties to try and bring about an effective resolution of this matter.

Mr. President, everybody who knows anything about this, knows that if we suffer a strike it is going to be crippling to our economy. Everybody knows that. The Washington Post this morning on the front page says, "Rail Contract Talks Appear at a Standstill, Strike Tonight Could Close MARC, Virginia," and they talk about the commuter trains. In the first paragraph they say:

> Negotiators reported little progress yesterday in efforts to head off a crippling railroad strike that could shut down freight and passenger service from coast to coast and strand hundreds of thousands of commuters in the heavily populated Washington-New York-Boston corridor.

I have to confess that a lot of people may think, so what? This strike just hurts the northeastern part of this country, from Massachusetts down to Washington.

Anybody who believes that really does not understand the railroad industry in this country. We have already been put on notice by some of the major auto manufacturers, all of whom are unionized, that if this strike occurs they are going to start laying off people. These are fellow union members. They are going to start cutting back. We all know that when heavy-duty industry starts cutting back, it is very difficult to start up again.

So we all know that it is going to be crippling to the economy if we have a strike of even 1 day. I think Members of Congress may say: Well, they are not going to do anything even if we have a strike of 5 to 7 days.

Mr. President, a strike of 5 to 7 days could cripple this country, and could cripple it badly at a time when we are pulling out of the recession, when people are starting to get back to work, and when we feel the economy coming back. Something has to be done to continue the recovery.

Look, there are always two sides to every issue. I am sure the railroad unions involved in this matter have points that need to be listened to. I am sure that the railroad companies have points that need to be listened to.

They have been listened to in three Presidential emergency boards. The so-called cooling-off period expires tonight at 12 o'clock. There is nothing more the President can do.

The only body that can resolve this matter outside of the parties themselves happens to be the Congress of the United States. We can either do nothing about it, as some have suggested, for 5 to 7 days, or we can go to work and do something about it.

I understand that Senator KENNEDY has has called for a meeting of the members of the Labor and Human Resources Committee for 5:30 p.m. this evening in the Labor and Human Resources Committee room. That is an effective call. That is important. I commend the distinguished Senator from Massachusetts for his willingness to get involved and see if we can explore the middle ground here, and see if there is some way that we in Congress can act, since we are the only ones who can do something about what might be a crippling set of strikes to this whole Nation.

I have to tell you that I commend the Senator for wanting to do that, and I intend to be there this afternoon. I intend to help him and our counterparts in the House to get together and see what can be done. But this country simply cannot tolerate a 5- to- 7-day strike.

We have worked out of one of these disputes that I have been involved with in the past by getting management and labor together and working out the differences. If we cannot work out those differences, then the Congress cannot allow the country to go down the drain. They cannot allow thousands if not millions of people to lose their jobs. They cannot allow the distribution and transportation of commodities all over this country to be lost.

We are going to have to act. It seems to me we have to act in a reasonable and ethical and competent way that will try and bring the parties together. I think that is all this sense-of-the-Senate resolution says. It is a sense of the Senate that Congress needs to act immediately to forestall the possible railroad strike to occur at midnight tonight since the economic ramifications of such a strike are devastating to the country, and congressional action could prevent that economic damage.

So we need to do that. Our counterparts in the House need to do that. If we do not, I do not see any reason why anybody should blame the administration. They have done all they can do at this point including having the Secretary of Transportation stand ready to aid and try to bring the parties even together further.

It is up to us now. We cannot sit idly by and just act like this is not a problem. Nor can we stand up here and blame the President for the economy any more after today. If we do not do something here, then I think the Congress is to blame for the economy, and I do not think anybody is going to be able to refute that statement. I think we ought to put the blame where the blame ought to be.

I also think that there has to be some room to resolve this problem. Many people are concerned that some of these railroads make a lot of money, some do not. Amtrak is not making very much money, and may even be in the hole. Conrail has made reasonable profit.

I have to say our fellow union members have made good livings. Their average annual wage and benefit package on one railroad provides $51,000 per worker. So some people think: Well, because they make that much they should not be demanding more. I cannot agree with that. I think that they should bring up their complaints, and Senator METZENBAUM has raised a couple of them. And those complaints have to be dealt with, and we hope we can bring the parties together to resolve them. But it is not because people are not being fairly compensated thus far, because until now basically they are compensated better than many other blue-collar workers, with the possible exceptions of some very specific illustrations.

Mr. President, this is important. Let us not blame anybody but ourselves if we do not get this resolved. I know my distinguished friend from Ohio is going to be there at 5 a.m. to sit down with us to see what we can do to encourage both sides to be reasonable and resolve this problem. And like he, I will hopefully be meeting with people from both sides of the equation, union leaders, plus the management of the railroads in question, I will do everything I can to help to bring this thing to a fruitful resolution to satisfy all concerned.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to compliment Senator DOLE for this resolution, and Senator HATCH for his statement. I certainly hope that Senator HATCH, Senator METZENBAUM, and others, Senator KENNEDY, can be successful working on this.

I think it is important that we pass this resolution because it is awfully important for the Senate to be on record averting this strike.

I will just say for my State of Oklahoma that we have wheat farmers who just finished cutting their wheat. They need to get it to the market. We have automobile plants that need to have parts delivered. If not, there will be thousands of people put out of work. You can go on and on down the line. This economy is still fragile. We need to be creating environments which create jobs, and not allowing something like a national rail strike to be putting the entire economy in real jeopardy.

So I compliment the Senator from Kansas. I think it is vitally important.

I might mention to my colleagues that a little over a year ago, when this happened before, Congress acted I believe within 17 hours of the strike. I hope that we take no longer than the first day. I would like to see us do it today and avert a strike, but certainly do it within 1 day. I have heard people talking about doing this in a week or so. I do not think our economy can afford it. I do not think those thousands of people whose jobs are directly related can afford it either.

So I encourage those who are meeting with some of the business and union leaders to urge them to come to an agreement, but if necessary I think the Congress should act and act within the next 24 hours to make sure that we do not allow a long-term strike to cripple our economy.

Mr. DOLE. Mr. President, I want to underscore the point just made by the Senator from Oklahoma. We have had a pretty tough year in the Midwest. When we needed rain, we could not get it, and when we get the rain, we cannot cut the wheat because we have tornadoes, hailstorms, or rain. It is going to be difficult at best to get a half a crop. There is also a threat that we could lose the rest of that other half because we do not have any rail cars. This is critical in the Midwest—critical for a lot of farmers and others who are in that business.

Let me suggest that there is precedent for doing something. I do not propose in the sense-of-the-Senate amendment what ought to be done. We could extend the cooling-off period for one thing. That would forestall a strike. I am not trying to impose any settlement. I am suggesting we ought to send a signal.

There are still 8 hours 10 minutes, and somebody out there is listening—management and labor. And If they understand the Senate is serious about this, they may yet negotiate a settlement by midnight and avert a strike on their own. That is the way it ought to be.

Having said that, it seems to me that the appropriate congressional committees ought to be meeting now in the event a strike does occur at 12:01 tonight. We ought to be meeting now to figure out something we can pass tomorrow morning or in the middle of the night to avert a strike of even 1 day.

I do not know the exact positions of management or unions. I understand that each of the relevant Presidential Emergency Board reports is based heavily on PEB-219 which governs the rest of the industry and its labor force. And the railroads generally are willing to accept the recommendations of Presidential Emergency Board, 220, 221, and 222. I am advised that the union position is they want to be able to strike and negotiate on the basis of a strike without congressional intervention, and that they oppose the recommendations of PEB 220, 221, and 222.

So it seems to me that we are not trying to legislate an agreement here. That would be unfair, as the Senator from Ohio pointed out, to both parties; labor or management. I am not trying to get involved in that.

I am trying to protect all the people on the outside who are neither labor nor management who have a stake in this, whether they are commuters, shippers, whatever they may be. There are going to be a lot of people inconvenienced, a lot of people disadvantaged, and a lot of people are going to lose a lot of money because Congress said we do not want to do anything in advance; we do not want to get prepared; we are not Boy Scouts; do not be prepared; wait until it happens.

We can meet this afternoon, the House and Senate committees, and that would be another signal. We are sending signals right now to management and labor that you still have 8 hours, 10 minutes. It will be down to 4, 3, 2, and 1 hour, but an agreement could be reached by this evening. The Secretary of Transportation. Mr. Card, met with us at noon. He is working very diligently with labor and management trying to work out an agreement. The President stated he wants to avert a strike if at all possible.

I might add, Mr. President, that in 1967, during the Johnson administration, there was a 20-day extension of a cooling off period and then 47 more days. In 1968, during the Johnson administration, there was a 37-day extension, and then they imposed a solution.

I am not suggesting that at all. I am not suggesting that. In 1970, under President Nixon, there was an 80-day extension of the cooling-off period before the strike. So there is precedent for this. If that is what the committees decide to do, extend the cooling off period for 1, 2, or 3 days, I would much prefer a 3-day extension of the cooling-off period than a 3-day strike, if they can reach a settlement within 3 days.

There seems to be a rumor that we ought to have a 3- or 4-day strike to show everybody we can do it. I am not certain who benefits from that. It is certainly not the American economy. It cannot be the American worker. It cannot be management. It cannot be hundreds and thousands of commuters in Ohio and the Northeast and other States which rely heavily on commuter traffic. I am not certain who the beneficiaries are, except that "we proved a point," I guess, "that we can create chaos," and Congress is pretty good at that.

I hope for whatever impact this little sense-of-the-Senate amendment might have—it may not have any—that we would have a unanimous vote in the Senate and let the American people know that Congress understands our responsibility. President Bush cannot do anything else. Nobody can blame President Bush on this one. He gets blamed unfairly for a lot of things around here. He did not do anything on

this one. He did all he could do when he appointed the Presidential Emergency Board. Now it is in the lap of Congress. If there is a strike, only Congress can act. We can let the strike go on, and hope they settle it in 30, 40, 50 days, or 5 or 10 days, or impose a settlement, which we prefer not to do, or we can extend the cooling-off period, and there are probably other options.

It seems to me that it is a timely amendment, and it is a signal, a warning, an alert that we ought to be prepared, and I hope that it would have the unanimous support of my colleagues.

Mr. METZENBAUM. Mr. President, indeed, as the Senator from Kansas says, we have in the past, when there have been strikes, caused congressional action to be taken, and in some instances, we have even imposed a solution. But, in the past, Congress intervened in rail labor disputes only where a strike has caused or threatens to cause substantial harm to the Nation's economy.

There is a claim being made at the moment that this is going to cause substantial harm to the Nation's economy. As I understand it, however, there is uncertainty as to which unions, if any, will be going on strike at this moment. We do not even know which, if any, unions will strike and what the impact would be if they were to strike.

There may be a time for congressional action, but when there is, it has to be balanced. I am concerned that the implications of the proposal of the Senator from Kansas are that we make it clear that Congress is stepping in—no strike, we do not want a strike. Well, that is all right. That sounds good.

I am concerned about the grain being moved in the Midwest, and I am concerned about cars and steel being moved in the part of the country I represent. I am concerned about many of those things. But I am also concerned about the workers. They have some rights, and as I previously pointed out, they have not received a wage increase for 4 years. I am not sure that is true of all of those contemplating a strike, but I am positive about some of them.

I am also positive that a company is imposing a change with respect to these working conditions, and that the workers out on the road are going to be paid $35, a pittance, for room and board. That is totally incredible. There is not much question about the fact that the companies are attempting to cut back on the health benefits.

I do not think we want to do anything unfair here. But the only right that working people have in order to assert their position is to strike. As a matter of fact, there is no less profound an authority than the distinguished Senator from Utah who was on his feet a few moments ago. He said just the other day, "I will fight to make sure," said he, "that every worker in this country has that right, the right to strike, if they want to, through organized labor, if they want to. It is a very powerful right." June 16, Senator HATCH.

He said further, "It is an awesome power that unions have, and like I say, I would fight to maintain that right in a union, and I have."

Well, this is a week later, and apparently he is changing his position.

Then he went on to say, "I am proud of my union membership, and I will fight for these collective bargaining rights that they have."

Senator GRAMM said, "If I do not think you pay good enough wages, or I do not like the working conditions, or we have some kind of dispute, the fundamental source of my freedom in a free society is that I have the right to say that I will not work for you anymore. I also have the right, without using coercive power, to go out and urge other people not to work for you. I do not think anybody disputes those basic rights."

That is what we are talking about here, the unions talking about asserting those basic rights. But with this amendment, we are saying here that we are disputing those basic rights.

Senatcr NICKLES said, "I believe that people have the right to get together collectively, to organize, and to bargain in good faith with an employer. Those individuals also have a very critical right to withhold their services if they are not satisfied with the economic conditions in a workplace situation. They may withhold their services, either individually or collectively, if they so choose," said he. "No one should be compelled to work any place if they are not satisfied with the working environment, the wages, or the conditions of employment. These are fundamental rights which are protected by the National Labor Relations Act," so said Senator NICKLES on June 11, 1992, just last week.

Now we have the situation where several unions are talking about withholding their work product, where they are saying we are not satisfied at continuing to work at the same wages we were paid back in 1988. They are trying to get some matters worked out. And if Congress steps in at this point, even before a strike occurs, and there is some question as to whether all of the unions will go on strike, whether there will be a strike against Amtrak or Conrail, or both, I do not know the answer to that. But I believe that this is a premature action. There may be a reason for action at a later point, but I believe there is no reason this afternoon for us to adopt the amendment of the distinguished Senator from Kansas. I, therefore, move to lay the amendment on the table.

Mr. DOLE. Will the Senator withhold the motion for a minute?

Mr. METZENBAUM. Certainly.

Mr. DOLE. I ask unanimous consent to have printed in the RECORD a document setting forth prior rail strike legislation models and what the disposition was in each case.

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

PRIOR RAIL STRIKE LEGISLATION MODELS

Overtime Pay & Eight Hour Day, 1916 (Pub. L. No. 64-252)

Eight hours deemed a day's work.

President to appoint commission to observe effects of eight hour day and report to Congress.

[Supreme Court rejected rail management's argument that the legislation was a taking of property in violation of the 5th Amendment. *Wilson* v. *New*, 243 U.S. 332 (1917).]

Fireman Manning, 1963 (Pub. L. No. 88-108)

[Mediation by a Presidential Railroad Commission, a Presidential Emergency Board (PEB), and Presidents Eisenhower and Kennedy were unsuccessful, thereby leading to legislation.]

Return to status quo.

Arbitration by Arbitration Board No. 282 to create new set of work rules to govern use of locomotive firemen and the consist of train crews. Award binding for two years only [Fix did not work and UTU struck several railroads in 1970, resulting in Emergency Board No. 177; in 1972 parties entered into the Fireman Manning Agreement, which as amended in 1985, provides for elimination of firemen through attrition.]

[Legislation upheld as constitutional. *Bhd. of Locomotive Firemen and Engineers* v. *Chicago, B.&O. R.R.*, 331 F.2d 1020 (D.C. Cir. 1964), *cert. denied*, 377 U.S. 918 (1964).]

Shop Craft Disputes, 1967

[Recommendations of PEB and further efforts by government officials to mediate a settlement were unsuccessful, leading to legislation.]

Pub. L. No. 90-10—return to status quo and 20-day extension of section 10 cooling-off period; during this period, President established Special Mediation Panel which made a settlement proposal to the parties with no success.

Pub. L. No. 90-13—further extension of cooling-off period for 47 days [with no success].

Pub. L. No. 90-54—Special Board established (NMB to provide staff, compensation), which recommendations would become binding if parties unable to reach agreement and remain in effect for not to exceed two years. [Special Board award required to settle dispute].

Shop Craft Dispute, 1968-1970

Pub. L. No. 91-203—37-day extension of section 10 cooling-off period.

Pub. L. No. 91-226—imposition of Memorandum of Agreement between unions and carriers (that one of the unions had failed to ratify).

Four Union Dispute, 1970-1971 (Pub. L. No. 91-541)

80-day extension of section 10 cooling-off period.

Pattern wage settlement imposed by law.

President to make recommendations for settlement. [Agreements reached with two of unions during cooling-off period and two after President made recommendations.]

[Legislation upheld as constitutional. *Louisville & Nashville R.R.* v. *Bass*, 328 F.Supp. 732 (W.D. Ky. 1971).]

Signalmen Dispute, 1971 (Pub. L. No. 92-17)

4½ month extension of section 10 cooling-off period.

Secretaries of Labor, Transportation and Defense to make reports on impact of dispute.

Retroactive age increases imposed by law (at levels consistent with PEB recommendations). [Settled]

UTU/Penn Central Dispute, 1973 (Pub. L. No. 93-5)

35-day extension of section 10 cooling-off period.

Secretary of Transportation to submit report to Congress on essential transportation services.

Secretary of Labor to submit report to Congress with recommendations for solution of dispute.

BLE Dispute, 1982 (Pub. L. No. 97-262)

[BLE and UTU failed to reach agreements and two PEBs were convened. UTU settled its dispute, but BLE did not and a national strike resulted.]

Return to status quo.

PEB recommendations imposed.

BMWE/Maine Central, Dispute, 1986

Pub. L. No. 99-385—60-day extension of section 10 cooling-off period. Special Board (appointed by NMB) to submit report.

[Carrier's argument that the legislation violated the equal protection component of the Fifth Amendment was rejected. *Maine Central R.R. v. Bhd. of Maintenance of Way Employees*, 813 F.2d 484 (1st Cir. 1987), *cert. denied*, 484 U.S. 825 (1987).]

Pub. L. No. 99-431—upon parties continued failure to reach an agreement, Congress followed the Special Board's advice by imposing the PEB's recommendations on the parties. Any unresolved implementing issues remaining after 10 days to be resolved by binding arbitration (NMB appointed arbitrator); arbitration to be completed within 30 days of enactment of the Act.

[Carrier's attack that legislation violated due process clause of the 5th Amendment and the separation of powers doctrine was rejected. *Maine Central RR. v. Bhd. of Maintenance of Way Employees*, 835 F.2d 368 (1st Cir. 1987), *cert. denied*, 486 U.S. 1042 (1988).]

Long Island Labor Disputes, 1987 (Pub. L. No. 100-2)

60-day extension of section 10 cooling-off period.

NMB to establish 3-member board which was to report to Congress 10 days before expiration of cooling-off period on the progress of negotiations and make recommendations for solution of dispute.

UTU/C&NW Labor Dispute, 1988

Pub. L. No. 100-380—35-day extension of section 10 cooling-off period (until 10/9/88); on 10/9/88, UTU went back on strike.

Pub. L. No. 100-429—settled dispute by imposing recommendations of PEB.

[Eastern Airline/IAM Dispute, 1989]

President refused to convene PEB despite recommendation of NMB, or to approve legislation providing for the creation of a Congressional study commission.

In face of strike, the carrier hired replacement workers.

The President threatened to send secondary picketing bill to Congress if the unions carried out their threat to engage in secondary picketing. Threatened secondary picketing of various railroads (Long Island Railroad, Metro North, New Jersey Transit, PATH, Amtrak, SEPTA) and various airlines (United, Northwest, TWA, USAir/Piedmont, American and Northwest) was enjoined by various U.S. District Courts; courts found the matter to be a minor dispute subject to arbitration under Section 3 of RLA.

National Health & Welfare/Wages & Work Rule Dispute of 1990 (Pub. L. No. 102-29, April 18, 1991, 105 Stat. 169)

PEB 219 studied issues for eight months; three unions (Bhd. of Railroad Signalman, American Train Dispatchers Ass'n, and Transp. Communications Int'l Union) negotiated tentative agreements based on report.

Remaining eight bargaining units commenced nationwide rail strike on April 17.

Congress created three-member Special Board to consider requests to (i) interpret or (ii) modify recommendations of PEB 219, but only if presumption of validity was overcome by party seeking modification. To overcome presumption party needed to show that PEB recommendation was demonstrably inequitable, or was based on a material error or material misunderstanding. Special Board granted very limited modifications.

[Statute was upheld as constitutional; UTU asserted that reopening of local crew consist agreements constituted taking. *Burlington N. R.R. Co.* v. *United Transp. Union*, Civil Action No. 91-1851 (D.D.C. 1991)]

Mr. DOLE. Mr. President, I think this might be of help to those who read the RECORD to have a chance to see what has happened in the past. It is also my understanding that about 95 percent of the workers have already settled about a year ago—last year in connection with PEB 219 and congressional action. So you have about 5 percent holding out who want a better deal than the other workers received.

I am not trying to take anything away from the worker or anything away from management. I am just trying to forestall a strike. There are hundreds and thousands and millions of people who are going to be hurt by this beyond the workers and management.

I would hope and I would think the Senator from Ohio would want to join in any effort to forestall a strike. I am not taking away anybody's rights. I have not said anything about taking away anybody's rights. There is not a thing in the amendment about that. There is nothing to say we are taking away the rights of either side, management or labor.

It does indicate we would like very much to have a disposition of this before midnight tonight.

I hope that if the motion to table is made, and I will ask for the yeas and nays on that motion when it is made, that it will be defeated and we will adopt this sense-of-the-Senate resolution.

The PRESIDING OFFICER. The distinguished Senator from Ohio.

Mr. METZENBAUM. Mr. President, when I spoke before, I was not certain about one of my facts. I want to make one fact clear. All of the 20,000 workers who are involved in this labor dispute, both with Conrail and Amtrak, and the other rail carriers, have gone without a pay raise for 4 years. If you vote to support the Dole amendment you are impliedly indicating you think that is OK.

This Senator does not think that is OK. This Senator thinks that the parties ought to still be able to try to resolve their disputes, and if the Congress is going to intervene, yes, indeed, maybe the Labor Committee should be holding some hearings in order to see what all the facts and the issues are. I do not think we ought to indicate this afternoon we are on one side or the other.

Mr. DOLE. Mr. President, if the Senator will yield, let me make it very clear for the RECORD, in case anybody should read the RECORD, that is not the intent of this Senator. I am not suggesting that we should not have an increase in pay for some of the workers. Indeed, I understand that the PEB reports recommended pay increases. I am suggesting we should not have a strike; we ought to avert a strike.

They may end up with increases. Hopefully they will end up with an increase. That is not the issue I am addressing. The issue is, if we do want a nationwide strike, a lot of innocent people not involved in these negotiations will bear the consequences; they are farmers, workers, a lot of people in organized labor, a lot of people in the private sector, a lot of people in other industries, a lot of people on the farm, and business, that I think we ought to at least take into consideration their interest, too. And all this does is to send, I think, a pretty good signal. It was when I started about 8 hours and 10 minutes ago. They still have 7 hours and 58 minutes; midnight tonight. A lot can be done. I would hope the Labor Committees in the House and Senate would meet this afternoon so they would again indicate to management and labor, both, that this is serious business and we ought to try to resolve it.

I thank the Senator from Ohio for yielding.

Mr. DURENBERGER. Mr. President, I support the Dole amendment that expresses the sense of the Senate that Congress should act quickly to end the rail strike that we expect to occur at midnight tonight. This strike will hurt Minnesota's economy, and I cannot stand by while the Nation's economic recovery is threatened due to a labor dispute in our rail system.

I encourage the parties to settle their dispute privately. That is the purpose of our collective bargaining system. But when the parties do not come together to reach agreement and the disruption threatens our economy, Congress must intervene.

Mr. President, I also want to indicate that, in my view, there is substantial inequity in allowing the parties that are threatening to strike tonight to break from what the Presidential emergency boards [PEB 220-222] recommended to settle the dispute. Let me explain.

In this case, the parties have already bargained to impasse, and the Presi-

dent, pursuant to his authority under the Railway Labor Act, appointed a Presidential emergency board to take testimony and issue its recommendations.

Both labor and the carriers agreed to the members of the emergency board. All parties had an opportunity to present their case before the emergency board. And the board deliberated and made their best recommendation on how the parties should settle their dispute.

The emergency board's recommendations are not binding on the parties. The board considered all the facts and circumstances of the case, but the parties cannot seem to come to some agreement on how to use the board's recommendations to solve this problem.

The PEB did not deliberate on a clean slate, however. Last year, 95 percent of the rail unions reached agreement privately or as a result of congressional action. During last year's dispute, a PEB, called PEB 219, studied the issues and made recommendations. Ninety-five percent of the rail industry settled their labor contracts last year based upon PEB 219.

Some labor organizations utilized PEB 219's recommendations to reach agreement. And some were covered by the congressional action that imposed the neutral board's recommendations on the parties. But the important thing is that 95 percent of the industry settled their disputes last year.

Mr. President, I want to encourage parties to settle their disputes. I want to encourage parties to mutually compromise in order to reach agreement. And that is what 95 percent of the rail industry did last year.

The 5 percent who are threatening to strike tonight are the holdouts from last year. They waited on the sidelines to see how the 95 percent did. The 5 percent opted out of the national negotiations last year in order to try to obtain more for their membership. I do not blame them for trying to obtain that, but I also do not think that we should encourage them.

Mr. President, if we are to encourage settlement, we cannot give 5 percent of the industry more than the 95 percent received. Otherwise, no party will ever settle his or her dispute.

Again, I encourage the parties to settle their dispute privately without a strike. But in the event a strike occurs, then I urge my colleagues to act quickly to settle the matter.

Mr. President, I would like to make a few additional comments to explain my support of the Dole amendment. A national rail strike would have devastating consequences for Minnesota as well as the country. Burlington Northern, a major rail carrier in Minnesota, has about 340,000 carloads that originate in my State, and about 300,000 carloads that terminate in my State. That is a great deal of cargo. The rail strike clearly will have a strong impact on Minnesota's economy.

In addition, I heard this afternoon during the debate on this sense of the Senate resolution, that some people are claiming that a vote for the Dole amendment is a vote against giving the workers a pay increase. That is simply not the case.

In the past, when Congress has acted, we have, in some form or another, ordered the parties to utilize the Presidential emergency board recommendations as the basis for a new contract. In this case, the Presidential emergency boards [PEB 220-222] basically recommended that the parties receive the same increase that the rail unions received last year when they went on strike; that is, a $2,000 signing bonus, and a 3 to 4 percent cost-of-living increase.

I do not see the Dole amendment as a vote against giving rail workers a cost-of-living increase. Rather, in my view, the Dole amendment encourages the Congress to act quickly to avoid a national economic calamity. My hope is that when the Senate acts, it will utilize the Presidential emergency board recommendations as the basis for a settlement, and those recommendations clearly provide for pay raises for rail workers involved in this dispute.

Mr. SPECTER. Mr. President, I am voting against tabling the Dole amendment to encourage Congress to act to avert the threatened rail strike because I believe that further consideration and further debate is necessary on this important subject.

We are considering this issue on the afternoon where a strike has been called for 12:01 a.m., approximately 8 hours from now. This Nation faces a very serious shutdown of Amtrak and Conrail which could imperil millions of passengers and disrupt shipments of millions of tons of freight. It is estimated that industrial operations and commuter rail service to 500 communities in 45 States would be adversely affected.

This is a delicate matter because it is desirable to give the parties a full opportunity to settle this labor dispute without governmental intervention. It is possible that any vote on this issue might be viewed as upsetting that delicate balance. Disposition of the Dole amendment prior to the midnight deadline would send to the negotiating parties one or another unfortunate signals. Should the Dole amendment be tabled, it will be perceived that the Senate favors the union's positions. Should the Dole amendment be accepted, it will be perceived that the Senate favors the carrier's positions. Neither of these scenarios is productive, but further debate and deliberation are useful.

I believe we should debate the matter fully. Therefore, I am opposing the motion to table with the hope that the Senate will conduct further debate.

This matter is of sufficient significance for the Senate to give extended consideration to this issue for the balance of today's session, awaiting the outcome of late night negotiations and then into tomorrow's session.

Should a strike occur, Congress will be confronted with the issue of whether to involve itself in a labor dispute. Last April, the Congress enacted, and the President signed, legislation to stop a strike less than 24 hours after it began. It is my understanding that Congress has intervened to stop 12 similar rail strikes since 1963, most of them nationwide, but others confined to single railroad companies. That legislative history is a forceful statement by the Congress on the public policy of not permitting such strikes.

It should be noted that in 1991, I wrote to Chairman Cleary of the National Mediation Board requesting that a new catalyst be found to settle the dispute. Most recently, on June 11, I wrote to the Chairman of Conrail and Amtrak urging that positive steps be taken to reach a settlement before the deadline. I have listened hard to the concerns of both the unions and the carriers. In my opinion, we should consider this issue at greater length so I am voting against the tabling motion.

The PRESIDING OFFICER. The distinguished Senator from Ohio.

Mr. METZENBAUM. Mr. President, I move to lay the amendment on the table.

The PRESIDING OFFICER. The distinguished Senator from Ohio moves to lay the amendment on the table.

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Ohio to lay on the table the amendment offered by the distinguished Republican leader. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. I announce that the Senator from North Carolina [Mr. SANFORD], is necessarily absent.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. HELMS] and the Senator from Delaware [Mr. ROTH] are absent due to illness.

I further announce that if present and voting, the Senator from North Carolina [Mr. HELMS] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 39, nays 58, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—39

Adams	Glenn	Mikulski
Akaka	Gore	Mitchell
Baucus	Harkin	Moynihan
Biden	Inouye	Pell
Bingaman	Kennedy	Riegle
Bradley	Kerrey	Robb
Burdick	Kerry	Rockefeller
Byrd	Kohl	Sarbanes
Conrad	Lautenberg	Sasser
Cranston	Leahy	Simon
Daschle	Levin	Wellstone
Dodd	Lieberman	Wirth
Exon	Metzenbaum	Wofford

NAYS—58

Bentsen	Ford	Murkowski
Bond	Fowler	Nickles
Boren	Garn	Nunn
Breaux	Gorton	Packwood
Brown	Graham	Pressler
Bryan	Gramm	Pryor
Bumpers	Grassley	Reid
Burns	Hatch	Rudman
Chafee	Hatfield	Seymour
Coats	Heflin	Shelby
Cochran	Hollings	Simpson
Cohen	Jeffords	Smith
Craig	Johnston	Specter
D'Amato	Kassebaum	Stevens
Danforth	Kasten	Symms
DeConcini	Lott	Thurmond
Dixon	Lugar	Wallop
Dole	Mack	Warner
Domenici	McCain	
Durenberger	McConnell	

NOT VOTING—3

Helms	Roth	Sanford

So the motion to lay on the table the amendment (No. 2438) was rejected.

Mr. DOLE. Mr. President, as I understand it, the yeas and nays have been ordered on the amendment. I ask unanimous consent that they be vitiated.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the distinguished Republican leader.

The amendment (No. 2438) was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Michigan.

Mr. RIEGLE. Mr. President, before Senator DOLE offered his sense-of-the-Senate resolution, I sent to the desk the managers' amendment which is presently before the Senate, which is an amendment to incorporate some provisions previously passed by the Senate but not yet passed by the House, as well as some technical and other minor changes to the GSE bill currently under consideration.

Amendments previously passed include:

First, a provision to clarify that directors of an insured depository institution are not liable to the institution's shareholders or creditors for acquiescing to the appointment of a conservator or receiver or to a supervisory merger;

Second, a provision to allow financial institution regulators to create a small loan exemption from the requirement to obtain appraisals on collateral, if such exemption is in the public interest;

Third, a provision limiting the liability of U.S. banks for deposits at a foreign branch if the branch is unable to repay the deposits due to war or an action of a foreign government;

Fourth, a provision clarifying that branches of foreign banks may accept certain types of nonretail, uninsured deposits of less than $100,000 in their wholesale branches as permitted by regulation before the FDIC Improvements Act;

Fifth, a provision clarifying that Federal banking agencies may not set a specific level or range of compensation for officers, directors, or employees of banks;

Sixth, a provision extending for 4 months a transition rule in FIRREA for the separate capitalization of savings associations' subsidiaries;

Seventh, a provision extending to 5 years the statute of limitations for civil suits brought by the RTC;

Eighth, the money laundering provisions in titles IX and XI of last year's banking bill with additional provisions to deter counterfeiting;

Ninth, an amendment to the Banking Committee's provisions to establish an insurance commission, as worked out in last year's banking bill by Senators METZENBAUM and DODD;

Tenth, a provision worked out with Senators HARKIN and GRASSLEY similar to section 1163 of last year's banking bill that would allow the FDIC to waive its authority to repudiate contracts for the sale of credit card operations by undercapitalized depository institutions; and

Eleventh, the lender liability provisions of title X of last year's Senate-passed banking bill, with minor changes to conform more closely with a recently issued EPA rule.

In addition, this managers' amendment includes:

First, additional safeguards to the provisions in the committee bill regarding the community development authority of banks;

Second, a provision worked out with Senator LEVIN regarding the authority of the Director of Federal Housing Enterprise Oversight to prohibit excessive compensation at GSE's;

Third, a sense of the Senate resolution authored by Senator KOHL that any final GSE legislation should not compromise the independence granted to the GSE regulator provided in the Senate's bill;

Fourth, an amendment of Senator DOLE'S to the subject matter of the studies of the Home Loan Bank System in the committee bill that would require consideration of the effect of consolidation of that system on affordable housing in rural areas;

Fifth, an amendment of Senator SIMPSON'S that would exclude loans backed by Treasury collateral from the insider loan limits in the Federal Reserve Act;

Sixth, changes in the committee's bill requested by the administration to give OMB authority to review the GSE regulator's budget and to require use of the Justice Department's litigating services;

Seventh, an amendment of Senator MACK'S to expand the study of the secondary market for commercial mortgages to include business loans; and

Eighth, a provision to amend the collateral requirements for loans by Federal Home Loan Banks to State housing finance agencies.

I think these are all excellent provisions. Most have already passed the Senate, and the others should not be controversial. I ask unanimous consent to insert some further explanatory material concerning this amendment into the RECORD.

AMENDMENT TO THE INTERNATIONAL BANKING ACT OF 1978

The managers' amendment that Senator GARN and I have agreed should be added to this bill makes a technical correction to section 214(a)(3) of last year's banking bill. That provision added a new subsection (c) to the International Banking Act of 1978 which requires foreign banks to take insured deposits in subsidiary banks incorporated in this country rather than in direct branches of the foreign bank. I pushed for enactment of that provision in order to better safeguard the bank insurance fund and the American taxpayers who back it from losses that might be suffered by U.S. branches of foreign banks whose full operations U.S. bank regulators do not oversee or control.

Concerns have been expressed by the Federal Reserve Board, other regulators and some State officials that section 214(a)(3) could be interpreted to prevent branches and agencies of foreign banks from accepting certain types of nonretail, uninsured deposits of less than $100,000 in their wholesale branches. It was not my intention in sponsoring section 214(a) to void regulations promulgated by the FDIC and OCC that permit them to do so. This technical amendment will clarify that matter. It will not, however, remove the discretion of the responsible agencies to revise their regulations governing nonretail deposit accounts under $100,000 if such revision is deemed appropriate. In fact, I expect the regulators to review those regulations to determine if all provisions of them are warranted.

This is the same technical correction to section 214(a)(3) of last year's banking bill that the Senate passed on March 26 as S. 2482 a bill that provided funding for the Resolution Trust Corporation [RTC]. Final passage of that bill has been delayed in the House.

EXPLANATION OF AMENDMENT TO INTERNATIONAL BANKING ACT OF 1978

The section of the manager's amendment entitled "Amendment to Inter-

national Banking Act of 1978" makes a technical correction to section 214(a)(3) of the Federal Deposit Insurance Corporation Improvement Act of 1991, which added section 6(c) to the International Banking Act. That section requires foreign banks to take deposits of less than $100,000 that require deposit insurance in subsidiary banks incorporated in this country rather than in direct branches of the foreign bank. This technical amendment recommended by the Board of Governors of the Federal Reserve System clarifies that section 6(c) applies only to domestic retail deposits. Therefore its enactment does not moot regulations promulgated by the OCC and FDIC that permit foreign banks to take certain types of nonretail deposits of less than $100,000 that are not insured in their wholesale branches. See 12 CFR 28.8 and 12 CFR 346.6. The amendment does not remove the discretion of responsible agencies to revise current regulations governing nonretail deposit accounts under $100,000 if such revision were deemed appropriate.

PROHIBITING EXCESSIVE COMPENSATION AT GSES

The manager's amendment adds a section that requires the Director of the Office of Federal Housing Enterprise Oversight to prohibit enterprises from paying excessive compensation to any executive officer. Because this is an issue that concerns the financial health and security of the enterprises, the Director may act on this section without the HUD Secretary's review or approval. The definition of compensation is extremely broad, and includes all forms of compensation. The phrase "termination of employment" as used in this section or in title VI is also broad. It covers any circumstance in which an executive officer's employment terminates, including the officer's retirement. One of the factors to be considered in evaluating whether compensation is excessive is compensation at comparable publicly held financial institutions. "Comparable publicly held financial institutions" in this section or in title VI means comparable publicly held FDIC-insured depository institutions and other Government-sponsored enterprises.

COMMUNITY DEVELOPMENT AUTHORITY OF BANKS

Section 905 of the bill authorizes national banks and State member banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities and families. The appropriate Federal agency—the Comptroller of the Currency for national banks, and the Federal Reserve Board for State member banks—must impose per-project and aggregate limits on such investments. In no case can such investments exceed 10 percent of a bank's capital.

The requirement that investments primarily promote the public welfare is crucial. Section 905 is not intended to authorize entrepreneurial investments in community development clothing.

The manager's amendment provides several additional safeguards. First, a bank can make aggregate investment exceeding 5 percent of the bank's capital only if the bank is adequately capitalized, as defined in section 38(b)(1)(B) of the Federal Deposit Insurance Act, and the agency has determined by order that the higher amount will pose no significant risk of loss to the affected deposit insurance fund. Second, the amendment clarifies that the bank cannot use this authority to make investments that would expose the bank to unlimited liability.

National banks have heretofore made community development investments under the eight paragraph of section 5136 of the Revised Statutes, which authorizes national banks to contribute to community funds or to charitable, philanthropic, or benevolent instrumentalities conducive to the public welfare. Section 905 adds a new eleventh paragraph to section 5136. In so doing, section 905 contemplates that banks would make future investments under the 11th rather than the 8th paragraph and that existing investments—insofar as they comply with the 11th paragraph—could continue under that paragraph without the formality of reauthorization.

In the case of State member banks section 905 specifies that the Federal Reserve Act does not prohibit State member banks from making community developments investments of the type specified, to the extent permissible under State law. Section 905 does not authorize a State member bank to make any investment not permissible under State law.

MONEY LAUNDERING AMENDMENT

In November 1991, the Senate included money laundering improvements provisions in its comprehensive banking bill, but these provisions were not adopted in conference. This amendment would authorize regulatory sanctions against financial institutions convicted of money laundering, and it would strengthen money laundering requirements as they apply to nonbank financial institutions. This amendment would also enhance the ability of the Justice Department to use civil forfeiture statutes in money laundering cases, as well as, make other technical changes to strengthen money laundering laws.

THE MURKOWSKI TRUTH IN SAVINGS AMENDMENT TO S. 2733

Let me describe the changes provided by the Murkowski amendment.

First, the amendment would change the notice and disclosure provisions of the Truth in Savings Act with respect to maturing certificates of deposit [CD's].

The act requires banks to provide, 30 days in advance of the expiration of a CD, a notice of when the CD will expire, and to disclose all the information about the terms and conditions that will apply. These disclosures are the same as those required with respect to new CD's.

The bill would replace these requirements with a four-tier approach. For CD's with a maturity date of 1 month or less, the Board may establish any notice and disclosure requirements it believes are needed. The Board is given broad discretion for these particular CD's because the purchasers of most of them are sophisticated depositors who are well aware of the key elements of such instruments.

For CD's with a maturity date of greater than 1 month but no more than three, the amendment permits the Fed to determine the appropriate time for notice that the certificate is rolling over. The amendment provides that the renewal notice must state: the maturity date of the expiring time deposit; the maturity date or the term of the renewed time deposit; any penalty for early withdrawal; any change to the terms or conditions that would be adverse to the customer with an exception; the date the APY and simple rate of interest will be determined; and a telephone number to obtain the APY and simple rate of interest that will be paid when the account is renewed.

For CD's that have a maturity of more than 3 months and less than 2 years, a bank must provide the depositor with a renewal notice not later than 15 days before the date of maturity. The notice must contain the same elements as are required for CD's of more than 1 month but no more than 3 months.

Finally, for renewable CD's with a maturity date of 2 years or more, the renewal notice must be provided not later than 15 days before the date of maturity, but, because of the lengthy maturity, the bank must provide the depositor with all the disclosures required for new account holders.

The second set of changes deals with the use of signs, including rate boards, that disclose a rate of interest and that are displayed on the premises of depository institutions. The amendment would permit the continued use of such signs—without requiring the disclosure of additional terms and conditions—under two circumstances.

First, the sign must display the accompanying annual percentage yields.

Second, the display sign must include a statement that the consumer should request further information from an employee of the bank about the fees and terms of the account being offered.

Depository institutions may avail themselves of this exception to the disclosure provisions so long as the sign is designed to be viewed only from the interior of the depository institution's premises. This means the sign is located inside the bank and designed for

use by consumers there. What it does not mean—and what is not authorized by the amendment—is that a depository institution could post such a sign on or next to a window so that the information can be read easily from outside. The reason the exception does not reach that situation is because consumers would not have ready access to all the required disclosures, particularly when the institution is closed. Any information provided to people outside the institution would be just like any other solicitation and would require the disclosure of all information required under section 263 of the act.

Finally, the amendment would give depository institutions an additional 3 months to comply with the Fed's regulations.

I have a summary of a number of items in that managers' amendment and I ask unanimous consent that these now be printed in the RECORD.

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

SENATE MONEY LAUNDERING BILL—SUMMARY

This bill would strengthen the money laundering requirements as they apply to nonbank financial institutions, and would authorize regulatory sanctions against financial institutions convicted of money laundering. The bill also includes certain law enforcement provisions recommended by the Justice Department that would address some of the issues raised in the BCCI forfeiture action and generally forestall situations where the government ends up turning money or property back to criminals.

The text of this bill has already been passed by the Senate in last year's bank bill, but it was not cleared out of conference. The House separately passed H.R. 26, which has been discharged by the Senate Banking Committee and can be called up from the Senate calendar. The banking regulators, the Justice Department and the Treasury Department support this bill.

Bill highlights by title:

TITLE I—TERMINATION OF CHARTERS, INSURANCE AND OFFICES

Provides for the revocation of the charters of federally-chartered institutions and the termination of insurance for state-chartered financial institutions convicted of money laundering, after a hearing and due process.

Allows state financial institution supervisory agencies access to currency transaction reports maintained by the Treasury Department.

TITLE II—NONBANK FINANCIAL INSTITUTIONS AND GENERAL PROVISIONS

Requires the Treasury to prescribe regulations by January 1, 1993 which would require depository institutions to identify certain nonbank financial institution customers.

Provides the Treasury with the authority to require financial institutions and their management and employees to keep the existence of targeted currency orders confidential.

Requires the Treasury and the Federal Reserve to prescribe regulations requiring all financial institutions, including businesses that cash checks or issue money orders or travelers' checks, to maintain records of payment orders that involve international wire transfer transactions and will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Authorizes the Treasury to require nonbank financial institutions to report, without fear of liability, suspicious transactions relevant to possible violations of law or regulation.

Requires the Attorney General to report on whether the issuance of guidelines for the prosecution of financial institutions would enhance cooperation by financial institutions with law enforcement authorities.

Requires the Treasury to establish a team of experts to assist and train foreign governments in developing their expertise in money laundering investigations and prosecutions.

Requires the President to submit an annual report detailing bilateral and multilateral initiatives to combat money laundering.

TITLE III—MONEY LAUNDERING IMPROVEMENTS

The first four sections of Title III provide new procedures that would enhance the ability of the Department of Justice to use the civil forfeiture statutes in money laundering cases. The forfeiture procedures under existing law may be satisfactory for customs cases, but they are not appropriate, and were not designed to be used, in complex financial cases involving bank records, electronic funds, and the complex transactions that often are central to money laundering activity.

The remainder of Title III addresses problems that have arisen with the use of existing money laundering laws, as well as removes obstacles in other statutes that unnecessarily limit the Justice Department's ability to use the money laundering statutes.

TITLE IV—REPORTS AND MISCELLANEOUS

Requires the Attorney General to conduct a study of the effects of reimbursing financial institutions and non-depository entities for providing financial records.

Clarifies that inter-agency sharing of information among the Federal bank regulatory agencies does not result in the loss of any applicable legal privileges, and requires U.S. agencies promptly to share any information affecting the safety and soundness of the U.S. banking system with the proper Federal banking agencies.

Provides the Federal Reserve Board of Governors, in conjunction with the Department of Justice, the power to grant limited immunity to witnesses.

TITLE V—COUNTERFEITING DETERRENCE

Title V amends the counterfeiting statutes by increasing the sanctions that may be imposed against convicted counterfeiters, by providing the Secretary of the Treasury with the authority to designate "distinctive counterfeit deterrents" which may not be used by the general public, and by clarifying the scope of existing counterfeiting statutes to encompass electronic means of counterfeiting.

AMENDMENT

(Purpose: To propose an amendment to the Constitution of the United States to require that the budget of the United States be in balance unless three-fifths of the whole of each House of Congress shall provide by law for a specific excess of outlays over receipts and to require that any bill to increase revenues must be approved by a majority of the whole number of each House)

Strike all after the enacting clause and insert in lieu thereof the following:

"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 if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"'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. 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 3. 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 4. 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 5. 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 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

"'SECTION 7. 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 principle.

"'SECTION 8. This article shall take effect beginning with fiscal year 1998 or with the second fiscal year beginning after its ratification, whichever is later.'".

SENATE MONEY LAUNDERING BILL—SECTION-BY-SECTION ANALYSIS

Sec. 1. The Act may be cited as the Financial Institutions Enforcement Improvements Act.

TITLE I—TERMINATION OF CHARTERS, INSURANCE, AND OFFICES

Sec. 101. After the conviction of a Federally chartered financial institution for money laundering, the OCC, NCUA, or OTS shall hold a hearing to decide whether to revoke the charter of the institution. The regulator shall consider: the degree to which senior management was involved; whether the interest of the local community would be threatened by loss of the franchise; the degree to which the institution cooperated with law enforcement officials; whether there will be any losses to any Federal deposit insurance fund or the RTC; and whether the institution had policies and procedures designed to prevent money laundering that exceeded the federally required minimums.

After the conviction of a Federally chartered financial institution for bank secrecy act violations (31 U.S.C. §5322), the appropriate Federal regulator may hold a hearing to decide whether to revoke the institution's

charter. The factors set forth above are to be considered at the hearing.

Sec. 102. In the case of State chartered financial institutions, the FDIC or NCUA shall issue a notice of intention to terminate insurance and conduct a hearing considering the same factors set forth above in section 101 for criminal convictions of the money laundering statutes and may issue a notice of intention to terminate insurance where a state chartered financial institution is convicted of a violation of the bank secrecy act. The factors set forth above in §101 are to be considered at the hearing.

Sec. 103. The appropriate Federal regulator may initiate a removal action against: an institution-affiliated party (IAP) for violating the Bank Secrecy Act; an officer or director of an insured depository institution where that person knew that an IAP of the insured depository institution violated any provision of the criminal money laundering or structuring statutes; or an officer or director of an insured depository institution where that individual committed a violation of the Depository Institution Management Interlocks Act which generally prohibits dual service of management officials at financial institutions in the same geographic area and for large financial institutions.

The appropriate Federal regulator may suspend an IAP who is charged with a felony involving dishonesty or breach of trust or a criminal violation of the money laundering or structuring statutes.

Sec. 104. Amends existing law to bar individuals from all federally insured financial institutions not only if they have been convicted of crimes of dishonesty and breach of trust, but also if convicted of money laundering.

Sec. 105. State financial institution supervisory agencies shall have access to currency transaction reports maintained by the Department of the Treasury.

Sec. 106. Authorizes the Federal Reserve to initiate a termination proceeding where a foreign bank operating a State agency, State branch, or State commercial lending subsidiary, or any of the directors or senior executive officers of one of those entities is found guilty of a money laundering offense.

TITLE II—NONBANK FINANCIAL INSTITUTIONS AND GENERAL PROVISIONS

Sec. 201. Requires the Treasury to prescribe regulations by January 1, 1993 which would require depository institutions to identify certain nonbank financial institution customers. Civil penalties of up to $10,000 per day against any person or depository institution may be imposed for willful violations.

Sec. 202. Establishes a new crime, subject to fines and imprisonment of up to five years, or both, for conducting, controlling, managing, supervising, directing, or owning all or part of a business knowing the business is an illegal money transmitting business. The section also permits criminal as well as civil forfeiture of the proceeds of an illegal money transmitting business. An "illegal money transmitting business" is one knowingly operated without the appropriate State license and where such operation is a misdemeanor or felony under State law.

Sec. 203. Amends the compliance procedures section of the Bank Secrecy Act by allowing the Treasury to require domestic financial institutions to maintain appropriate procedures to guard against money laundering in addition to generally ensuring compliance with the Bank Secrecy Act.

Sec. 204. Provides the Treasury with the authority to require financial institutions to keep the existence of targeted currency orders confidential.

Sec. 205. Before October 1, 1992, the Treasury and the Federal Reserve are required to jointly prescribe regulations requiring all financial institutions, including businesses that provide check cashing services and businesses that issue or redeem money orders and travelers' checks, to maintain records of payment orders that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, where wire transfers are used for international transactions. Prior to promulgating regulations, the Treasury and Federal Reserve are to consider the usefulness of the records to be maintained in a criminal, tax, or regulatory proceeding as well as the effect this recordkeeping requirement will have on the cost and the efficiency of the payment system.

Sec. 206. Amends exceptions to Right to Financial Privacy Act to allow the financial regulators to provide financial records to Treasury to investigate money laundering and other financial crimes.

Sec. 207. Broadens the scope of the anti-structuring provision of the Bank Secrecy Act to include structuring transactions designed to evade the customer identification provision of the Act. Authorizes Treasury to require nonbank financial institutions to report suspicious transactions relevant to possible violations of law or regulation. Prohibits nonbank financial institutions that voluntarily report suspicious transactions from notifying persons involved in the transaction of the filing of a referral. Amends the Right to Financial Privacy Act to exclude from liability any nonbank financial institution that voluntarily discloses possible violations of law or regulation. Authorizes Treasury to require nonbank financial institutions to carry out anti-money laundering programs.

Sec. 208. Requires Treasury to report to the House and Senate Banking Committees, not later than 90 days after enactment of this Act, on the advantages and disadvantages for money laundering enforcement of modifying the color, size or denominations of U.S. currency.

Sec. 209. Requires the Attorney General to issue a report to Congress, not later than six months after the date of enactment of this Act, with recommendations whether the issuance of guidelines for the prosecution of financial institutions would enhance cooperation by those institutions with the money laundering and bank secrecy statutes, the criminal referral reporting requirements, and cooperation with law enforcement authorities generally.

Sec. 210. Requires Treasury to establish a team of experts to assist and train foreign governments in developing their expertise in money laundering investigations and prosecutions. Authorizes $1 million to be appropriated to carry out this section.

Sec. 211. To combat international money laundering, objective of the U.S. is to ensure that other countries adopt comprehensive measures against money laundering and cooperate with each other in investigations, prosecutions, and forfeiture actions. Requires the President to submit an annual report detailing bilateral and multilateral initiatives, and requires that report to detail for each major drug producing and drug transit country, the efforts taken to combat narcotics-related money laundering and, where applicable, instances of noncooperation with U.S. actions in this area.

TITLE III—MONEY LAUNDERING IMPROVEMENTS

Background

The first four sections of Title III contain new procedures that would enhance the ability of the Department of Justice to use the civil forfeiture statutes in money laundering cases. The civil forfeiture statutes were derived from the customs laws and with minor changes have been applied to drug forfeiture cases for the past decade. The procedures under existing law may be adequate when used to forfeit such things as vehicles, vessels, aircraft, cash and real property, but they are not appropriate, and were not designed to be used, in complex financial cases involving bank records, electronic funds, and the complex transactions that often are central to money laundering activity. Thus, sections 301-304 address the need to craft procedural statutes that are geared toward money laundering cases.

Sec. 301. Relates to the jurisdiction and venue in civil forfeiture cases and provides that civil forfeiture actions may be brought in the district where the illegal acts giving rise to forfeiture occurred. In a money laundering case involving funds on deposit in bank accounts, for example, this would allow a single case to be brought in the district where the money laundering offense occurred even if, as is often the case, the money launderer has placed the laundered property in numerous different banks throughout the United States. In contrast, current law requires the government to file a separate civil action in each of the districts where the property is located.

Sec. 302. Facilitates the forfeiture of electronic funds in a bank account. Current law limits civil forfeiture to the actual property involved in the underlying offense. As applied to money laundering cases, this means that the government can forfeit electronic funds only when an accountant can directly trace the funds on deposit at the time of the lawsuit to the earlier illegal activity. For this reason, tainted funds deposited into highly active accounts often cannot be forfeited. For example, if a money launderer puts $1 million in "dirty" money into his account on Monday, removes it on Tuesday, and deposits $1 million in funds from an unknown source on Wednesday, none of the funds can be forfeited. The proposal remedies this by relaxing the tracing requirement in the case of electronic funds.

Sec. 303. Allows the Attorney General to issue administrative subpoenas to gather evidence in civil forfeiture investigations. As you know, grand jury subpoenas can be used to gather evidence only in contemplation of bringing criminal charges. In forfeiture cases, where the government, from the outset, intends to proceed civilly, there is no corresponding way to compel the production of evidence. Congress has recognized in the past that where it has given the Attorney General the authority to enforce the law through civil actions there needs to be a means of gathering evidence. The proposal in Section 303 is, in fact, substantially identical to the administrative subpoena provision enacted in FIRREA in 1989 in conjunction with the civil enforcement statutes relating to bank fraud.

Sec. 304. Simplifies the procedure for gathering bank records in a forfeiture case once the forfeiture action is filed. Under current law, the only way to gather such records is pursuant to a deposition of a bank records custodian under the Federal Rules of Civil Procedure. This is a cumbersome process, since the subpoena must be issued, and the deposition must be noticed and taken, in the district where the custodian resides. The proposal eliminates the need to involve courts and prosecutors in other districts in the discovery process by providing for the is-

suance of subpoenas for bank records by the clerk of the court in the district where the forfeiture action is pending.

Additional Background

The remainder of this title contains a number of miscellaneous improvements to the money laundering statutes that were enacted in the Money Laundering Control Act of 1986. Basically, these proposals address problems with the existing laws that have been encountered as prosecutors have learned to use the statutes and courts have begun to interpret them. Sections 305–318 also contain provisions designed to remove obstacles in other statutes that unnecessarily limit the Justice Department's ability to use the money laundering statutes.

Sec. 305. Repeals a provision enacted in the Crime Control Act of 1990 that could have the unintended effect of limiting the ability of the government to prosecute those who launder the proceeds of mail and wire fraud schemes. The repeal of the provision clarifies that Congress had only intended to emphasize the importance of applying the money laundering statutes in bank fraud cases, and had not intended to foreclose the use of those statutes in all other fraud cases.

Sec. 306. Makes it a crime to structure financial transactions with the intent of evading the CMIR reporting requirements. This provision tracks the language of the current statute relating to structuring transactions to evade the CTR requirement.

Sec. 307. Clarifies ambiguous language in sections 1956 and 1957 of Title 18 regarding the definition of "financial institution." The purpose of the clarification is to ensure that entities such as car dealers, pawnbrokers, and precious metals dealers are considered financial institutions to that transactions involving such entities are covered by the money laundering statutes as Congress intended.

Sec. 308. Closes a loophole in the definition of "financial transaction" that currently excludes transfers of title to property from prosecution under the money laundering statutes where the transfer does not involve a monetary instrument. For example, the exchange of titles to properties between coconspirators is not currently a money laundering offense, even if one or both of the properties constitutes the proceeds of a criminal offense.

Sec. 309. Amends the obstruction of justice statute to make it a crime to obstruct a money laundering investigation.

Sec. 310. Permits the use of the Assets Forfeiture Fund to pay awards to informants in money laundering cases.

Sec. 311. Raises the penalty for money laundering conspiracy from 5 years to whatever the penalty would be for the substantive offense that was the object of the conspiracy.

Sec. 312. Makes technical amendments to section 1956 of Title 18.

Sec. 313. Amends the Right to Financial Privacy Act to prohibit financial institutions from notifying customers that their account information is the subject of a grand jury subpoena regarding drug trafficking or money laundering. The same prohibition currently exists for subpoenas related to FIRREA investigations.

Sec. 314. Makes a technical change to the definition of "property" in the criminal forfeiture statute for money laundering.

Sec. 315. Expands the money laundering statutes to permit prosecution for laundering the proceeds of foreign bank fraud, kidnapping, robbery and extortion offenses, and to permit the forfeiture of the proceeds of such offenses. Currently, foreign drug offenses are the only foreign crimes covered by these statutes.

Sec. 316. Removes an unnecessary restriction on the ability of Treasury and the Postal Service to dispose of property forfeited by those agencies in an administrative forfeiture proceeding.

Sec. 317. Adds several new predicate offenses to the list of crimes set forth in the definition of "specified unlawful activity" in the money laundering statute. The new predicates include food stamp fraud, theft from the mail, and violations of the Foreign Corrupt Practices Act.

Sec. 318. Makes several minor and technical amendments requested by the Treasury, including a provision to bring attempts to evade the identification requirement regarding cash transactions exceeding $3,000 (enacted in 1988) within the scope of the 1986 anti-structuring statute.

TITLE IV—REPORTS AND MISCELLANEOUS

Sec. 401. Requires the Attorney General to conduct a study of the effects of the provisions in the Right to Financial Privacy Act which authorize reimbursement to financial institutions providing financial records, and of the effects of providing comparable reimbursement to nondepository entities for providing the same type of financial records.

Sec. 402. Requires U.S. agencies promptly to pass any information affecting the safety and soundness of the U.S. banking system to the proper Federal banking agencies. This requirement does not arise in instances involving certain information relating to intelligence matters; criminal investigations; and grand jury investigations.

Sec. 403. Provides the Federal Reserve, in conjunction with the Department of Justice, the power to grant limited immunity to witnesses.

Sec. 404. Clarifies that inter-agency sharing of information among the federal bank regulatory agencies does not result in the loss of any applicable legal privileges. Additionally, clarifies that any sharing of information by federal bank regulatory agencies with any other federal agency does not result in the loss of any applicable legal privileges.

TITLE V—COUNTERFEIT DETERRENCE ACT OF 1992

Sec. 501. Short title.

Sec. 502. In order to increase the deterrent against counterfeiting, the maximum penalties are increased by this section from $5,000 to $50,000 for each violation and the maximum prison sentence for each violation is raised from 15 years to 20 years.

Sec. 502 also refines the definition of "other thing" as used in section 474 of title 18 to encompass electronic methods of counterfeiting. Recent advances in reprographic and computer imaging technology pose a new and substantial threat of counterfeiting. Currency and securities designs can now be read by electro-optical (laser) scanners, which digitalize the image and store it for future use. Once stored, such designs may be reproduced at will.

Sec. 503. In order to combat these new threats of counterfeiting, the Secretary of the Treasury is authorized to adopt a variety of new "distinctive counterfeiting deterrents" that would make U.S. currency and obligations more difficult to counterfeit.

Sec. 503 would also authorize the Secretary of the Treasury: to adopt new distinctive counterfeiting deterrents (e.g., watermarks, seals, and security threads); to criminalize the unauthorized possession of distinctive counterfeit deterrents adopted by the Secretary, as well as the possession of features and devices similar in form to such deterrents; and to amend chapter 25 of title 18, United States Code, to clarify that counterfeiting includes the use of electronic techniques such as electro-optical scanning.

Sec. 504. Amends existing section 504 of title 18, United States Code, to provide that the use of electronic methods, such as laser-generated computer images of U.S. currency and securities, are not permissible reproductions. Section 504 also conforms the counterfeiting statutes with the holding of the Supreme Court in *Regan v. Time, Inc.*, 468 U.S. 641 (1984) (which held as unconstitutional under the First Amendment's guarantee of free speech a limitation in section 504(1)(D) that permitted photographic and certain other reproductions of U.S. government obligations only "for philatelic, numismatic, educational, historical or newsworthy purposes").

Mr. RIEGLE. Mr. President, I know the Senator from Rhode Island has an issue he wishes to raise and the Senator from New Jersey also has an interest in it. Another Senator has indicated that he hopes that that issue could be debated and settled in a time soon so that he can make another commitment that he is obligated to do. I think the Senator who is in that situation has made that interest known to the Senator from Rhode Island. I am not going to take any further time right now.

I am going to in a moment yield the floor so that we might be able to engage that issue and hopefully settle it maybe without a vote, but if a vote is required in a way that can accommodate the Senator from New York, who has indicated he would like to be present for that vote. I yield the floor.

Mr. GARN. Mr. President, last year the Senate passed, as title X of the Federal Deposit Insurance Reform Act—S. 543—a provision I authored to clarify the liability of innocent lenders and Federal banking and lending agencies under our environmental laws. Today, a revised version of that amendment is included in the managers' amendment. The revision takes into account a recently promulgated EPA regulation and has the effect of making the scope of my proposal similar to that of the EPA rule.

The major changes made by this revision may be summarized as follows:

First, as modified, the amendment provides protection for all lenders, not just depository institutions or mortgage lenders. In addition, it now also includes successors and assigns, so that a party purchasing a loan in the secondary market would also have the benefit of this bill. Sureties and title insurance companies are also included within the protected class, as well as persons financing transactions through lease agreements. Fiduciaries are also protected.

Under this modification a lender is defined to include any person that makes a bona fide loan to a nonaffiliated party. A bona fide loan is a loan or extension of credit that is made for

a legitimate business purpose. It does not include a sham loan that is made for the purpose of avoiding liability under the Superfund law or other environmental laws, and it is for that reason that the term "bona fide" was added to the amendment. Similarly, a person is acting as a fiduciary in a bona fide capacity if the relationship was created for a legitimate purpose and was not established as a sham in order to avoid liability under the environmental laws.

Second, the amendment clarifies that a lender that causes or significantly contributes to an environmental release would have liability only for the damage the lender is responsible for. This clarifies that if a lender causes part of the problem, he or she would still have protection for the pollution that he did not cause, and would only be liable for damage that he or she is responsible for.

Third, under the Senate-passed bill, the liability of a Federal banking or lending agency under State law was limited to the value of an agency's interest in the contaminated property prior to the cleanup. The amendment now makes clear that in addition, a Federal banking or lending agency may agree with a State agency to transfer the contaminated property to the State in lieu of any other liability that might be imposed under State law.

Fourth, the modified amendment becomes effective on the date of enactment, and therefore applies to any case or controversy not finally adjudicated as of such date.

Mr. President, it is important to keep in mind that there is no conflict between the recently promulgated EPA rule and my amendment. The rule defines terms used in the Superfund law, and clarifies the meaning of an existing secured creditor exemption.

My amendment limits liability under Superfund or other environmental laws, but only if the underlying law would otherwise impose liability. Thus, if a lender is protected under the EPA rule, there would be no need to rely on this legislation. However, if an innocent lender or Government agency is not covered by the rule, it may still be covered by this legislation.

Mr. President, some may argue that since the EPA rule has been promulgated, there is no need for this amendment. I strongly disagree, for several reasons.

One, the rule will no doubt be subject to litigation. While I hope that the EPA will ultimately prevail, it could take years for the question to be finally adjudicated by the courts. In the meanwhile, lenders will be faced with the uncertainty as to whether or not they have the protection afforded by the regulation. Prudent lenders may continue to restrict credit during this period, thereby unnecessarily prolonging the credit crunch attributable to the lender liability issue. My amendment will settle the issue immediately, establishing clear guidelines that lenders may rely upon.

Two, the EPA rule only covers Superfund, while my legislation would also cover title I of the Resource Conservation and Recovery Act, with respect to private lenders. With respect to Government agencies, my amendment would also cover any other Federal, State, or local law that imposes strict liability for pollution releases.

Three, the EPA rule does not provide protection for fiduciaries. My legislation covers innocent fiduciaries, such as bank trust departments, and bank affiliated trust companies.

Four, the EPA rule does not require the lender to undertake any type of environmental inspection or assessment. My bill requires the depository institutions and other lenders to undertake appropriate environmental assessments prior to making the original loan. What is an appropriate assessment, of course, depends on the particular circumstances. Before lending to a chemical manufacturing company, a lender would no doubt be required to undertake an extensive environmental inspection. Prior to making a simple home mortgage in a residential area far from commercial activity, a simple checklist, or perhaps no assessment at all, might be appropriate. In any case the decision would be left to the discretion of the FDIC.

The failure of an insured depository institution to undertake an appropriate environmental assessment will subject it to the normal sanctions available under section 8 of the Federal Deposit Insurance Act, including civil money penalties and cease-and-desist actions. A lender that is not an insured institution, and thus not under the supervision of a Federal banking agency, would not be subject to these penalties. Instead, failure to comply will result in the lender losing the protection of this legislation for each particular loan that fails to have an appropriate environmental assessment. This enforcement mechanism has the advantage of being self-enforcing and will not require the FDIC or any other Federal agency to establish examinations or any other costly procedures for enforcement.

Five, the EPA rule does not provide a mechanism for governmental agencies that acquire properties in the course of carrying out their responsibilities to sell the property to a subsequent purchaser. My bill provides that an agency may sell property to one subsequent purchaser, provided that the purchaser was not involved previously with the property, either directly or through a related party. The subsequent purchaser must agree with the agency to take reasonable steps to remedy the problem as a condition to the sale.

Mr. President, the need for this legislation even after the promulgation of the EPA rule has been recognized by the two Federal banking agencies most affected by this problem—the FDIC and the RTC. Both of these agencies believe that the EPA rule is not enough, and have requested that we proceed with this legislation. I would ask unanimous consent that these letters be included in the RECORD at the conclusion of my remarks.

Mr. President, I have explained in detail to the Senate on several occasions why this provision is of critical importance to our country. Last year's Senate Banking Committee report associated with S. 543 also provides a detailed explanation of the basic structure of this provision and the urgency of its enactment. It is clear to me, and I believe to the majority of the Members of this body, why this legislation must be passed, and passed now. I urge that the Senate adopt this provision, which is very similar to title X as in the Senate-passed S. 543. I look forward to working with my counterparts in the other body so that we can quickly proceed to getting this measure enacted into law.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Rhode Island.

AMENDMENT NO. 2439 TO AMENDMENT NO. 2437

(Purpose: To strike section 1065 of the manager's amendment to S. 2733)

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 2439 to amendment No. 2437.

Beginning on page 262, line 14, strike all through page 273, line 20.

Mr. CHAFEE. Mr. President, I ask unanimous consent that Senator DOMENICI be added as a cosponsor.

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

Mr. CHAFEE. Mr. President, what this amendment does is to address some particular language that is in the committee amendment that deals with the subject of Superfund and municipal liability thereunder. That all sounds very complicated, but let me explain it as best I can.

Under the existing law, if an industry, for example, is sued by EPA in connection with a Superfund site, having contributed to the contamination of that site, that industry, that party can bring in other parties; in other words, that is what we call third-party liability. They can bring in that industry that sued, let us call it an industry. Before they have even been found guilty of the contamination, they can bring in other parties who have contributed to the pollution of that site. This deals with the subject which is very basic to Superfund which is what we call joint and several liability. In

other words, one industry or one polluter can be held responsible for all the pollution that is in the Superfund site unless that party can invoke other parties who have contributed and show that they also contributed to the pollution of the site.

What the provision, which I will call for ease of reference the Lautenberg provision, does is to say that municipalities that have contributed to the pollution of that site cannot be brought in as a third party. In other words, what the Senator from New Jersey is doing is in connection with a far different piece of legislation radically altering the Superfund legislation.

Mr. President, it may well be that the Superfund legislation should be altered, but the Environment and Public Works Committee, of which the Senator from New Jersey is a very prominent member, next year is going to have a review and oversight, a review I guess best to call it, of the entire Superfund legislation. At that time, we will be considering undoubtedly the joint and several liability. We will be considering the responsibility that municipalities might have, or small business, or whoever it might be. And perhaps some changes will be made at that time. But, Mr. President, to do it on this piece of legislation seems to me to be very unfair.

The answer is going to be hearings were held. A hearing was held a year ago on this subject. But the proponent, the Senator from New Jersey who has fostered this legislation, the exemption of municipalities, did not choose to bring that particular provision before the whole committee to consider.

Mr. President, it seems to me that we really do not want to go after the Superfund legislation in a piecemeal manner. The Senator from New Jersey probably will say, well, as a part of this committee amendment, you will find what is known as the Garn language, with which the Chair is very familiar. The Garn language deals with lenders' liability, and so the suggestion is going to be made, well, what is the difference? If you are going to be hung for a lamb, you might as well be hung for a sheep. We have tinkered with the Superfund legislation, with the Garn amendment, so what is the matter with going ahead with the Lautenberg provision likewise?

The answer is as follows, Mr. President. In the original Superfund statute, there was, indeed, an exemption for lenders' liability and that was understood to be a problem and was dealt with, we thought, when we did the Superfund legislation. But that language was thrown in doubt by recent court decisions, and so what the Senator from Utah [Mr. GARN] is attempting to do is to alleviate the confusion by the language which he has submitted.

As a result, unless the Garn language is adopted, lenders currently are afraid that they will be targeted under Superfund, and so they have quit lending to small businesses that might be considered polluters, such as gas stations, for example. And so the Garn amendment attempts to rectify that. That, as I say, deals with correcting court decisions that have changed language which we had in the original legislation.

Such cannot be applied, however, to the Lautenberg language. The Lautenberg language does not go back to try to straighten out some problem that has arisen as a result of court decisions that confused the original Superfund language. Not at all.

So, Mr. President, for the reason that I think we should not carve out a particular area such as the municipalities, because I think—not think, I know, Mr. President, we are going to be dealing with a complete overhaul or review of the Superfund language next year, in 1993, this is not the proper time to take up the Lautenberg provisions.

Mr. President, there might be also the statement made, do not worry about this third-party liability exemption that is provided under the Lautenberg language because the U.S. Government; that is, the EPA can come in on their own and sue municipalities if they deem those municipalities have contributed to the pollution of a Superfund site. But they take care of that one, too, Mr. President. They say "regardless," regardless of the contribution to Superfund site that the municipality might have made—and, indeed, it might be 50 percent of the total pollution within the Superfund site—all kinds of toxic materials may have been dumped into that Superfund site by a municipality, the provision is that if the Government; that is, the EPA, goes after the municipality, they can be held liable for a maximum ceiling of 4 percent of the total liability for the site.

Mr. President, that does not make any sense at all. I do not see why we are carving out exceptions. What this, of course, means is when you first exempt the municipalities entirely from third-party liability and then you go on to say, well, if EPA itself sues them, there is a ceiling of 4 percent, what does that mean, Mr. President? That means that somebody else who has not contributed as much or, indeed, a tiny bit—it could be a small business, it could be a big business, it could be another municipality—is brought in for more than its share, and that just plain is not fair.

Maybe we want to get rid of the whole Superfund legislation. Maybe we do not like joint and several liability. Those are legitimate questions that we ought to discuss on the floor in a serious, thoughtful manner after the committee has thoroughly considered those measures.

So for these reasons, Mr. President, I do hope the amendment that I have presented will be adopted.

Mr. DOMENICI addressed the Chair.

Mr. CHAFEE. What my amendment does again is to say there cannot be this carve-out for municipalities. I would like to also say that Senator DURENBERGER would like to be added as a cosponsor.

The PRESIDING OFFICER. Without objection, the distinguished Senator from Minnesota, the senior Senator from Minnesota, will be added as a cosponsor.

Does the distinguished senior Senator from New Mexico seek recognition?

Mr. DOMENICI. I do, Mr. President.

The PRESIDING OFFICER. He is recognized.

Mr. DOMENICI. I thank the Chair.

Mr. President, if the Senate accepts the Lautenberg amendment, we are literally saying that the law which we drew called Superfund, which said if you put waste on a site that happened to end up being hazardous, you are liable whether you knew about it or not, whether you put just a little bit in or a lot—and we said in that legislation you are jointly and severally liable for the damages that come from that hazardous waste, be it ruining a water system or whatever.

Mr. President, it is such a messed up law that we now come along and say, oh, wait a minute. Everyone but the cities are liable. IBM is liable, Little Pete's grocery store is liable if they sent waste over there in a container 40 years ago and you found it and it happened to have lead in it, jointly and severally liable, and you have to prove your way out of it.

That law is so literally messed up that most of the money is in courts. We re-did it for 4 years on the Senate floor without a bill. The same Senator who seeks to immunize municipalities by saying you cannot sue them got that law extended for 4 years as is, as was, signed, sealed, and delivered, and it is a mess. So now as soon as our cities, our mayors come crying to us, we say, oh, we did not mean that. We will take you out.

But my friends and fellow Senators, if business comes and tells us, what do we say? We say you live with that. You have a lot of money. You pay for it.

You have businesses in America going broke, businesses that have already gone broke over this law—20 pounds of some serious waste dumped 20 years ago and they find you and trace it and the water system for three cities got a little bit of something in it, you got sued for $25 million; you pay for it all.

But we are going to say today, it really is not a very good law. We did not think we were going to do this to our poor cities, so we are taking you out today, midstream, midway

through, still a mess out there in America, thousands of American businesses in court.

I say to my friend who occupies the chair, you would not believe the status of court cases that are on this Superfund. It will not be unusual to find 150 defendants because this one sues this one, sues this one, sues that one because everybody is saying if you have a little pinch of responsibility, we are getting you in here, and the lawyer fees exceed the cleanup.

In fact, I am not sure of that, but Senator DOMENICI from New Mexico thinks we are spending more in courts and lawyers' fees, discovery, and the like than we are spending to clean up.

But that is not really the issue except it is beginning to bite on cities that are just as willing to complain about the ridiculous nature of this law as everyone else but because it is a city and it might have been their landfill—they owned it. They might have put some sludge or some garbage there, and it is found to be in some way a contaminant and they are brought into the lawsuit.

Some of them may even have become liable, Mr. President. They may have had to settle a judgment. But now we are saying all American businesses, old ones, new ones, large ones, the same ridiculous liability scheme, we leave you in, but we sure do not want to hurt our cities because the mayors are complaining that they cannot afford it.

Why did not we think about that a little while ago and why do not we think about that when we redo this law or why do not we expedite our redoing this law to take care of some of the problems that do not get solved and make a little sense in the manner we are solving?

No. We will piecemeal. As someone comes in and really makes the good kind of holler, the political noise, we let them out. The cities make enough noise; they have enough sympathy and empathy: let them out. The rest of America, live under it. Like it, whether it makes sense or not.

Frankly, I do not believe we ought to be doing this on a bill that has nothing to do with Superfund. The bill before us has nothing to do with Superfund. If one argues that Senator GARN'S lenders liability amendment is on it, and has something to do with Superfund, the truth of the matter is we have passed the Garn amendment in this body at least two times. We cannot quite ever get it passed. And everyone admits that we did not intend the liability that he is clearing up. Nobody can contend that we did not intend the cities to be liable or get sued. We just did not quite figure that it was going to pinch that much.

Maybe there will not be as many cities brought in, but it turns out that is applied to everyone who are parties defendant to these Superfund cases.

So I urge that the Senator from Rhode Island, who is chief proponent of the Superfund bill, and Senator DURENBERGER, who is going to join in saying we ought not accept the Lautenberg amendment—they helped write that law also. They do not think it is fair to piecemeal. Let defendants out of the these lawsuits just because they happen to be cities if we are not willing to look and see where else this law should be changed.

I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, since I have been in appropriated authorship here, I have to defend by creation the Senator from New Mexico saying that Senator LAUTENBERG did it. He is the one that passed it; nobody else; not the other 99 colleagues; just that Senator LAUTENBERG did it; rammed this through anyway.

Mr. President, we are going to discuss this, I hope, in a rationale manner. We are going to discuss what is being done here. What we are going to talk about is whether or not some town should be used as a pawn in attempts to undermine Superfund. There have been several misstatements made but we will correct them just for the RECORD. One is by the Senator from Rhode Island. He said if a community contributes pollution—I think I wrote it down exactly—to that site, if they contributed pollution to that site, they have their hands full because they will go to court, they will be sued, and they will pay just like anybody else. The other was by the Senator from New Mexico when he said if a town owns a little landfill. The Senator is wrong. If they own a landfill, they are not protected here. They only get protection if they have either transported or generated trash, not hazardous material.

So, with those couple of adjustments to the RECORD, Mr. President, I would like to discuss the substance of my amendment.

Striking these provisions in my view is a blatant slap in the face to cities, towns, local taxpayers. And again, for the information of my distinguished colleague across the aisle, and small businesses across the country, they are protected as well. If they did not contribute any hazardous material to this, toxic material, they are also not permitted to be party to whimsical or capricious suits that extend or protect those who did pollute.

It is an attempt to place the interests, Mr. President, very clearly of the industrial polluter above those of the needs of local taxpayers and municipalities. I want to state simply what it is in the provisions that the Senator intends to strike.

The Senator from Rhode Island said that we should eliminate that language altogether, that we ought to resolve this question which, by the way, has been heard in committee. And, by the way, the reference to the other part of this amendment, that is the lender liability question, did not pass here a couple of times. It passed once on a voice vote as part of a large omnibus banking bill. I inform the Senator from New Mexico.

The provisions very simply are a revised version of S. 1557, the legislation that I introduced last year, as a result of hearings on the legislation and extensive discussions with affected parties. I developed a very simple bare bones proposal to protect local taxpayers in the 450 or so communities being sued or targeted for suit by those responsible, trying to shift this cleanup responsibility. It is an old game.

I am not a lawyer. The distinguished occupant of the chair is a lawyer. Many of our colleagues here are lawyers. They know the game that is often played, and that is, if it is your liability, whatever you do, try to give it to somebody else so you are not assessed for your liabilities; try to get someone else to pick up part of the tab even if they are not guilty.

The private parties use these lawsuits not only unfairly to shift the cleanup burden to local taxpayers, but in many cases to undermine the Superfund Program by delaying progress through extensive litigation.

Mr. President, very simply, the provision being debated here does essentially two things. First, it would block these unfair private party suits against municipalities, small businesses, and individuals, that merely generate or transport garbage. While blocking these private party suits, the legislation would leave intact EPA's enforcement prerogatives against everyone, including municipalities that are involved with truly hazardous substances.

Second, consistent with EPA's most recent analysis of the municipal issue, the provision would establish expedited settlement procedures for EPA to use in allocating something of cost to those that generate or transport municipal garbage. Following EPA's own analysis and calculations of the relative cleanup costs of hazardous and municipal wastes, the provisions set out a specific percentage formula for allocating these costs. The end result in that even generators and transporters of garbage will pay something.

You heard it. The Senator from Rhode Island talked about 4 percent. But they will do that without being used as pawns by toxic polluters in endless private party suits aimed at slowing down the enforcement and cleanup process.

Mr. President, as this description makes clear, the provisions being debated here in no way undermine or really affect the current Superfund li-

ability system. They are dealing with municipal garbage which is not even covered by the current liability system.

The provisions in no way affect EPA's ability or anyone's ability to sue municipalities that generate or transport actual hazardous waste streams. Proponents of this motion to strike may dress it up as something else—you have heard the argument. They say we should not deal with Superfund liability in a piecemeal fashion. The fact of the matter is that these provisions are not tampering with the Superfund liability system; they are simply keeping industrial polluters from dragging other people into Superfund lawsuits that we never intended to be involved with anyway.

Even putting aside this very real distinction, I find it interesting that the proponents of this motion to strike are so troubled, so anguished with the municipal question on this bill. Frankly, it is totally inconsistent for them to argue that it is not fair to address one liability issue without addressing all such issues because that is exactly what the effect is of the Superfund lender liability provisions that are also on the amendment today. That was the effect of similar lender liability provisions that passed unanimously in the Senate last year on the omnibus banking bill. And, unlike the municipal provisions that I have authored, these lender liability provisions make significant changes to the Superfund liability system.

How can the proponents of this motion stand here with a straight face? How can they sit back and allow significant modifications of Superfund to help the large financial institutions but draw the line at truly surgical corrections to respond to the problems facing the Nation's local taxpayers, cities, towns, and small businesses?

They argue it is OK to protect the banks, but, heaven forbid, do not include those municipalities, those little towns with 2,000, 1,000 people in them, where one minor little unwarranted action against them could bankrupt the community as the meter starts running when they retain the lawyer to defend themselves if even all they do is get notice of potential liability.

Why are they so unconcerned about the Nation's hard-pressed cities and towns? Obviously, they are not concerned, because these towns, as they struggle to get by, barely can keep their heads above water. You have seen it in community after community, State after State—police being discharged, firemen being discharged, libraries being closed, schools being closed. Towns can barely stay alive, especially with the policies of the present administration. People are being taxed to death.

But here we say: Why should they be exempt just because we are going to exempt a bunch of big banks or companies?

Why are they so unconcerned about the Nation's hard-pressed cities and towns, when these little towns often are struggling to get by, and are being forced to spend money defending themselves against overreaching, unfair lawsuits that the law never envisioned would be brought in the first place?

Mr. President, there are many across the country who understand these problems and see the need for immediate action. That is why the provisions the Senator seeks to strike are supported by the U.S. Conference of Mayors—they are the people on the front line—the National Association of Counties; American Communities for Cleanup Equity; the Sierra Club; National Resources Defense Council; Clean Water Action; Environmental Defense Fund; and the U.S. Public Interest Research Group, known as PIRG.

We should move to fix this unanticipated problem with the law, which we never envisioned would occur when Superfund was first written. The proponents of this motion to strike seem to argue that we should let this problem stand until we are ready to fix every conceivable problem with Superfund.

Well, I am chairman of the Superfund Subcommittee, and I frankly do not see any sense in that. If something is radically wrong and you can fix it, fix it. Local taxpayers in my State and 10 other States are presently being sued. They are being sued irresponsibly, and should get protection now before any more of their local tax money is spent defending themselves against polluters who should be picking up the tab.

I want to repeat that the municipal provisions that the Senators oppose do not tamper with the liability system of the law. Those who argue that it is unfair to provide relief for municipalities and small businesses that simply generate or transport nonhazardous substances are ignoring the law's original intent.

As chairman of the Senate Superfund Subcommittee, I say without reservation that the original statute never intended such parties be sued. Yet, the law clearly envisioned the liability of those that own and operate sites with hazardous substances, or generate or transport such hazardous materials.

Mr. President, we are being true to the intent of the law when we prevent industrial polluters from trying to shift their cleanup costs to innocent cities, towns, and small businesses.

We are not being unfair when we do this. That is what Superfund is about—making the real polluters pay. So, Mr. President, I simply do not see why Congress should wait to respond to the problems facing municipalities and small businesses who are not polluters. This is especially true if Congress is going to limit the liability of lending institutions. There is no way we should be addressing questions raised by financial institutions with regard to Superfund and ignore the tax burden and taxes paid by citizens in some 450 communities across the country.

Mr. President, Superfund is based on a system that expects those responsible for pollution to pay for cleaning it up. Despite resistance by some responsible parties, the current liability system is working. In fiscal year 1991, according to EPA, the current liability system resulted in private, responsible parties picking up the tab for $1.4 billion in cleanup costs. And a recent report by Rand shows that—contrary to assertions that Superfund simply pays for lawyers, not cleanup—industrial parties are paying significantly more for actual cleanup than for litigation.

Earlier this month, another study by Resources for the Future concluded that alternative proposals to the current liability typically being discussed would eliminate the law's current valuable incentives for private cleanup.

Some opponents of the Superfund Program are expending enormous revenues to cast a shadow over Superfund. They have their press out there, and the propaganda, and they are trying to avoid their responsibility by dilatory lawsuits. But the facts are showing us that Superfund can work as intended, making polluters pay to clean up their mess, if we stick to our guns.

If you vote against these provisions, you are voting to raise taxes and shift the cleanup burden off of the polluter and on to the local taxpayer, who had no responsibility for creating it, and no connection with the site.

If you believe that the mission of Congress is to make the laws we pass work, as we originally intended them to, if you believe that we are here to solve the problems, then you must oppose this motion to strike. If you support this motion to strike, you will be supporting a cynical industry strategy to sabotage Superfund by prolonging unintended problems that arise in its implementation.

That is what this motion is all about, pure and simple. It is about assuring that Superfund is in trouble when it comes to reauthorizing in 1995; that is what we are talking about. We are talking about a campaign designed to ultimately destroy the Superfund Program.

The worse its opponents make it look, the more people that are unhappy with it, the easier it will be for industry to escape its cleanup responsibilities by gutting the law's liability provisions.

(Ms. MIKULSKI assumed the chair.)

Mr. LAUTENBERG. Madam President, I want no part of the cynical strategy of this motion to strike. That is why almost a year ago, I, along with Senator WIRTH, introduced legislation, S. 1557, to respond to this problem. I

held hearings on the bill. I asked for comment and discussion of the measure over the last year.

My colleagues in the Senate on the Environmental Committee certainly have had a chance to respond. Modeled on this legislation that we introduced earlier this year with Senator WIRTH, and based on an extensive hearing record, as well as discussions between the municipal and environmental communities, we crafted the provisions that narrowly respond to the problem at hand, without modifying the intent of the original Superfund liability system.

The original legislation, which has cosponsors from both sides of the aisle, including the Senator from California, Senator SEYMOUR, represents a bipartisan effort to respond to pressing needs facing local taxpayers. And the provisions we are debating today make further improvements to the original bill in accordance with EPA's own analysis of this issue, and objectives of both the environmental and municipal communities.

That is why both municipal groups and environmentalists realize these provisions are necessary to address the serious problem facing Superfund. Industrial polluters responsible for cleanup costs at sites across the country are attempting to slow down the cleanup and frustrate EPA enforcement through these cynical lawsuits against cities and small businesses, small businesses I remind you that merely generate or transport municipal garbage.

This motion to strike serves the purpose of those who want to get away with pollution, not those who want to see Superfund work. It will help those industrial interests bringing these wasteful lawsuits in an attempt to shift cleanup responsibilities to innocent cities and towns; it will aid those who want to gut Superfund enforcement proceedings somewhere down the road. This is just the beginning of the fray. You heard it earlier in the debate that was held on the floor.

On the other hand, the provisions we are debating would respond to a serious problem facing the local taxpayer. In 11 States, California, Colorado, Connecticut, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, Pennsylvania, Wisconsin, there are at least 22 of these third-party suits either brought or threatened. About 450 local governments have been targeted as well as more than 1,000 small business and nonprofit groups. These are diversionary tactics by those who created the pollution in the first place. Let us try to get out from underneath this.

Third-party defendants and potential defendants have included a mom and pop pizza parlor, an elderly couple who had their septic tank emptied, a flower shop, a children's book store, the Elks Club and the Girl Scouts.

Some of the worst-hit cities in the L.A. riots are facing multimillion dollar liability. In one California case, 26 cities have been sued. Some of these cities merely granted business licenses to private waste haulers that contracted directly with citizens.

In New Jersey, 95 cities have been sued or threatened with suit, with some cities having been sued 2, 3, or 4 times in different cases.

In Minnesota, cities have been sued over tree stumps that were sent to a site after a tornado stuck. In upstate New York, 400 small businesses and cities were sued. In Kalamazoo, MI, 440 parties were sued by 1 company. in Metamora, MI, even the Boy Scouts and Girl Scouts were initially being considered as possible targets for a lawsuit based on trash from their summer camps.

Across the country well-funded corporate polluters are trying to shift their cleanup responsibilities to local taxpayers, cities, and small businesses, that merely generated or transported garbage. But that is not against the law. It is perfectly appropriate and it ought not to be dragged into a suit for pollution.

EPA recognizes the seriousness of this problem. Administrator Reilly, to his credit, has attempted to issue guidance to EPA regions on how to protect these parties from delaying litigation. But there are some in the White House who care more about protecting the polluters than in following the administrator's proposal. EPA's proposed guidance document was sent back from the White House for further review and consideration by the agency.

But even with these administrative steps that EPA is considering, even if they survive the industry lobbying at the White House, legislation is still necessary to provide an immediate comprehensive bar of these wasteful suits. That is what my amendment does. It is modeled on EPA's analysis of the municipal issue and the Agency's own pending guidance document. The provisions prohibit these private suits.

But the legislation does this without modifying liability or deterring EPA enforcement against generators or transporters that deserve to be sued. In fact, as I have stated earlier, following EPA's analysis, the legislation actually assigns some cleanup responsibility to municipalities based on the cost comparison between cleaning up industrial pollution and municipal trash.

In addition, the bill helps to expedite the settlement process and imposes new environmental responsibilities on municipalities, such as establishing a qualified household waste collection program, for those looking for future protection under this legislation.

Madam President, the choice is quite clear here. If my colleagues want to stand up for the Nation's local taxpayers, for cities and towns and small businesses, they must oppose this motion to strike. They should join with a bipartisan group of Senators supporting this legislation and with the U.S. Conference of Mayors and, as I said earlier, the National Association of Counties, the Sierra Club, the NRDC, PIRG, the Environmental Defense Fund, and Clean Water Action.

Madam President, I urge my colleagues to oppose this motion and take this opportunity to strike a blow both for a cleaner environment and for the Nation's local taxpayers, cities, and towns.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Madam President, I rise to support the amendment offered by the Senator from Rhode Island. I have listened with interest to all of the comments on the floor, but particularly those of my colleague from New Jersey, who is the chairman of the subcommittee of which I am the ranking Republican. I rise in that capacity. I also rise in the capacity of the Senator from the State of Minnesota. I have more than a small amount of familiarity with the causes of about which he talked a little bit earlier and I intend in my remarks to address them.

I rise because I do not believe that the Superfund Program should be amended piecemeal here on the floor of the Senate; I do not believe it should be amended on a housing bill; and I do not believe that even if this were the appropriate place to be doing it, this amendment is not the appropriate solution to the problem.

I am joined in that support by hundreds of entities, businesses large and small, insurance companies and governments, including many cities who do not want the Superfund Program carved up here on the floor of the Senate.

The managers' amendment is not good for every city in America. It is one of those typical amendments we see here all the time that has some winners, and we will probably hear from representatives of the winners, New Jersey, and California. I do not know where else. But it also creates losers among the cities and counties as all these amendments do.

Those who just collect and transport municipal waste would be helped. Cities and counties that own and operate landfills would be hurt because a larger share of the burden for the cleanup would be shifted to them. That is point No. 1.

Over the whole life of the Superfund Program, the strict joint and several liability standards has been a source of controversy. It is a draconian provision much maligned by some of my colleagues, the last being the Senator from New Mexico.

It was intended, I believe, to change the waste management ethic of American industry. It is joined to prevent future Superfund sites, the health and environmental horrors of these sites, and the expense to the taxpayers of cleaning them up. It may be, Madam President, that it has accomplished that purpose. But we all must acknowledge the high cost of that accomplishment. Billions of dollars are being spent to resolve disputes over the cleanup costs for past practices.

Because of these costs, industry wants the Superfund standards of strict joint and several liability repealed. Someday, we are going to have real debate here on that subject, and industry is doing everything it can to hasten the day. Big industrial companies that are the real polluters of landfills across the country, are suing small businesses in small communities for a contribution to their cleanup cost.

Big industry is suing small business in small towns not because they expect to collect large sums of money, they are suing simply to tie up the Superfund negotiations. They want to put the liability scheme under more pressure under specific sites and here in the Congress. The contributions suits which have been referred to most recently by my colleague from New Jersey are part of a larger strategy to swamp the Superfund Program and force the reopening of the liability question.

Mr. President, I have a friend who is a small businessman in northeastern Minnesota. For many years he operated a small schoolbus company, and the oil he removed from the schoolbus in the 1960's and 1970's was collected by another party and taken to an oil refinery for recycling. But some oil was also disposed of improperly. Now, the schoolbus operator is a target for EPA cost recovery actions at a Superfund site. He got his so-called PRP letter from EPA. He has had to hire a lawyer for defense. His financial future is uncertain. That is how strict, joint and several liability works. This story has been repeated hundreds of times in the Superfund Program. It is easy to see why the Superfund liability scheme has so many enemies.

My friend, the schoolbus operator, would not be helped by the managers' amendment. Only municipal governments would benefit from this amendment and only some of them. So, let me describe another Superfund case.

The Lowry landfill in Colorado is one of the more famous Superfund sites in the country. The second largest source of toxic substances present is municipal garbage. To be sure, the toxicity content of the garbage is less than half a percent, only a half percent of the municipal waste disposed at Lowry could be considered a hazardous waste. But the quantity of garbage disposed is so large that municipal trash accounts for nearly 20 percent of the total toxic substances present. Only one other polluter contributed a greater volume of toxic substances at that site.

Is it fair to keep my friend, the small businessman in northeastern Minnesota who disposed of a few gallons of used oil in the Superfund loop—and he has transaction costs equal to those of any city or other local government just because he is being chased by EPA—should we keep that small businessman in the system and let the cities who contributed 2.2 billion pounds of material and 20 percent of the toxic waste at the Lowry site out of the liability regime? That seems to me ridiculous.

Madam President, there are remedies within the Superfund law for the problems that the small cities are having. And I particularly want my colleague from California to be aware of this. In fact, there are two separate efforts underway that will help small cities with their problems. One is the so-called municipal settlements policy. The other is the de minimis settlements policy. If these two policies are implemented to the fullest extent, we do not need the managers' amendment that creates more problems than it purports to solve.

Under EPA's municipal settlements policy, cities are not pursued by the Government as responsible parties at multipurpose landfills. As I indicated a moment ago when talking about the schoolbus operator, one step in the Superfund process is the posting of what are called PRP letters. These are notices from EPA to those who have sent waste to a Superfund site that they might be considered potentially responsible parties or PRP's and might be required to pay for cleanup costs at a site.

The businesses that contribute industrial waste to a Superfund site all receive PRP letters early in the cleanup process just so they know they might be liable. But it is EPA's policy not to send such letters to cities that have merely contributed municipal garbage to a site. This policy recognizes the generally low toxicity of municipal garbage and is designed to reduce the transaction costs for cities that would not likely pay much of the cleanup costs when the actual remedy is completed.

EPA does not go after the cities as a matter of policy. So, what is the problem? As I have already said, industry has begun a campaign to overturn the EPA policy by suing the cities in third-party contribution cases. This is the way it works: A big company that gets a PRP letter because it did contribute to toxic material to a site goes to court and demands that the city, which is also involved with their small amount, their tree stumps, as my colleague has mentioned, also contribute to cleanup costs because of the municipal garbage it sent to a site. Although in the end of this whole process—after all the lawyers are paid and all the time is consumed—the city may pay only a small, very small, portion of the cleanup costs, and expenses for lawyers and studies and consultants are very expensive to the cities.

That is the problem. There is also a solution to that problem under current law. In 1986, when the Superfund Program was last amended by the Congress, we added a provision that goes under the heading "de minimis settlements." De minimis is a Latin word meaning very, very small. It presumably describes the contribution that some small communities have made to the pollution problems at Superfund sites—very, very small. The people my colleague from New Jersey has talked about.

But they are being hit with big, big costs under the Superfund Program. They must hire very expensive lawyers to prove that their contribution was very small. The managers' amendment would give them an exemption so that they will not have to hire a lawyer. There is another solution already in the law. EPA is authorized to enter into separate agreements with the parties that made only a very small contribution. The agreement can be concluded quickly.

And the agreement can protect the cities from further litigation by EPA, by the States, and by these big industry lawyers who are trying to strangle Superfund in litigation for contributions. Under the de minimis settlement policy small communities can get protection from the threat of Superfund liability. If they are as innocent and very, very small polluters, they can get protection under the law as it stands today.

Not in Minnesota. As has been referred to by my colleague, the chairman of the subcommittee, several cities in the State of Minnesota—we are one of the 22 States he referred to—we have some of the cities that are in just this predicament. Specifically, there is an industrial landfill called Oakgrove in Anoka County, MN, that is a Superfund site. Some Minnesota cities many years ago sent small amounts of municipal garbage to that landfill. It was tree stumps and trees that had been knocked down during the course of a windstorm and that sort of thing.

In the case of one city, there were only one or two shipments that were trees and debris that had been downed in a tornado. These cities found themselves threatened with lawsuits by the industrial concerns that had used Oakgrove and made it into a Superfund site. They received several threatening letters from the industrial PRP's promising lawsuits, if they did not agree to share the cost of cleanup voluntarily.

These Minnesota cities who used the Oakgrove landfill joined—and here is where all this stuff comes from—they all joined a national organization of cities called Americans for Cleanup Equity, or ACE, one of our wonderful acronyms that hang around this place to allegedly do good for people somewhere out there in America. But ACE, the Americans for Cleanup Equity, is the group that is behind the municipal provisions of the managers' amendment. It is a coalition of cities. They drafted the managers' amendment on municipal liability, the one that I do not support and the one that my colleague from Rhode Island has had the foresight to amend out of this bill.

I also felt that the Minnesota cities that are members of ACE were being just a little bit unfairly burdened, not only by the threatened lawsuits at Oakgrove landfill but by the business about joining ACE and somehow or other you get some kind of relief.

So I went to the EPA, the Environmental Protection Agency, and I asked if the existing authorities of Superfund could solve the problem for these Minnesota cities. If they made a de minimis contribution to Oakgrove as they have asserted, then they are entitled to de minimis settlement under the law. EPA came to the community, sat down, listened to the cities. The mayors were there, all the rest of these people were there. EPA, the general regional office of EPA, and the rest of the folks came and they listened and they have agreed to consider a de minimis settlement with these cities.

I think we are, as I speak, very close in that case to seeing a settlement between EPA and the cities. When that settlement is reached the cities will be protected from further lawsuits by industry.

There have not been many de minimis settlements under Superfund yet, because EPA sees little reward for the effort. I suppose it took a Senator calling up saying you have to come to the meeting to get them to do it. But the reality is they looked at this compared to other things and they do not see a lot of reward for the effort. These kinds of settlements do not get sites cleaned. That is what EPA wants to see. They do not recover Federal expenditures. They would like to get some money. So the EPA bureaucracy has been inclined to make them a relatively low priority.

But if they are pushed to use this authority, EPA can solve the very problem that has prompted the municipal liability amendment offered here today. If a city really did make only a small contribution to a site, it can get out from under Superfund liability under current law. We are about to prove that in Minnesota and we do not need this amendment.

Mr. RIEGLE. Will the Senator be kind enough to yield for one moment for a personal request?

Mr. DURENBERGER. I am happy to yield without losing my right to the floor.

Mr. RIEGLE. I appreciate that.

I ask unanimous consent—I have to leave the floor for a minute—I ask unanimous consent to have printed at the conclusion of Senator DURENBERGER's comments two letters on this issue that I have received from various parties. And also I am going to at the appropriate time move to table the amendment by the Senator from Rhode Island and if I am off the floor at that particular time I will ask someone else to do that in my stead. I expect to be back here before that. But I thank the Senator very much for yielding.

The PRESIDING OFFICER. Without objection the Senator's request is agreed to.

[See exhibit 1.]

Mr. DURENBERGER. Madam President, I might also point out de minimis settlements are available not only for small cities but also for small businesses. In fact, everybody who is small can get out and get protection. Unlike the managers' amendment, the de minimis settlement provision of the current law is evenhanded. EPA has recently issued the final guidance to implement the de minimis settlement provisions of the Superfund law. It has gone out to all of its regional officials and has gone out to all of the States. It ought to be used more frequently as a result of that guidance.

We do not need an amendment that tilts the law against some small communities, against some small businesses, against some small entities to favor a few others. The EPA has now the tools to take care of everyone.

But we in the Congress have to provide support for the tools in our oversight efforts as well. We should not just look at the number of sites cleaned up or construction starts or investigations completed. We also ought to look at the dollars that have been saved for small businesses and small communities through proper application of the current law and policy. Only by rewarding the bureaucracy for using de minimis settlements will we be able to stem the threat to Superfund that these kinds of harassing contribution suits reflect.

Revolt against the Superfund liability regime is coming from more than the Nation's small towns and cities. It is coming in an even larger tide from the Nation's small businesses. The managers' amendment will not hold back that tide. Vigorous pursuit of de minimis settlements policy might.

Madam President, I started these comments by calling attention to the inequity that would result if the managers' amendment was adopted. Some small governments would be freed from Superfund liability, while many small businesses making the same kind of contribution to pollution at a site would continue to be caught up in the strict, joint and several liability regime. That would simply be unfair.

But I must, in conclusion, make the point somewhat sharper. Part of the motivation behind the amendment is to assure that business never gets out of the Superfund net—never. The liability standard is being attacked from all sides—banks, cities, Federal facilities, small businesses, insurance companies, big businesses. Everybody is mad at Superfund.

The theory of the managers' amendment, which my friend from Rhode Island is moving to remove—the theory of the managers' amendment is to divide and conquer. If we fix it for the banks and for the cities, we will, presumably, deny business the allies it needs to repeal the liability regime when we get to the real debate on Superfund in the next Congress. That seems to be the theory of this amendment.

I would like to defend the Superfund law. But not with a strategy of that kind.

The town government that runs a garbage collection service, selects a landfill to dispose of the town's refuse, should be no less nor more responsible in the Superfund scheme than the Main Street business that puts its trash out for collection. But if we agree to this amendment, the towns will be exempt, the small businesses will remain on the hook, more firmly on the hook for the lack of the town as an ally in the Superfund debate that is coming.

So I hope the Senate will not take the position that a business is more of a polluter than a government just because it happens to be a business. I hope the Senate will defeat this amendment.

I yield the floor.

EXHIBIT 1

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, Washington, DC.

DEAR SENATOR RIEGLE: On behalf of the undersigned environmental organization, we are writing to ask you to support Senator Lautenberg and other senators in their efforts to resolve the problem of municipal liability under Superfund in an environmentally sound manner.

Over the past several months, we have worked hard to agree amongst ourselves and with members of the municipal community to revise S. 1577, the Toxic Cleanup Equity and Acceleration Act, to ensure that the Superfund program is strengthened by limiting frivolous lawsuits and providing incentives to local governments to remove hazardous materials from the municipal waste stream.

We believe that the compromise we have reached, which we understand will be included in the managers' amendment to the Government Sponsored Enterprise bill, is an important step forward in protecting the environment and returning the Superfund program to its proper focus. We urge you to continue working with Senator Lautenberg to address this important national issue.

Doug Wolf, Natural Resources Defense Council; Carolyn Hartmann, U.S.

PIRG; A. Blakeman Early, Sierra Club; William Roberts, Environmental Defense Fund; Phil Clapp, Clean Water Action.

ROSI, OLSON & LEVINE, P.C.,
ATTORNEYS AND COUNSELORS AT LAW
Traverse City, MI, June 18, 1992.

Senator DONALD W. RIEGLE,
105 Dirksen, Building,
Washington, DC.

DEAR SENATOR RIEGLE: I am an environmental attorney in Northern Michigan representing municipalities throughout the northern Lower Peninsula and the Upper Peninsula. While I have not been specifically retained by any of my clients to lobby on their behalf, I feel that it is important for you to understand the perspective of municipalities dealing with environmental clean-up liability under Superfund.

For years, municipalities have provided garbage pick-up, treated sewage, and operated landfills and dumps on behalf of their citizenry. These activities were undertaken by municipalities in their best effort to protect the health from garbage rotting in the streets, untreated or poorly treated sewage reaching Michigan's waterways and the creation of a multitude of household dumps throughout the municipality. For undertaking these activities, in the public interest, municipalities are now being asked to help foot the bill in massive environmental clean-ups at Superfund sites throughout the state of Michigan and the country.

The disastrous economic effect of these cost recovery actions against municipalities can not be underestimated. In smaller cities and townships the tax-payer base is insufficient to meet these substantial clean-up costs. In many instances the threat of municipal bankruptcy is not simply political posturing, but a reality that could be faced by smaller northern Michigan municipalities saddled with immense clean-up costs for just handling the garbage of its residents.

While every interest group has their own complaints about the Superfund program, it seems clear that municipalities have been asked to participate in a Superfund clean-up at a level that was never envisioned when Congress set up the program.

As an environmental lawyer in the trenches dealing with these issues every day, I can tell you that the industrial polluters that are bringing municipalities into Superfund litigation are having a devastating effect on municipal finances, both in terms of legal costs and ultimate clean-up costs. I encourage you strongly to support Senator Lautenberg's efforts to provide some relief to these municipalities.

Very truly yours,

John D. Noonan.

Mr. LAUTENBERG. Madam President, if the Senator will yield for a question?

Does the Senator not see the debate about Superfund, the liability system, taking place here now on the lenders' side? Frankly, I find it hard to understand the Senator's reasoning not to permit the municipalities, towns, small businesses to protect themselves under this provision; that it is quite all right for the lenders to be protected at the same time.

Mr. DURENBERGER. Madam President, I would be pleased to respond to the question of my colleague.

First, I need to make a correction in my final comment. I talked in terms of defeating the amendment before us. I meant—I was referring to the managers' amendment. I think we ought to support the amendment of my colleague from Rhode Island as a way to take out of this bill the mangers' amendment that has been put in there.

But that gets us to the response to my colleague's question. There are several parts to the managers' amendment, one of which is an adjustment to lender liability as well. I do not condone that any more than I condone this particular settlement. As the appropriate time, after we agree to the amendment of the Senator from Rhode Island, I intend to rise and speak specifically to my opposition to the changes in lender liability that were in this bill as well.

So I am not picking and choosing. I say, Madam President, I am not picking and choosing. I would prefer not to be debating Superfund at this time on this particular bill. I think we ought to deal with municipal liability. We ought to deal with lender liability at the time we deal with Superfund changes.

Mr. LAUTENBERG. If the Senator will yield for just one more question or observation. That is, it is my understanding the de minimis clause to which the Senator refers has generally been applied by EPA to only relatively small volume sites and has not been aggressively applied to address the municipal trash sites.

Mr. DURENBERGER. Madam President, as I understand the de minimis policy, the size of the site is not going to make that much difference. It is the contribution made by a particular PRP or responsible party. And the de minimis policy was put in there in 1986 so that people who are small contributors—small businesses, small cities, small whatever—have an opportunity to work their way out of the expense of litigation. So it does not make any difference how large the site is.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Madam President, all Members of the Senate, after they have looked at the content of this amendment, I suggest should have no doubt they need to support the Chaffee amendment to strike out the language in the bill.

The language of the Senator from New Jersey has major impacts in letting off people—individuals and cities—who transport material that contains hazardous waste from any responsibility of cleaning it up.

Let me give an example. Say a city in New Jersey, mentioning the State of the author of the amendment, hires a trucking company to collect the waste within their city boundaries. They collect it every day. And after they collect it, they put it in a train and once a month they take all of their municipal solid waste and they ship it to State X, Y, and Z. That municipal waste could possibly contain used batteries, it can contain pesticides, it can contain used motor oil, it can contain used paint, it can contain cleaners from dry cleaning establishments, it can contain any number of extremely hazardous, toxic substances. And after that city loads up that train, that train goes to Louisiana or any other State and deposits that load of material, which they call municipal solid waste in a landfill. And say they are the only company or city that deposits waste in that landfill. They do it once a month, and after 5 years of collecting that municipal waste from that city people find out that this is a hazardous site, it contains pesticides, it contains used oils, it contains cleaning substances, it contains used batteries, all of which can be collected at a municipal solid waste collection facility. Under the amendment of the Senator from New Jersey, they would not be able to sue the people who brought it and deposited it in that site.

Who would they find to clean it up? There would be no one left, under the Senator's amendment. That, I think, is contrary to the intent of the Superfund law. That is why the Superfund law allows that people who deposit hazardous substances in a landfill—they should be responsible for the cost of cleaning it up.

Do municipal landfills contribute to hazardous waste? You bet they do. EPA has a chart and it has information on that chart of where the hazardous materials and landfills come from. And, yes, it is true that manufacturing contributes about 38 percent of the hazardous substances that are found in Superfund sites, but do you know who the second-largest contributor to the hazardous substances and Superfund sites in America happens to be? If you guess municipalities, you are absolutely right, because EPA tells us that 16.5 percent of the hazardous material that comes and goes into Superfund sites in this country comes from municipalities.

Under this amendment, those municipalities, which are the second-largest contributor to the hazardous materials in Superfund sites, would be off the hook. Not only would you not be able to prove what they have put in those Superfund sites, you would not even be able to bring a cause of action against them. You would not even have an opportunity to have your day in court to say, look what they have done in my State; it is hazardous and we would like them to clean it up.

If the case can be made that municipalities are not contributing to the problem, that would be one thing. Madam President, EPA's own statistics clearly show that the second-largest contributor to the hazardous materials in Superfund sites in America are municipal landfills.

The example that I cited I think is one that is happening in reality all

over this country. As States contract with other private citizens and other States to receive their municipal sewage sludge, the amendment of the Senator from New Jersey would say that if that material that was sent to that site in another State was found to be hazardous, you are out of luck, there is nobody who is going to be there to pay and clean it up. You cannot sue them. Do you know why? Congress said you cannot sue them.

I do not think any of us are ready to go back into our States when hazardous material is dumped in your State and say that you cannot sue to clean it up because you do not have that right.

Yes, this is a question of being fair to municipalities but also to those who are on the receiving end of the hazardous waste as well as those who are transporting it and exporting it around this country.

So I suggest the motion of the Senator from Rhode Island to strike this very damaging language that is in the legislation before us is absolutely essential. We cannot allow this type of activity to be absolved of any responsibility.

That is all that the current law says; that if you are going to transport hazardous waste, then you should be responsible when it is discovered. My own State of Louisiana made a lot of news recently—it has been a year now—when one city in the Northeast—and I will not mention it—loaded up trains, train loads of what they said was sewage sludge containing hazardous materials, and they transported it from up in the Northeast all the way down to Louisiana to try and find a place to dump it. That sewage sludge contained hazardous materials. It was a train load that they wanted to bring once a month and find a place to deposit in my State. The problem is that under this amendment, we would not be able to pursue either the people who transported it, the people who collected it, or the city that generated it. They would be completely, arbitrarily, by an act of Congress, relieved of contributing 1 cent to cleaning up the contents of that material when it was discovered to be hazardous.

So I think that we have to be very careful when we consider this. This is a major, major amendment that carves out a special exemption for municipalities who, in collecting their waste, add to it hazardous materials. If they do that, I suggest, like anyone else, they should be responsible for the cost of cleaning it up.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I thank the Chair for recognizing me. I might say to my friend from New Jersey, who desires to speak, I will not be long.

Madam President, let me first say to the Senator from New Jersey, if I said that he was solely responsible for reauthorizing the Superfund, I clearly would not place such an onerous title on any single Senator, and so I would not put that on him either because obviously I think it is a law so desperately in need of being fixed that I would not want to say that any Senator was responsible for it.

Having said that, I make no apologies for coming to the floor and talking about business large and business small as this Superfund law and the various schemes of liability affect them because I cannot come to the floor regularly and say we want an American economy that is growing, we want American business to make money so they can hire people, and not have some concern about the situation that the Superfund creates by the litigation that it invites.

So I would only say to the Senate, if they are impressed with Senator LAUTENBERG's list of alleged liabilities, which turned out to be almost nonliability situations—the tree trunk and the hundreds of cases that he said are against cities where they did little or anything—I want to say to the Senate, there are thousands of similar situations in every regard against business in the United States. They are being brought into exactly the same situations that are alleged to be causing this enormous burden on the municipalities of the United States. There is no doubt that for every horror story about getting sued for something going wrong in a landfill that applies to cities, there are hundreds of similar ones in all respects that apply to business.

I want to compliment my friend, Senator DURENBERGER, for the way he presented this case, because clearly this is a case, a situation, where to let the cities out, as Senator DURENBERGER has explained it, is not fair. I frankly think the Senator from Minnesota [Mr. DURENBERGER] is right on the second point.

I believe this amendment that we are trying to strike carries with it so many institutions and entities that want to divide and conquer in a very, very serious way. They would like to take the pressure off the fact that Superfund is certainly not among one of the best cleanup laws that the United States has passed. In fact, Madam President, there probably is not a worse one. There probably is not a worse cleanup law of the United States on cost benefit, on how much of the tax dollars went into cleanup, what percent has stayed in the courts of America, what percent has gone to the lawyers and, yes, how few sites have been cleaned up after a number of years of this law being in existence.

So I do not shy away from being a Senator who does not think the law is working. I am one who says it is not working. In fact, I have been heard to say that if the Republicans were ever in control again and I could get a subcommittee, I would startle America with an oversight hearing on what is wrong with the Superfund. They would be literally amazed at what has happened to the billions of dollars that we put in that fund. They would also be absolutely flabbergasted at the lawsuits and litigation that it has brought.

If the Senator thinks that only the cities have been sued in situations where it appears on the surface that they should not have been sued, I invite him to ask the business people in his State, large and small, for the kinds of suits that have been leveled against them. They are there by the hundreds of thousands and they are not cheap and they are not free, yes, as witnessed by the cities of the United States who are complaining vigorously about the very same thing that business is suffering from.

Senator DURENBERGER equates it to letting the cities out so we can keep the small business in. I will just say let the cities out so we can keep all business in. And I close by saying I happen to have been on the committee that went to conference with the House when the Superfund came out of conference. I was not for it. I tried my best to fix some of it, but I did get a couple of things in conference. And I will tell the Senator from New Jersey, the de minimis rule is a Domenici idea. We proposed it because we could see that if you had joint and several liability without regard to how much you really polluted that everybody is going to get sued and that there ought to be an opportunity for those who can go to the court or go to the negotiator and say my liability is de minimis—and that is a pretty well understood legal term—and they could get out for a very small settlement and let the rest scuffle, not be in there for joint liability or several liability, as we state it in the law. That was not intended—and I reread the law—that was not intended for small dump sites, but rather for small liability, so it is available whether it is a big lawsuit over a big hazardous waste situation or little ones. It is the question of a city saying, "We are not liable other than a very small amount; let us out."

I think that is going to work administratively, and I do not believe we ought to make the pressure that will naturally come to the Congress of the United States—and I am not even embarrassed to say that it is coming. And let it come from cities; let it come from small business; let it come from big business; let it come from experts who are studying this law. Do not take part of the pressure off in the name of fairness. Leave the cities in. They will take care of themselves, just as we expect business to take care of itself. If they are not liable, they will not be liable. If they are liable only a little bit,

they will prove it and get out under a de minimis rule. Very small is what it means. The liability is so small, it is not worth noting. That is what de minimis means.

I am delighted to be a cosponsor of the Chafee amendment. I am delighted that we agree that we ought not, piecemeal, let various defendants out, whether they are cities or otherwise. We ought to keep the law intact. And I close by saying it is inaccurate to say that municipal solid waste is benign. It is also inaccurate to say that Congress did not intend to treat municipalities the same as it treated other potentially responsible parties. It is just that we did not understand the size of this problem. But we clearly intended that they be included.

I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, while my colleague from New Mexico is still on the floor, he is someone with whom I serve on the Budget Committee. We occasionally agree on some things. But, as usual, the Senator from New Mexico is vigorous in his views and is articulate. He understands the law very well, and I have often admired his comprehension of complicated issues and his response, often, which is fairly succinct and direct. And I hear him say these things today.

But I do have to respond by just making the RECORD reflect the fact that this is not designed to tax communities, or disguise, as the Senator describes it, benign waste. It is very specific. It says that if there is hazardous waste handled, deposited, that no community is exempt. It is very specific.

My amendment does not protect municipalities that handle truly hazardous waste. It does not protect parties who are liable for owning or operating Superfund sites; not at all. Even with municipal waste, EPA still retains the discretion to bring lawsuits, although the settlement procedures will, we hope, resolve the cases quickly and fairly.

Now, there is an occasion around here for people to scoff at Superfund, saying that nothing has worked; nothing good has happened; more has gone to lawyers, et cetera. There is some of that. And I am no apologist for problems with EPA's implementation of the law.

But in 1991, private party settlements were worth about $1.4 billion; in 1990, something around $1 billion. We are talking about fairly significant resolutions of problems. There is a new report of yesterday, June 22, from Houston, TX: Chemical companies and developers have agreed to a $207 million settlement under which they will buy up more than 200 homes near a toxic waste dump and pay for 700 neighborhood children to go to college. This site, called the Brio site, has been listed as the Nation's 13th worst Superfund site by EPA.

What is the point? The point is that something is at work; that we are developing experience and results which persuade me that Superfund finally is achieving some results.

There is a landfill in south Jersey, the Lipari landfill, listed as the number one site in the country, now being worked on. Recent citizen testimony before my subcommittee suggests that EPA finally is making headway, even at this site.

So we are not looking at some casual game here. We are trying to do something that improves the environment. We have all kinds of laws to do that, including the Clean Air Act and the most recently signed major piece of legislation, the Surface Transportation Act, in which we make reference to congested areas so that we can clean up the environment.

I consider that to be a pretty serious responsibility, and I know a lot of people in my State and people across the country do. I know the Senator from Rhode Island certainly is conscious and aware of the need to protect the environment, whether it be along the Long Island Sound or the rivers that thread through his State or the beautiful State of New Mexico.

So this is not frivolous. We are talking about a law that is in place, flawed though it may be. It is starting to get results, though very obviously we are trying to do what we can to make sure that it works as well as it can, even as we approach major review.

But I do not understand the logic of the Senator from New Mexico, which says that the liability system is so flawed that maybe this ought to be dumped altogether. The Senator asserted that if he were the chairman, we would be taking a good look. I would not know why the Senator would have to hold hearings, because he already came to the conclusion, as he announced in his comments, that the whole thing is a failure.

There are lots of people who disagree. Based on recent EPA testimony, I think the environment is beginning to improve significantly as a result of the liability exposure that companies and individuals have to dumping hazardous material.

Mr. DOMENICI. Will the Senator yield for a question?

Mr. LAUTENBERG. Certainly.

Mr. DOMENICI. Did the Senator hear the Senator from New Mexico say that he did not think we ought to clean up the kinds of things we are talking about? I thought I said that I did not think this was a very efficient way to do it, and that I thought there were a lot better ways, and I would like to have a hand at trying to do that. I thought that is what I was saying.

Mr. LAUTENBERG. Perhaps we are dealing with some verbiage and some interpretation. I think the Senator said that were he chairperson of the subcommittee, he would be calling for a review. And I think introduced in the remarks was a conclusion that this thing is a failed program.

Mr. DOMENICI. Yes.

Mr. LAUTENBERG. Am I correct in my interpretation?

Mr. DOMENICI. Yes. But the Senator does not——

Mr. LAUTENBERG. The Senator from New Mexico loves a clean environment.

Mr. DOMENICI. The $10 billion is what the taxpayers put in. I am just wondering whether they received anything like 10 billion dollars' worth of results. That seems to me to be a pretty good subject for a hearing. That is what I said.

Mr. LAUTENBERG. I think the Senator makes a good point. Because we spend $10 billion does not mean we get it back; just like the B–2.

When we spent $10 billion on the B–2, we got about $100,000 of value. When we spend all kinds of money on defense programs, we get—I would use different language—let us say gypped in the process. When we produce toilet seats on which one resides in comfort, and it costs $600, that is a fairly comfortable ride.

So there are all kinds of occasions when we have spent money—and I do not say this is one of them—and were up the creek in which we have not gotten value where the American taxpayer got gypped. People have gone to jail. I have not heard the same kind of protest when those debates came up, Madam President. There are many occasions when, unfortunately, this Government and our people get seduced and ultimately taken as a result of overruns by the defense industry all over the place. We find them, we penalize them, and sometimes we send them to jail. But I did not hear the same outcry, the same indignation, such as my gosh, look what is happening to our taxpayer dollars.

We can disagree on this, but if we want to say we have thrown away $10 billion, I am going to hold fast on this ground and say we have not wasted $10 billion. Some of it may have been for learning and some of it may have been misdirected because this was a major change in environmental policy in this country, and because of failures by President Reagan and Bush to implement the law we passed. But some things have happened and better things can happen if the administration commits to implementing the law.

But I have to ask the Senator from New Mexico. Why is it all right to let the banks off the hook and not the municipalities?

Mr. DOMENICI. Let me first say I understand the Senator from New Jer-

sey does not want to spend any money to defend our country. He is going to quickly say I did not say that. But that is the way he treated my discussion. So let the record show that he thinks we should never have spent anything on defense because there is waste in defense.

I will get back to answering his question. What I already said about that was the difference is that the cities were intended to be parties to the Superfund. Nobody can come to the floor and say we did not intend them to be in. You might say we intended them to be in if they owned, but did not intend them to be in if they only transported. But they were in.

It is absolutely clear that for vicarious lenders' liability that no one contends they were supposed to be in. So two times before, the Senate has voted that we did not want the vicarious liability of lenders without knowledge—that is what they are, banks that have no knowledge of any liability—and still we are saying you are liable. We passed it twice and it is in this bill.

(Mr. WELLSTONE assumed the chair.)

Mr. LAUTENBERG. Once.

Mr. DOMENICI. Once. I cannot do any better. They are very different situations as I see it.

Mr. LAUTENBERG. Mr. President, I have to respond because I think we are getting a little bit beyond the pale—I have heard that expression used over the last few days—we describe unwillingness to defend the country.

I did my time; World War II. I know I look to young for that, but I was there. The fact is I have done my share of appopriations on defense. So let us not carry this to a ridiculous extent.

Did we get $10 billion worth of value? The question was asked the Senator from New Mexico. I do not have a simple answer. But I have both CBO and GAO examining how well Superfund is working. And I am committed to additional oversight in my subcommittee. I know where we did not get value on some of which we spent on defense, to which the Senator from New Mexico has been very generous. But that we have not heard about. So I think we ought to cut that argument just where it is, and let me talk specifically about the issue at hand.

The banks in this case who are dragged into these suits are not innocent parties. If they are innocent parties, they are exempt from liability. If, for example, they participate in the management of a company that they have lent money to, then they are liable. And if they have not, and if they stand back and let the company do its own operations, they are exempt from liability under the law.

Mr. President, we can talk all we want about whether or not we ought to exempt one party or another, but I would say this: if we are going to exempt the banks, if we are going to exempt the lending institutions, then we sure ought to look at the municipalities, lots of them small towns, lots of them innocent, dragged into these lawsuits by whimsy, by diversion, not able to even handle the cost for lawyers in these things.

So I feel pretty good about defending the municipalities and small businesses who have transported or generated trash innocently. If they have transported or generated hazardous material, or if they own a Superfund, they pay just like anybody else. They are a responsible party.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Thank you very much, Mr. President. I am here to support the distinguished Senator from New Jersey, whose amendment lays out a very enlightened approach for us all, particularly in a day and age in which we know our municipalities are at best hard pressed, and at worst having an enormously difficult time holding themselves together in these difficult economic times.

If we are going to involve them in Superfund as some would want, we are going to end up raising local taxes on all kinds of people, something I do not think we want to do. There is a simple solution, and that is the solution that has been offered by the distinguished Senator from New Jersey.

In the course of this debate, the famous Lowry landfill has been cited. The Lowry landfill is a perfect case in point. It is a very large landfill, Mr. President, outside of the city limits of Denver, that was used for the disposal of a whole variety of materials, as many of these large landfills were. Among other things, Lowry was being used by municipalities to dump their treated sewage sludge, which they did in very significant volumes.

The cities of Lakewood, Littleton, Englewood, and Glendale, a number of communities in the Denver metropolitan area, put their sewage sludge out there. Was that a bad thing? In fact, Mr. President, these very municipalities got an award for cleaning up that sewage sludge. Their sewage sludge was so clean, EPA was saying, not only are we going to give you an award, but maybe what you ought to do is not put it in the landfill at all, but use it as a fertilizer. And in fact, the State of Colorado and EPA certified the sludge—that same sludge that was going into the landfill—to be clean enough to be used on gardens. You can use it to fertilize your tomatoes and eat them. This was clean material. Yet these communities are being attacked under the Superfund law for putting things in that landfill that in fact EPA was certifying are clean.

What a bizarre situation for these municipalities to be in. They spend money to clean up the sewage sludge, to make it so clean that EPA rewards them for doing such a good job of cleaning it up. So the citizens of these communities have already spent the money to clean up the sludge. They put the sludge into the landfill, and then we turn around and under the Superfund law attack them for the volume of this clean material they are putting in here.

That does not seem quite fair. On the one hand, they are paying to clean it up and they do a very good job for doing it, put into the landfill something that is certified to be clean. Then they are told they have to pay their share of cleaning up the Superfund site because they put a large volume of this clean material in the Superfund site, next to people who are putting in heavy metals, solvents, industrial chemical wastes, and other toxic materials.

That is not fair. Those municipalities have done a very responsible and careful job. Under the language that the distinguished Senator from New Jersey has authored, what we can do is get the EPA to come in and bargain a fair settlement out with these municipalities. That is a fair thing to do.

The amendment does not say they get off scot-free. I think there is a 4-percent number in here. Get the municipalities who, in the case of the Lowry landfill, are putting clean material in to the landfill. It is not fair that they be attached by Superfund like the major industrial polluters, who, by the way, are outside this Chamber lobbying as hard as they can against the Lautenberg language so that the municipalities can continue to share responsibility for picking up a major share of the costs of cleaning these sites up.

That is not fair either. You have these major polluters right outside here, our own "Gucci Gulch" of lobbyists sitting out here, lobbying to make sure that municipalities, innocent in this process, are paying the tab. That is not fair, not fair to the taxpayer, and it is not the intent of the Superfund law either.

The final point I want to address is that this is not the place to fix Superfund. Well, these procedural arguments are the oldest arguments in the book. If you have an opportunity to change the law in a productive way, we ought to take that opportunity, and change the law in a productive way.

That is what the distinguish Senator from New Jersey is attempting to do. This language in the managers' amendment is only fair. It is fair to those municipalities, like the ones that I represent, to be allowed to bargain with EPA, and reach a reasonable settlement of their responsibility and not be in there subsidizing the big polluters who really have major problems because of what they put into the Lowry landfill. I think this is a very fair and balanced amendment.

Mr. President, again, I commend the distinguished Senator from New Jersey for this amendment. It is a fair beginning of a resolution of some major problems in Superfund, and maybe most important, it is fair to the taxpayers of those communities that I represent, as well as to so many others communities in almost every State.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I listened to the argument of the Senator from Colorado, and I must say it is intriguing. He is saying that we must exempt municipalities, because sometimes municipalities might be unfairly charged, but it is those wicked businesses that we have to get, those big polluters. Somehow there is something that is unfair to a municipality, that a municipality must be exempt, but if it is unfair to a business or small business, they are in a completely separate category; they are guilty before charged. So I think we can really see those arguments for what they are.

Mr. President, I want to say this. One of the joys of being in the Senate is the ingenious arguments one hears. You can hear Senators take the worst case and argue and twist it and do a splendid job with it. And I must say I have listened intrigued by the Senator from New Jersey, who comes here as he proceeds to gut Superfund, he has taken a great big chunk out, the second-largest contributor to waste, hazardous waste, in our Superfund sites, and he has taken them out. Then he stands up and says he believes strongly that the polluter should pay. That has a wonderful ring to it—the polluter should pay—except those he is interested in exempting from the act.

And then the Senator from New Jersey goes on to say—again, he is good, I must say, and if you are not careful, you are liable to be persuaded, and also if you do not know all of the facts, you might be persuaded. What the Senator from New Jersey said was very interesting. He said that under his provision, no municipality would be exempt if they were guilty of disposing of hazardous waste. But, Mr. President, "hazardous waste" is a term of art. Hazardous waste does not apply to anything that is picked up from a home, for example.

You can pick paints, oils, pesticides, Drano, batteries; that is your whole load. You take it and dump it in the site, and that is not hazardous waste. Those are facts, Mr. President. Those are facts that under the proposal of the Senator from New Jersey all of that would be exempt. In other words, the municipality that had done that would be protected by his provision.

Mr. President, I must say that I followed closely what the Senator from New Jersey has said. One of his quotes are: These suits, third-party liability suits, are unfair to municipalities. Well, if they are unfair to municipalities, Mr. President, they are unfair to all of the prospective defendants.

The Senator from New Jersey pointed out, and the Senator from Colorado pointed out, that some of these municipalities are hard put. They are suffering. Indeed, the Senator from New Jersey said they are laying off teachers, recreational directors, policemen, firemen, and having all kinds of difficulties.

That may be. But Superfund does not look and say, who is suffering out there? Superfund does not say: We are not going to tag you, Mr. Small business, because you have had a bad year. It is true you might have dumped a bunch of PCB's in the local dump, but you have had a bad year, so we are going to exempt you. That does not figure. Maybe it should.

Maybe we ought to review the Superfund and reassess it and say we will only hit those with deep pockets; we are only going to get the big ones, not the small business that this might be difficult for. You might find a rich municipality somewhere, Bethesda or someplace, and maybe they are a little more prosperous. I am not sure how that would work out under their proposal.

In closing, Mr. President, I would like to make a couple of quick points. Again, I stress that the Senator from New Jersey is really not quite accurate when he said that the original intent of the Superfund law was to exempt municipalities. I have been present on the Environment and Public Works Committee throughout the whole Superfund legislation, when it was first discussed and passed. There never was an intent to exempt municipalities.

It is also true that there was the belief that those who provided funding, in the instance of the banks, would not be caught under the provisions or the interpretation that the courts have recently given.

So there is an argument in favor of the Garn amendment. I must say, if we start fresh here, and if somebody wants to move to eliminate the Garn amendment, I will vote for it, but there is justification for the Garn amendment.

Second, I make a correction on what the Senator from New Jersey said. He said that his language passed through the committee. I do not think that is accurate. I do not think his language was approved by the subcommittee, and certainly I am clear that it was not approved by the full committee. I just wanted to make those couple of corrections.

Mr. WIRTH. If the Senator will yield, I appreciate the Senator's comments on the eloquence of the distinguished Senator from New Jersey, and the Senator from Colorado, and I think he knows that I have enormous respect for his knowledge and support of the Superfund legislation.

Let me again explain the situation that exists in the Denver suburbs, where municipalities treated their sewage sludge to the point that EPA was awarding them for doing this so cleanly that it could be used as a fertilizer. They spent a great deal of money to do that. They put that sludge into the Lowry landfill, which is now a Superfund site, and EPA is now coming around to sue those communities, who had already cleaned up the material they sent to the landfill to the highest level of the available technology EPA is now making them liable for their role in that Superfund site by virtue of the volume of clean material they sent there.

I do not have any idea how the vote on this amendment is going to go, but how would you explain to them the current situation? How do I explain to them, you cleaned it up once, and now we are going to come back and attach you for cleaning it up, a second time.

Mr. CHAFEE. If I understand the illustration of the Senator from Colorado, or if it is not an illustration? As I understand, it is a fact. He indicated that it is EPA that is coming after the various municipalities. Of course, that would not be changed under this statute. EPA could still come after them.

Mr. WIRTH. They could bargain under the language of Senator LAUTENBERG, they could come in and bargain this out and treat them differently than they do normally, where they are assessing their liability by volume.

Mr. CHAFEE. Under the Lautenberg language, it does not remove the ability of the Government; that is, EPA to go after municipalities.

Mr. WIRTH. Sets a ceiling on it.

Mr. CHAFEE. Sets a 4-percent ceiling, that is correct.

Mr. WIRTH. That is correct.

Mr. CHAFEE. What the Lautenberg amendment does or the Lautenberg provision says that other parties to the action cannot invoke the municipalities and bring them in as defendants. But as to insurance, from what I understand the Senator from Colorado said that is not his situation. It is EPA that is coming after them, and that would still be permitted. So I do not think he is going to find the solution that he seeks except for the ceiling.

Mr. WIRTH. Yes, the ceiling is more important because that limits that liability and protects the municipalities that I represent in this situation, where those taxpayers are being asked to pick up the liability for the really severe toxics that we all know are in the old Lowry landfill. It is a real dilemma.

Mr. CHAFEE. I would say this, under the existing law, municipalities would only be liable for whatever hazardous substances they can contribute. But, Mr. President, we have heard the arguments. I will just in a final sentence say this, I believe it is unfair to exempt

one group, one group that are clearly in many instances polluters. If we want to reexamine the law, OK let us do it, and there are proper times and places for doing that. I believe the polluters should pay. That is why I do not think the Lautenberg language should stand, and that is why I urge all my colleagues to vote for the Chafee amendment.

The PRESIDING OFFICER. The Republican leader is recognized.

MUNICIPAL LIABILITY AND SUPERFUND

Mr. DOLE. Mr. President, this provision to exempt municipal governments from liability under Superfund brings with it a series of questions and some issues of fundamental fairness that I believe we must address if we are to address this issue at all. While it is politically popular to exempt municipal governments from Superfund liability claims, the end result will be to put the entire burden of cleanup costs on the business community. At the same time, the legislation makes the distinction that municipal governments are exempt from contribution claims if they were only hauling trash to third party sites. However, those sites, and there is one in my State of Kansas, that owned and operated their own disposal sites remain fully liable. I ask where is the fairness in this?

Likewise, Mr. President, as long as we are talking about forgiveness from Superfund, we should be exploring the fairness of singling out municipal governments who are liable under Superfund for practices that occurred 30, 40, even 50 years ago when environmental protection laws were virtually nonexistent.

In Hutchinson, KS, for instance, at the Obee Road Superfund site, dumping practices at the old naval air station are suspected of being the source of ground water pollution under what is now the airport. The fact that the city owned and operated an abandoned landfill from the mid-1950's to the mid-1960's in the same area now subjects the city to Superfund liability. Now the city is engaged in a very expensive process to determine to what extent it and other parties are liable for cleanup. This process could take years and has already cost hundreds of thousands of dollars. There is no telling how long this will take.

I have just received the latest EPA progress report toward cleanup of NPL sites in Kansas. Not one of the projects at these 11 sites has been completed. I would suggest that if we are to take a look at Superfund that we look at the total program. The message I am getting from the mayors and city and county commissioners of Kansas is: Let us get on with it.

Right now most of the money, as I understand it, goes to lawyers, lawyers on each side, where 80 percent of the money is spent.

Mr. President, I offer the following final comments: Superfund in general probably needs to be overhauled so we can see real progress toward cleanup—not just continual planning and study of these problems which is the No. 1 complaint I hear from affected parties in Kansas. Second, if we are going to address municipal liability issues, we need to look at the total picture all at once, rather than in a piecemeal fashion, so we can take care of communities, like Hutchinson, KS, and, in fact, small cities like Hutchinson, KS, face financial ruin—even bankruptcy—if these problems are not addressed.

I think it has already been stated that the EPA and White House strongly support the amendment by the distinguished Senator from Rhode Island.

Mr. President, I ask unanimous consent to have printed in the RECORD a table entitled "Progress Toward Cleanup at NPL Sites in the State of Kansas."

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

PROGRESS TOWARD CLEANUP AT NPL SITES IN THE STATE OF KANSAS

Site name	County	NPL	Date	Initial response	Site studies	Remedy selected	Remedy design	Cleanup ongoing	Cleanup complete	Deleted
Arkansas City Dump	Cowley	Final	Sept. 8, 1983		X	X	X			
Big River Sand Co	Sedgwick	do	June 10, 1986		X	X		X		
Cherokee County	Cherokee	do	Sept. 8, 1983	X	X	X	X	X		
Doepke Disposal (Holiday)	Johnson	do	Sept. 8, 1983		X	X	X			
Fort Riley	Geary	do	Aug. 30, 1990		X					
Hydro-Flex, Inc	Shawnee	do	Mar. 31, 1989		X					
John's Sludge Pond	Sedgwick	do	Sept. 8, 1983	X		X		X		
Obee Road Site	Reno	do	July 22, 1987	X	X					
Pester Refinery Co	Butler	do	Mar. 29, 1989		X					
Strother Field Industrial Park	Cowley	do	June 10, 1986	X	X					
29th & Mead GW Contamination	Sedgwick	do	Feb. 21, 1990		X					

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I know we are in the closing minutes of this debate and probably one of the most comprehensive and thorough conversations and robust conversations we had on the Superfund site in a significant amount of time.

I am going to support the Lautenberg amendment. I am going to support it not only because I am a U.S. Senator that funded the Environmental Protection Agency and knows the flaws in the Superfund site, but I am going to support it because I was in the Baltimore City Council and I know the issues that municipal governments face and where they often are left in a situation in which they have no recourse. I think that the Lautenberg amendment addresses some very, very important issues.

THE PRESIDENT'S VETO

Mr. President, while we are having this discussion on the Superfund site, and actually what it is about is the potential devastating effects that the Superfund situation has on America's health, I would like to take a few minutes and just shift gears for a moment and bring to the U.S. Senate's attention that President Bush has just vetoed the National Institutes of Health legislation.

This legislation was created to be the biomedical research framework for the United States of America. I cannot wait for the rest of the evening to contain my frustration with that veto. We must stand in protest over that veto. The President has just vetoed America's future, has just vetoed the health of American families, and has just vetoed the opportunity for jobs today and jobs tomorrow.

How did this happen? How did he veto America's family health? I will tell you why. Any of those who have ever been with families whose mothers have died of breast cancer want to know why it had not been detected earlier or treated differently. Many people have been with family members or friends in their final agonies as they died of AIDS wondering if there was a cure—and I have been with my own dear father during those languishing hours before he died of Alzheimer's disease.

I must protest the fact that we have vetoed the only agency in the United States of America that is trying to seek a cure for these devastating illnesses and at the same time the President says, well, we have a little section there about women's health. We do not need anything special on women's health.

Mr. President, the men of this United States understood as I spoke with them about a GAO study that systematically excluded women from clinical trials for a number of years. We were excluded from the clinical trials on taking an

aspirin a day and keep a heart attack away. There were 20,000 men interviewed and not 1 woman. There were many other instances about that. So we established an office on women health. But the President says we do not need that.

Mr. President, that is the equivalent of saying do not worry, honey. We will take care of you. Every woman in America knows that when anybody says do not worry, honey, we will take care of you that is a code word that you better watch out. And that is what we now know is happening at the National Institutes of Health.

The President wants to eliminate that office and at the same time we set aside money for breast cancer research, ovarian cancer research, and osteoporosis. But this is not only about women's diseases. We have been very much concerned about the rising rate of prosrate cancer, the fact that there are very few techniques or either reliable early detection or for a treatment to look out for the men that we care about. And then what happened? The issue of vetoing research on Parkinson's disease and Alzheimer's disease, is that not vetoing a family health concern?

Be with me as I talk with the nursing home widows as they sit there in nursing homes watching their husbands' lives and intellectual capacity slip by or talk to the male caregivers who are caring for their wives which they need to comb the hair, put on lipstick to meet the basic need, and those gallant men struggling with that.

Mr. President, I protest the veto of the National Institutes of Health legislation. It is antifamily, and it is vetoing our future, because it is in finding these cures that we will generate jobs today and jobs tomorrow. This President had an opportunity to sign a bill that would save lives, save jobs, and save America's future. He chose to veto it and must bear responsibility for that.

I yield the floor, and look forward in voting for the Lautenberg amendment.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, the Senator from Maryland, as usual, distinguishes us by her poignant reflection on some of the actions we take here because there is a tendency around here to disparage things that we do, to position them like bureaucratic exercises, to take away from business opportunity in this country to invest, to play with the taxpayers' dollars.

You just heard from one of the most eloquent spokespersons in the United States about women's problems, about our health problems. Senator MIKULSKI is chairperson of the Appropriations Subcommittee on EPA. And that comes after we have had a discussion about how badly the program operates, how ridiculous some of these functions are, and how, by implication, we are looking at a total failure, and would that we can get our hands on these things so we can strangle this program.

I have to correct the RECORD in a couple of places, Mr. President. One by my distinguished colleague from Rhode Island who called me on the fact that the municipal liability amendment that I propose, built on an earlier one, did not pass the Environment Committee, and he is correct on that. I want the RECORD to reflect that I had confused it with something else that we were working on. But the fact is that it has reviewed in our subcommittee.

And when we make reference to the permission for lenders to reduce their liability, it has been said several times that in a couple of cases it has passed the Senate. It is not so. It passed once on a voice vote. So we had no real measure of the Senate's desire to support that.

But then the Senator from Rhode Island criticized my comments further when he said that I wanted to exempt municipalities from liability. That is not true. I do not want to exempt municipalities. If they contributed hazardous waste, toxic waste to dump sites, they are responsible and there is nothing here that shields them from having to pay the price for their irresponsibility or for their violation of the law. That is not what we are talking about.

Our protection is for those municipalities and all individuals, all persons. It says so specifically in the legislation as I have written—all persons. So that can be anyone, involved only with trash generation on transport, despite the contradictory statements made by my colleagues on the other side, who is protected under this.

If they have been innocent transporters or generators of household trash, garbage as we know it, they have been intended to be exempt from it from the beginning. The Superfund is not supposed to take in garbage disposal. Superfund talks about hazardous waste sites, toxic waste sites. So I would call to the attention of my friend from Rhode Island the fact that there is nothing here that exempts municipalities who violate the rules by transporting or generating or dumping hazardous waste.

Now, the Senator from Rhode Island also said something else that I am kind of scratching my head about. He said I wanted to gut Superfund. Did I hear the Senator correctly?

Mr. CHAFEE. Yes.

Mr. LAUTENBERG. Well, the Senator happened to sit on the Banking Committee for some time, even I guess until last year. There were attempts to exempt banks from liability under Superfund. And I would ask the Senator—I checked the RECORD—how many times he protested exempting those banks from escaping their liability? I do not think the Senator during his days on the Banking Committee did anything to protest at any time that the Superfund or lender liability questions were being discussed.

But as I listened to the negative comments, Mr. President, about the success of Superfund, I have to just go back in history and the record for a little bit and tell you that in April of this year, I held a hearing to look at how Superfund was doing. I invited witnesses from a variety of perspectives, from EPA, a lawyer who represented a private industrial party at a site, citizen activists from several sites, and a State environmental official. All of these witnesses, including a citizen activist from the No. 1 Superfund site in the Nation, had a generally positive story to tell about Superfund's recent performance at their specific sites.

I asked these witnesses, particularly the Administrator of EPA, Mr. William Reilly, who was publicly dressed down when he appeared on behalf of our Government at Rio de Janeiro—he tried to do a proper job—I asked him to address the toughest criticism that the Superfund program faces. Mr. Reilly not only disagreed with the popular assertion that Superfund is throwing money at low environmental risks, but pointed to the site-by-site safeguards designed to assure that cleanups only take place where significant risks are present.

As I later suggested in the hearing, perhaps one way to test the assumption of those who argue that Superfund sites do not pose risks is to ship them the water supply from the area around the sites that have not yet been cleared up, then say "Drink the water or give it to your kids." And that will tell us the mettle of those who believe that the site ought not to be cleaned up.

EPA presented a number of impressive statistics to combat the constant industry attacks on the liability system. Although those seeking to avoid their cleanup responsibilities point to long delays and inefficiencies resulting from EPA's attempt to make industrial parties pay for cleanups, the facts run contrary to this allegation. Mr. Reilly testified that it generally takes only about 3 months or so to get a site cleaned up where EPA has used the Superfund liability system to make responsible parties pay for the work. That is about 3 months over a typical 7- to 10-year cleanup process. So that does not sound like it is slowing by much and it does help us capture the funds from the responsible parties that they rightfully owe.

Mr. Reilly specifically stated that Superfund's liability system is resulting in private parties assuming significant shares of cleanup. In fiscal 1991, EPA used the liability system to get private parties to agree to pay $1.4 bil-

lion of the cleanup tab with private parties performing 63 percent of that year's cleanup construction projects. To me, it is evidence that the liability system is working. While some of those being forced to pick up the tab would rather spend large sums of money lobbying against the current law or fighting EPA's efforts to make them pay, such parties hardly can be viewed as objective critics of the program.

Mr. President, a recent Rand study suggests that some segments of industry are actually realizing much lower legal costs than others at Superfund sites. To their credit, some in corporate America have gotten with the program. Instead of buying ads and hiring consultants to lobby Congress and write op-ed pieces attacking Superfund, instead of litigating cases into the ground, some in corporate America are coming forward to pay for cleanups.

It is interesting that industry opponents of Superfund fail to mention the positive news from the Rand study, the news showing that some industrial parties are paying significantly larger amounts for cleanup than they are spending on litigation costs.

The record goes on. I think there is enough support that says we ought to continue, if we have problems with Superfund, in my view—and that is what we are trying to do today—to fix them as we go. But there is no reason to exempt one party from their full liability while leaving municipalities and other individuals unprotected.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, it may come as some shock to my friend from Rhode Island, Senator CHAFEE, that I do agree with him with regard to the amendment of the Senator from New Jersey. Not that I disagree with the amendment of the Senator from New Jersey, it is just that I feel it is time to look over the total problem involved within the Superfund law.

Let me just cite one example of a situation that has developed in Fairbanks, in Alaska. A battery concern, the Alaska Battery Enterprises, was the place to which responsible companies took their batteries to be recycled. That was back in the days before Superfund, and when people did not quite have the technology available that we have today, to handle things like batteries and battery acid.

As a result of action taken by the EPA under the Superfund law, the battery company has gone out of business. As a matter of fact, the person who formed that business, closed his business entirely in May as a result of $3.2 million bill to clean up his small business in Fairbanks. He took his business to eastern Russia, and he is now manufacturing batteries in that former area of the Soviet Union. He has no alternative, really.

The problem is that the small businesses that are faced with this Superfund law just are at their wits' ends. They cannot deal with the massive charges involved in the Superfund cleanups. And on top of that they face substantial legal costs—still undefined liability—because of the unfair liability problems involved.

I want to put into the RECORD, if I may, a series of letters from people who have been affected by this action. As a practical matter, one of the most difficult is a small auto parts company that has notified me they have up to $90,000 in cleanup costs and legal fees coming out of an action against those who took batteries to this small battery company to be recycled. Anyone who took a battery there to be recycled is now being charged for the problem of the pollution that occurred in the area when people thought it was all right to bury battery casings.

Even the Department of Defense during World War II days took their batteries to this small battery shop. Now all those in business, still remaining in business in Fairbanks, are faced with a portion of the charges for the cleanup, and legal fees associated with the action.

I cannot think of anything more irresponsible than what has been done by the EPA under the Superfund law in my State. And it stems, in large part, from the strict liability aspect of the Superfund law.

Let me read a letter from William Ransom Wood, the president emeritus of the University of Alaska, a good friend, one of Alaska's famous poets, as a matter of fact, who served our university and came to us from the University of Nevada. As a matter of fact, he served at that university for a long time. Dr. Wood is in his eighties. He is still very articulate, as you will hear from this letter. He wrote this to me:

When an agency of government runs amok, destroying the livelihood as well as the spirit of honest, decent citizens, and then punishing them with retroactive fines, it is only a matter of time until the people, in seeking redress for wrongs, turn to violence.

The EPA has overstepped the boundaries of decency, fairness, common sense and justice. It is creating more harm for more people than a measure of good for a few.

In assessing the good being done under any cause, never overlook the evil committed in its name.

The EPA, and the antihumanistic philosophy under which it is being administered, apparently by zealots, can destroy a great Nation now at the beginning of its third century.

The Congress and the media might be astonished and sobered by how deeply bitter the growing number of the victims feel about this, country-wide.

It is signed Bill Wood.

If people are looking for reasons why Mr. Perot has suddenly taken off like a skyrocket in our political skies, they might look at some of the reaction of small businesses facing the overregulation of our Government and the inability to cope with something like the Superfund law.

I cannot support the amendment of the Senator from New Jersey at this time because I want him here helping us when it comes to the time when we have to restructure this law. At that time I do not think my friend from Rhode Island will be as appreciative of my vote as he will be today—I can assure you. But it is time we made some sense out of this law.

To charge people who took batteries to a recycling company, now, for a portion of this enormous fee that is assessed to clean up the soil—and, understand me, we would like to see it cleaned up—is just not right. There must be some way we can devise to find the technology to do it right and to do it at less cost than is now charged, particularly to avoid the fines and fees that come from the EPA, as they administer this law. I hope that this can be done comprehensively, not in the piecemeal fashion in which the Senator from New Jersey suggests.

I ask unanimous consent to have printed in the RECORD the letter from Brown & Sons Auto Parts, as well as the newspaper articles from the Fairbanks Daily News-Miner concerning the battery cleanup figures—an article of January 29, of this year—and then the followup story, "Romans Closes Alaskan Battery Shop," which tells the story of my friend, Earl Romans, how he had no alternative but to take his business—leaving his employees, unfortunately—but to take his business to Russia in order to survive.

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

BROWN & SONS AUTO PARTS, INC.,
Fairbanks, AK.

Hon. TED STEVENS,
U.S. Senate,
Washington, DC.

Congratulations on another victory to the Senate. As constituents who voted for you, Eddie and I have a problem we need your help with. Our company, Brown & Sons Auto Parts has been named by the EPA as one of the (PRP's) Potentially Responsible Parties for the cleanup of the Alaska Battery Waste site.

I'm sure you've read in the Fairbanks Newspaper about all of us who have been named, and the list is obviously incomplete at this time, are going to be charged 100% of the cost of the cleanup. Yet the EPA knows and admits that we only contributed 15% towards the problems.

As it stands now we could possibly have to pay upwards of $90,000 in cleanup costs and legal fees, this could force us into bankruptcy. Many of the other (PRP's) are large corporations, Government Agencies, Military, etc. These people have the resource to withstand a hit of this magnitude, but we cannot.

We employ just under 50 people in the Fairbanks, North Pole area with an annual payroll of over $900,000. How are we going to explain to our employees, some of whom have been with us for 13 years, how to make their next mortgage payment or feed and clothe

their children? We have built a stable business and contribute a great deal to our community. All our profits we've made through the years have always been put back into building our business. We do not have the funds to pay huge bills for the cleanup.

[From the Fairbanks Daily News-Miner, Jan. 29, 1992]

LOCAL GROUPS PUSH FIGHT ON BATTERY CLEANUP FIGURES

(By Helen Gordon)

The Fairbanks businesses and government agencies being billed for the $3.2 million Alaskan Battery cleanup will have one more chance to challenge certain Environmental Protection Agency figures.

Keith Rose, remedial project manager for the EPA in Seattle, said Tuesday that the 36 parties identified as contributing to lead contamination at the battery recycling site have until Feb. 15 to submit new information.

The EPA reopened the door to new information last week during meetings with individual parties. Rose said some of the parties were concerned with the EPA battery count. Contributing parties have challenged both the EPA total and the numbers assessed to each party.

"We're re-evaluating the numbers," Rose said.

A change in the count could make a difference in how much of the tab each party must pick up.

The EPA in 1988 placed Alaskan Battery on the federal Superfund list and spent $2 million on an emergency cleanup after testing showed toxic levels of lead in the soil. The agency spent another $500,000 since then on follow-up testing and plans to spend up to $520,000 more on monitoring over the next five years.

Eleven of the 36 parties tapped by the EPA are being asked to pick up the majority of the cleanup bill. The EPA offered to let the remaining 15 parties, labeled minor contributors, pay $69.25 per battery to settle their liability. If every minor party participated, their total contribution would be $146,296.

Rose said that as of Tuesday, about half of the minor parties had notified the EPA they are interested in pursuing the settlement offer. Any of the minor parties interested must notify the EPA by Feb. 7, but any party can pull out during the 60-day negotiating phase and 30-day public comment phase that will follow.

The EPA has asked the major contributors, expected to cover the remaining $3 million, to decide among themselves how much each party will pay. Brown said the EPA hopes to begin negotiations with the major contributors by mid-March.

Greg Durdik, general manager of Brown & Sons Auto Parts Inc., a store identified as a major contributor, said his company believes the EPA figure for Brown & Sons of 1,000 batteries is off by at least 25 percent. He also complained that some parties dropped off batteries larger than standard car batteries, while others were responsible for smaller batteries such as those used for motorcycles.

"The numbers are all screwed up but they (the EPA) lay the responsibility on us (the major contributors) to work it out. That's pretty hard for us as a group of individuals," Durdik said.

Durdik said major contributors want the EPA to assign a specific level of responsibility to Alaskan Battery owner Earl Romans. And, he said, the parties continue to be concerned about the "orphan share," that portion of the cleanup cost being billed to the major contributors to cover contamination caused by unidentified parties.

Some of the identified contributors had hoped the state would help pay for the cleanup because the EPA has been unable to identify parties responsible for as much as three-quarters of the contamination.

"We're not going to get the good end of the stick here," Durdik said. "Unless the state gets involved, we're going to pay the orphan share."

While Rose said the meetings last week were "productive," Durdik said the parties "got the standard nods and, 'We'll look into it.'"

Rose said the business owners are less angry than when the liability process started. Durdik disagreed.

"Everybody is just as angry," he said.

Rose and EPA attorney Lori Houck earlier last week met with an irritated crowd of about 30 representatives of the 36 contributing parties.

Some of the minor, or "de minimus," parties that were offered the $69.25-per-battery settlement complained they could end paying more than their fair share. They said the cost of the cleanup could be less than expected because more contributing parties could be identified, the battery count could change, or a successful challenge of EPA handling of the cleanup could force the EPA to pick up some of the tab.

"The de minimus people are paying a very high premium," Houck agreed, "but it allows them to get out."

She said de minimus parties who decline to settle will join the 11 major contributors and could end up paying a much larger bill.

Rose added that federal law holds all the parties contributing to a contamination at a Superfund site "jointly and severally" liable for cleanup, which means any one party could end up paying the entire cleanup bill.

Jim Turner, a manager of NC Machinery, a Washington company identified as a major contributor, said the EPA is punishing the parties who cooperated with the investigation and voluntarily acknowledged they had contributed batteries.

"Honesty did not pay in this case," Turner said.

"This is a very hard situation," Houck said. "We want to do what's fair. We feel we've done that for the de minimus people and we want to do that with the non-de minimus people."

[From the Fairbanks Daily News-Miner, May 10, 1992]

ROMANS CLOSES ALASKAN BATTERY SHOP

(By Ingri Martin)

Alaskan Battery Enterprises on the Old Richardson Highway has closed.

Owner Earl Romans, who said he would close up shop for good Friday evening, blamed the shutdown mostly on a fight with the Environmental Protection Agency over the Superfund cleanup of his battery yard.

"It's for economic and regulatory reasons," he said. "It's just business."

The cost of the cleanup, which will include followup sampling and testing this summer, is expected to hit $3.2 million. The EPA is attempting to get Romans and his former customers to pay for the work.

Romans estimates that since he became the focus of the federal cleanup in 1968, he has gone $30,000 in the hole.

"That was money advanced by my brother to clear my name," Romans said. "He's 64. That was his retirement money."

His brother, James Welker, started the Alaska Husky Battery line in Anchorage 40 years ago. Welker went out of business in the '80s, after also running into lead-contamination problems with the EPA.

At the height of his success, Romans employed a staff of 12, with sales peaking at about $500,000 annually. More recently he has had the bulk of his batteries made in Korea to his specifications, although he retained a staff of five locally to turn out a smaller Alaska line.

"Since the EPA announced in January that they were going to do more cleanup work here this summer, I've had customers saying, 'You can't survive them twice. There will be customers who won't buy your batteries because they'll think you're not here,'" Romans said.

Romans said he plans to discuss the effect of his decision with the EPA and the three dozen "potentially responsible parties," or PRPs, the agency has identified to share the cost of the cleanup.

"They've been told (by the EPA) that as long as I operate here, anything that has to do with batteries, I'm a liability to them," Romans said. If the EPA finds additional contamination at the site, the cost to clean it up would be added to the tab that Romans' former customers are already being asked to pay.

However, once he is out of business, Romans believes, any contamination found in the future will be the EPAs responsibility.

"The PRPs (potential responsible parties) are being used as a lever against me and I think that's baloney," he said.

Romans said he will turn his attention to production and sale of an EPA-approved battery tote, and to Spark, a joint-venture battery manufacturing company in Russia. He and Russian industrialist Valentin Tsvetkov intend to go into production in a privately-owned factory in Magadan by fall, Romans said.

That is a delay from the targeted startup date on May 1, Romans said, because some of the equipment from the United States was damaged in transit.

"We're going to perfect in Russia what we couldn't perfect in America," he said.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I congratulate the Senator from New Jersey for his effort to oppose the motion to strike offered by the Senator from Rhode Island, and to stand by the proposal which he, Senator WIRTH, I, and others offered to protect municipalities.

I heard the comments of the Senator from Alaska and other Senators. I agree that a candid and complete appraisal of the Superfund law requires that we look hard at some of the costs that it is placing on businesses, as well as at the other difficulties we have experienced in the cleanup effort.

But I think this particular amendment is not focused at all on such a careful reappraisal, but instead is just one more of the many attacks that have been leveled at the Superfund law itself.

There are many people who just do not like the law. There are many businesses who just do not want to take part in the cleanup in this country. They have engaged in every kind of subterfuge, every kind of avoidance.

Regrettably, a few too many administrations have engaged in their own avoidances of responsibility for cleanup in this country.

There is not one of us who does not remember why this fund was created in the first place. It was a response to the public outcry over the Love Canal incident, where 200 homes were boarded up, schools were closed, and families were displaced because of chemical waste dumping into the abandoned Love Canal in upstate New York.

The Superfund law requires the Environmental Protection Agency to determine the most dangerous hazardous waste sites, and gives EPA the power to force those responsible to clean them. In addition, the EPA can conduct cleanups using Superfund, and later sue responsible parties to recover the expenditures.

Since its inception, over 1,280 of the worst hazardous waste sites in this Nation have been added to the Superfund national priorities list. And 20 percent of those are municipal landfills.

In addition to that, EPA has received reports of more than 33,000 potential hazardous waste sites. At the current rate, the potential number of municipal landfills to be placed on the NPL reaches into the thousands.

Mr. President, current law says that if EPA cites an entity as a potentially responsible party, or PRP, for disposal of hazardous waste, that entity has the right to sue other parties who also may have contributed to a hazardous waste site. But, it is EPA's policy not to sue municipalities or other persons who generated or transported only municipal solid waste [MSW] or sewage sludge. EPA recognizes that studies show that MSW contains less than one-half of 1 percent hazardous materials.

The Superfund was created, as we all know, to identify hazardous waste sites and the contributors thereto, and get them to pay the costs of cleaning up those sites. It was never the intent of the U.S. Congress to make a local government liable for millions of dollars of toxic waste cleanup costs simply because of the disposal of ordinary household trash by its citizens. Yet, as unbelievable as it may sound, that is fact becoming the reality.

To date, more than 400 local governments in 13 States are facing hundreds of millions of dollars in litigation and cleanup costs from lawsuits brought by corporate polluters. Given the potential of 30,000 additional sites, this number is just the tip of the iceberg. This outrageous practice must be stopped.

The key issue for municipal landfills included in the NPL is that individuals and local governments are being sued as third parties, not for contributing hazardous waste, but for simply disposing of ordinary municipal solid waste—and they are being sued not by the EPA but by those identified as primary hazardous waste polluters.

In my own State of Massachusetts, there are 25 Superfund sites and 10 sites that involve municipalities. One such site, the Charles George landfill, located in Tyngsborough, was used by nine local governments from 1955 through 1983 for MSW disposal. For a 3-year period in the 1970's, commercial and industrial waste generators also used the landfill, disposing of significant amounts of toxic waste. In 1981, after finding volatile organic compounds and toxic heavy metals, the site was added to the NPL.

Four years later, the EPA named several corporations as potentially responsible parties—or PRP's—that disposed of hazardous materials at Charles George. EPA also determined that the MSW contributed by the nine communities did not warrant a lawsuit against the nine communities. Despite EPA's decision, the original PRP's filed a third-party lawsuit against the local governments, arguing that despite the extremely low toxicity of the municipal waste, the volume should be a major factor in allocating cleanup costs at the site.

The third-party lawsuit poses a tremendous financial burden to the local governments which already are struggling to make ends meet. They have been forced to spend hundreds of thousands of dollars defending themselves.

Communities in Massachusetts are not the only victims. In addition to communities nationwide, I am aware of little leagues, Boy Scout organizations, elementary schools, and many other community groups that have been sued and paid thousands of dollars in court fees and settlement costs because they had disposed of what we consider ordinary trash.

The provision which I joined Senators WIRTH and LAUTENBERG in offering, and which is a part of the GSE bill we now are considering, would block third-party suits for municipal solid waste and sewage sludge if a party's only actions at the site related to the generation or transportation of MSW or sludge, or if that party merely owned or maintained a public right-of-way over which waste traveled.

It would retroactively cover all pending actions, unless a final court judgment has been rendered, or a court-approved settlement has been reached.

Senators LAUTENBERG and WIRTH in their comments today have noted that, if municipalities or anyone else owned or operated a facility, or handled genuinely hazardous waste, this provision to block third-party suits would not apply.

In addition, this provision would not affect the current EPA municipal settlement policy which states that the Agency will not sue municipalities or others for MSW transportation or disposal unless truly exceptional circumstances exist. If EPA decides to send notices of potential liability to municipalities, such parties would be given an opportunity to settle their liability with EPA. At that point, a moratorium on all Superfund litigation against them would be set in place.

The provision also would establish a cap of no more than 4 percent of total cleanup costs for MSW, to apply to any situation where, notwithstanding the municipal liability limit of this provision and current EPA practices, one or more parties involved with MSW at a Superfund site—notably including communities—are brought into a suit pertaining to that site.

It is also our intention with this provision to provide incentives to local communities to prevent hazardous materials from entering landfills in the first place. We address future disposal practices by requiring municipalities wishing to take advantage of the settlement provisions with EPA to establish a qualified household hazardous waste collection program. This program must include a semiannual communitywide collection of household hazardous waste, a public education program that identifies both hazardous products and safer substitutes, efforts to collect hazardous waste from conditionally exempt generators, and a comprehensive action plan.

The Lautenberg-Wirth proposal is an important step forward in returning the Superfund Program to its proper focus and in advancing environmental protection. Some would argue that it would be preferable to wait until the next Congress when an effort will be made to reauthorize and revamp the entire Superfund Program. Unfortunately, the municipal liability issue is an urgent matter that we believe requires immediate action.

So, Mr. President, I am not going to belabor this. There has been a substantial debate here this afternoon. But I do want to thank the Senator from New Jersey for his efforts to hold the focus of the U.S. Senate on the original intent of the Superfund and not to allow communities to be penalized—unfairly penalized in my judgment—at a time when many of them are financially strapped. Failing to act as the Lautenberg-Wirth proposal provides will result not only in communities being penalized, but penalized by the very people who are responsible for the major pollution in the first place and who are simply seeking a way of avoiding their responsibility.

The people who suffer when this happens are the citizens who are already angry enough at Government for not doing what it is supposed to do. It would be irresponsible to exacerbate the loss of well-being they already are experiencing as a consequence of the disease and other hazards caused by improperly discarded toxic wastes.

I thank the Senator from New Jersey for his effort, and I urge colleagues to oppose this motion to strike.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. KOHL. Mr. President, I rise today to commend my friend Senator LAUTENBERG for his leadership in addressing one of the most troubling aspects of this Nation's Superfund law—the ability of polluters to unfairly shift clean costs onto municipalities. In my nearly 4 years in the Senate, I have met with leaders in communities across Wisconsin being implicated or threatened with lawsuits merely because they contributed municipal solid waste to landfills also used for dumping the toxic waste of industry.

Under the Superfund law, some large generators and transporters of hazardous waste have been able to file lawsuits to unfairly shift cleanup costs at contaminated landfills to local governments and small businesses. In many instances, these lawsuits have been plainly frivolous, since most municipalities generated or transported predominantly municipal solid waste and sewage sludge, not hazardous waste. Such lawsuits represent an enormous financial threat to hundreds of municipalities across the country. It is often less expensive for a community to settle such lawsuits rather than to fight such cases in court, resulting in these costs being unfairly placed on the shoulders of the average taxpayer.

By addressing many of the toxic cleanup inequity issues facing municipalities, the Lautenberg amendment brings some reason into a process that has defined reason. This provision would not prevent municipalities from being required to contribute to the costs of cleanup of hazardous waste sites if EPA determines that they have significantly contributed to the problem, it merely prevents industry from unfairly shifting cleanup costs to municipalities.

Mr. President, it is no secret that Superfund is in serious need of reform, not only in the area of municipal liability, but across the board. Senator LAUTENBERG's amendment is one step toward achieving needed reform, but should not preclude a full review of the Superfund law.

I urge my colleagues to vote against the Chafee amendment, and to support Senator LAUTENBERG's municipal liability provision as it appears in the manager's amendment.

Mr. JEFFORDS. Mr. President, my colleague from New Jersey mentioned that we never envisioned the lawsuits that cities can be faced with under Superfund. I agree. We never envisioned several of the problems that have surfaced with Superfund. Unfortunately, Superfund was reauthorized nearly 2 years ago in spite of the fact that it never went through the committee process nor ever passed either House of Congress, but was added in conference. Thus, we're forced to try to piecemeal a solution to Superfund's problems. I think this is wrong.

Among my constituents are the owners of a business over 200 years old, a business which Superfund may bankrupt. What was their crime. Nothing. They obeyed the law, but are now forced to play by new rules. They run a salvage business and had to provide the Government with the names of all their past clients. This action so alienated all of their clients that they are losing business at the very time that they need the money to finance a cleanup. EPA has frustrated their efforts to do the best they can. This company has even received bills from EPA calculated to the penny, but when they ask for the documentation on costs, they are told there is none. And, if they want documentation, EPA will charge them to make it up. Where is the help for the small businesses?

Now the issue at hand is whether or not cities should be held as equally liable under Superfund. Yes, I believe they should. Municipalities need to be held accountable for their actions. If we let municipalities off the hook, who pays Vermont communities for the cost of cleaning up out-of-State wastes? What needs to be looked at is not whether cities should have their potential exposure reduced, but whether or not Superfund's liability scheme as a whole needs to be overhauled.

Under the current scheme, millions and millions of dollars have been spent on litigation, not remediation. The intent of Superfund was to clean up sites, not make lawyers rich. We have barely scratched the surface of the number of sites in this country. There has to be a better way. We need to look at Superfund in detail and honestly ask ourselves if anyone is getting their money's worth under the program. No middle-of-the-night reauthorization, but instead a thorough review. I agree with my colleague from Minnesota, this is not the place nor the time for amending Superfund. Thus, I support the amendment by my colleague from Rhode Island.

Mr. LIEBERMAN. Mr. President, I rise today in opposition to Senator CHAFEE'S motion to strike and in strong support of Senator LAUTENBERG's amendment which deals with a very troubling development in the Federal Superfund law—the increasing exposure of municipalities, small businesses and individuals who sent only municipal garbage to Superfund sites. Twenty-four municipal entities, as well as individual citizens, in my State of Connecticut have been brought into third party litigation at two sites in the State. For years, the towns have attempted to get out from under the burden of litigation through negotiations with EPA. While I was encouraged by EPA's recent efforts to resolve this general issue, those efforts have now apparently been curtailed by the White House. Counsel for the Connecticut towns has reported to my staff on a recent meeting between the municipalities and the White House; I am deeply disturbed by the White House's attitude toward the plight of municipalities on this issue. The White House's interference—once again—with decisions reached by professionals at EPA after extensive deliberations and consultation raises serious questions about whether an administrative solution will be implemented as expeditiously as necessary.

Senator LAUTENBERG's amendment allows entities which transported or disposed of municipal garbage to offer to settle their potential liability by stating in writing their willingness to settle. The President is then directed to make every effort to reach final settlement as promptly as possible. The maximum amount that the President mav require an eligible party to pay is its equitable share of no more than 4 percent of the total response costs. An eligible entity must be permitted to provide services in lieu of money and to be credited at market rates for such services. Additionally, an eligible entity's payments must be reduced based on inability to pay.

The 4-percent maximum share of response costs codifies the views of experts at EPA set forth in the draft interim municipal settlement strategy now being held up.

It is unfair for municipalities to be asked to shoulder the burden for hazardous waste cleanups. If municipal garbage alone had been disposed of, these sites would never have been on the EPA's national priorities list. Congress never intended to impose strict, joint and several liability on local governments and small businesses simply because they sent ordinary municipal solid waste to landfills.

There are, however, broader issues concerning the Superfund law. Senator LAUTENBERG, as chairman of the Environment and Public Work Committee's subcommittee with jurisdiction over Superfund, commenced a series of oversight hearings on Superfund on April 8, which I believe are intended to provide a thorough review of issues relating to the law and its implementation.

Let me set forth some of the other topics I hope will be considered as we begin to focus on the Superfund law.

First, and foremost, is the question of whether the current liability scheme impedes effective and rapid cleanup of sites. As Senator LAUTENBERG indicated at the April 8, hearing, Administrator Reilly has achieved some significant successes in implementing the law. Following the recommendations of the Lautenberg-Durenberger report on Superfund, he has adopted an enforcement-first approach, leading to a total commitment in private party cleanup work of more than $5 billion; respon-

sible parties are now performing 63 percent of long-term cleanup work at Superfund sites. Administrator Reilly also testified that known immediate threats from hazardous waste sites have been eliminated at all 1,235 national priorities list sites.

On the other hand, the American Insurance Group, an advocate of Superfund reform, which has completed a number of studies of Superfund sites, including one in Connecticut concludes that the current liability scheme has delayed cleanups and that a different system of funding would expedite the cleanup of sites and provide other benefits. Most environmental groups reach opposite conclusions. A recent report by Resources for the Future, "Assigning Liability for Superfund Cleanups," concludes that a different system of funding would expedite cleanup (as would a streamlining of the current system) and reduce transaction costs; however, the study warns that a new funding system could diminish, if not eliminate, the current cleanup incentives for sites not on the NPL and could adversely affect the incentives to practice safe handling of hazardous waste. But these are important questions and so I am pleased that Senator LAUTENBERG intends to explore them in upcoming hearings.

Congress must also review the type of Superfund issues being litigated which may be delaying the cleanup process. Are lawyers raising legitimate issues or issues intended to distort Congress' intent and simply prolong litigation?

A second question concerns the impact of the Superfund system on various sectors of our society. I have heard from small businesses in my State that have found themselves involved in the Superfund process but just cannot understand why they are responsible parties or how much they will be asked to pay? While the Superfund law contains procedures for EPA to remove small businesses from the process expeditiously, these tools have been greatly underutilized. But even with effective implementation of the tools in the law, the liability scheme still has significant consequences for many critical sectors of our society; I hope these consequences will be explored.

Part of the examination of Superfund should include a review of the transaction costs associated with the process—extending from disputes with the Government to disputes among liable parties over cost allocation to insurance coverage litigation. Along with Senator LAUTENBERG and others, I have asked the GAO to study these costs. Other groups, such as Rand and Resources for the Future, are also doing work in this area. There is much discussion about Superfund money not being spent on cleanup and we need to know the complete facts. I am confident that Senator LAUTENBERG will ensure that the results of these studies are part of the debate.

The evaluation of Superfund should also review the positive assessments of the statute. William Roberts of the Environmental Defense Fund recently reported on the benefits of Superfund, particularly in changing how companies do business and concluded that it is "one of the least bureaucratic and most cost-effective Federal environmental programs." Evidence of direct and indirect benefits should be reviewed.

A third major issue I believe the subcommittee should review grows out of case studies indicating that the Superfund Program is having a negative impact on the redevelopment of depressed urban areas. A recent study by the Northeast Midwest Institute, "New Life for Old Buildings," reports that currently millions of acres of contaminated industrial land, much of it located in urban areas, lies idle because of the myriad problems impeding its reuse. Returning these sites to productive use means the creation of jobs and tax revenues as well as social and aesthetic benefits. The institute reports that the implementation of Superfund's liability scheme has discouraged both municipalities and private parties from purchasing and redeveloping these properties because of the specter of liability.

A fourth issue I hope the subcommittee will examine concerns the level of risks posed by Superfund sites. EPA's Science Advisory Board in its report, "Reducing Risk," concluded that the risks from hazardous waste sites are relatively low when compared with other environmental threats. However, a report by the National Research Council found that we do not know very much about the hazards posed by many of the chemicals found at Superfund sites. And the public repeatedly lists hazardous waste sites as one of its major sources of concern.

On one point there is wide consensus: Cleaning up these sites is expensive. Although estimates vary, a study by the University of Tennessee recently found that a best guess of the cost of cleaning up Superfund sites under current cleanup standards is $151 billion over the next 30 years; a best guess under a more stringent policy is $352 billion over the next 30 years. Even more staggering is the total cost of cleaning up all sites where hazardous materials have been stored or disposed—about $750 billion, according to these researchers.

A question related to these cost figures concerns whether the worst hazardous waste sites are now part of the Superfund system and whether the program should be modified to address lower risk sites in a different manner.

I hope the subcommittee will review our expectations about what Superfund can accomplish. Experts have raised significant questions about whether expectations concerning cleanup timeframes are consistent with science and technology. Are technological limitations affecting our ability to cleanup sites expeditiously? We should know if the problems are more daunting than the ones we thought we faced when the system was designed, and what that may mean for the future.

With the answers to these particular questions, we should also look at the broader question of whether the law and program are generally on course, whether a midcourse correction in either the program or the law is needed or whether a fundamental overhaul of the law is in order. These hearings are important and they should not become a bash EPA exersice, a bash business exercise or bash anyone exercise. The issues involved in Superfund are too critical to be sidetracked. I know Senator LAUTENBERG will chart a course in these hearings that will allow us to determine where this important reauthorization voyage should end.

Mr. DURENBERGER. Mr. President, this amendment contains provisions authored by the Senator from Utah that affect the liability of private lending institutions and Federal agencies for the cost to clean up toxic chemical, hazardous waste, and gasoline or petroleum spills. These provisions would amend the Superfund law and the underground storage tank program to ease the liability of lenders and Federal banking agencies.

This amendment is made necessary by two court decisions that have altered the scope of liability under Federal environmental laws. Although I believe the court decisions have created a problem that requires legislative attention, the amendment by the Senator from Utah goes too far.

Under the Superfund law, EPA can require those who contributed to pollution at a landfill or other industrial waste disposal site to conduct a cleanup. In the alternative, EPA can clean up the site itself and sue the responsible parties to recover its cleanup costs. A similar scheme applies to the release of gasoline and other petroleum substances from underground storage tanks under subtitle I of the Resource Conservation and Recovery Act. Enforcement of both laws would be affected by this amendment.

The Garn amendment would give some lending institutions a limitation on their liability for cleanup costs under those statutes. Lenders may acquire contaminated property through foreclosure and other aspects of a credit relationship. Rather than requiring lenders who received property through foreclosure to pay the whole cost of cleanup, the Garn amendment would limit liability for these lending institutions to the increase in property value that results from the cleanup activity.

And it would give Federal agencies an outright exemption from Superfund and RCRA liability in certain cases. In addition to the exemption under Federal law, the amendment would limit liability of Federal agencies under State and local environmental laws that impose liability for cleanup costs. In other words, this bill partially preempts State laws and regulations that would otherwise apply to Federal banking and lending agencies limiting liability to the market value of the property held by these agencies on which the contamination has occurred.

I might add that these environmental laws are not the jurisdiction of the Banking Committee. If this amendment were introduced as a freestanding bill in the Senate, it would be referred to the Committee on Environment and Public Works. I am the ranking Republican member on the subcommittee that has jurisdiction over the Superfund Program. And I was the author of the RCRA provision that imposes cleanup liabilities for underground storage tanks.

But I am not here to argue on jurisdictional grounds. I believe there is a problem that needs fixing and I am in favor of addressing that problem expeditiously. The Committee on Environment and Public Works has refused to address these lender-liability problems. That is unfortunate in my view. I think the committee should have addressed these questions in a straightforward and timely way. But that has not occurred. So, it is necessary for Senator GARN to come forward with this amendment on the Senate floor.

As I said a moment ago, the problems addressed by this amendment arise because of two court decisions interpreting provisions of the Superfund law. When Congress passed Superfund in 1980, it granted an exemption from strict, joint, and several liability to persons who hold a mortgage interest in a property but who do not participate in the management of the property, and therefore, do not contribute to a release. Congress believed this to be a broad exemption for banks, saving and loans, and other lenders who might otherwise be caught up in the Superfund liability scheme. The same language was included in the underground storage tank program under subtitle I of RCRA.

That exemption has been narrowed by two court decisions. In one case, United States versus Maryland Bank & Trust Co., a Federal district court held that the exemption does not apply, if a lender forecloses on a property and takes title. The lender becomes the owner under the Maryland Bank decision and is subject to Superfund liability.

A second case, United States versus Fleet Factors Corp., led to an appeals court opinion from the eleventh circuit court suggesting that lenders may be held liable, whether or not they foreclose, simply because of their ability to influence the management decisions of borrowers. It is appropriate for the Congress to respond to these cases. They do not reflect congressional intent with respect to the liability of lenders under the Superfund or RCRA statutes.

There are not very many examples of lenders actually being held liable for the cleanup of pollution caused by their borrowers. EPA and the States are not out there suing banks and S&L's for the cleanup of industrial and commercial facilities they lent money to. EPA has never recovered cleanup costs from any lender who owned a property simply as the result of foreclosure. And to EPA's knowledge only seven lenders have even been contacted by EPA as part of a Superfund investigation. There is no real problem out there.

But there is a fear in the lending community that it may become a Superfund target in the future. The court cases that I have cited are the cause of this fear. It is alleged that this fear is preventing banks and other lenders from approving loans for small commercial and industrial firms like service stations or dry cleaners or small manufacturing companies that handle hazardous chemicals.

That is the case made for this amendment. It is the perception of a liability problem, based on two court cases, rather than the language of the statute, the intent of the Congress or the enforcement actions of EPA or the States under these environmental laws, that has caused banks to close their doors to small businesses and others who handle toxic chemicals.

I have no problem addressing the fear. I believe that the Congress should clarify the liability of lenders under Superfund. Superfund should not stand in the way of loans to small business or others who are ready to provide jobs in our economy. Superfund has enough problems without being an excuse for banks to shut the loan window to certain types of business.

So, let's fix lender liability. But this amendment goes beyond a simple restoration of congressional intent with respect to the liability of mortgage holders in Superfund. It raises other issues that deserve the careful consideration of the Senate. Let me describe, Mr. President, the major issues.

First, the amendment would provide an exemption from liability for cleanup costs under Federal law for a long list of Federal agencies. Two of those agencies, the Federal Deposit Insurance Corporation, the FDIC, and the Resolution Trust Corporation, the RTC, are engaged in the urgent business of liquidating failed banks and savings institutions. The FDIC and the RTC have testified that potential environmental liabilities may make it more difficult for them to carry out their mission.

Again, the actual evidence does not show that the law has a big impact on the activities of these agencies. The number of properties with potential environmental problems and the projected liability is very small compared to the huge portfolio of properties now held by these two agencies. Perhaps 200 or 300 properties have potential environmental problems. Many of those are asbestos-related and are not addressed by this amendment. And the estimated cleanup cost is in the $500 million range.

Compared to a $200 billion real estate liquidation involving thousands of properties, the environmental liability problem is small indeed. But there is a perception that they will not be able to liquidate all of their assets, unless they get relief. It is something that we should address.

But the amendment goes way beyond the FDIC and RTC problem. It exempts not only FDIC and RTC but a series of other agencies. It exempts not only the Federal agencies, but everyone who buys property from them. And it is an exemption not only from Federal laws like Superfund and RCRA, but it is also a limitation, that is a partial preemption, of all State and local environmental laws that have strict liability regimes. Let me take those issues one at a time starting with the preemption of State law.

The Senate is now in a conference with the House on a bill sponsored by the majority leader that promised to hold Federal agencies to the same environmental standards that we impose on everybody else. That bill is S. 596, the Federal Facilities Compliance Act. The conference is not even concluded on that bill and here we have legislation that would exempt a group of Federal agencies from liability under various environment laws, not only our laws but those of the States, as well.

More than that it would preempt the environmental laws of the States. This bill raises the same issue that is at the heart of Senator MITCHELL's Federal facilities bill. A few months ago the Senate voted overwhelmingly to hold Federal agencies to the environmental standards that apply to everyone else. We put out our press releases saying the environment is saved, that public health will be protected. And today we are right back here carving out exemptions from environmental law for Federal agencies.

The first problem is the preemption of State law. The second problem is the long list of agencies that would benefit from the preemption.

I could agree to an amendment that granted an exemption from Federal environmental law and FDIC and RTC and the other banking agencies that acquire property through receivership. But I would limit the exemption to the banking agencies. I would strike that long list of other Federal agencies that

may acquire property but that have expressed no concern about their Superfund liability. If those other agencies have a problem, it is certainly not urgent because they have not expressed that concern to the committee with jurisdiction over Superfund at any time.

Let me read the list of the other agencies that would receive an exemption from Federal law and the benefits of a preemption of State laws. In addition to the FDIC and the RTC, the list includes the Federal Reserve System, any Federal Reserve bank, a Federal home loan bank, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, and the Small Business Administration and all of their agents.

Mr. President, the State of Minnesota is very much opposed to any preemption of their Superfund Program and other environmental laws. My State doesn't want Federal agencies exempt from its law. I have a letter from the Minnesota Pollution Control Agency to that effect that I would ask be included in the RECORD. This preemption is also opposed by the organization of solid waste officials that represents all of the States. I have their letter on that point that I would ask to place in the RECORD.

FDIC and RTC argue that a liability exemption is necessary so that they may keep valuable properties in commercial circulation—that properties in receivership should not be held by the Federal Government for long periods while cleanups are conducted. The economy will be hurt, if that occurs. That is a valid concern.

But so is the concern of State governments who have sovereignty on these questions within their borders. If a State chooses cleanup over commercial circulation, we should not argue with the State's decision. Said another way, the swift return of commercial properties to productive uses, the objective that I presume the Senator seeks to achieve with his amendment, is an objective also understood and pursued by the States. But if in their judgment, other objectives, like the careful management of hazardous substances, are more important, it should be our policy to respect the State laws that reflect these other objections.

We have had that debate many times here in the Senate. For instance, the oilspill legislation that was enacted in 1990 was first introduced in 1972. It took nearly 20 years to pass that law because of a dispute between the House and the Senate about liability for oilspills under State laws. The House wanted to preempt State law for oilspill cleanup liability. The Senate insisted that State laws be respected. It took the *Exxon Valdez* oilspill for the House to come around to the Senate view. State liability regimes were not preempted under the oilspill law. And they should not be preempted here.

The third major issue deals with persons who purchase property from Federal agencies. The Garn amendment gives an exemption to Federal agencies for cleanup liabilities under Federal law and preempts State law to limit liability at properties that the Federal agencies acquire through receivership. And then the Garn amendment extends that exemption and preemption to persons who purchase the property from the Agency.

The purpose of this provision is help the FDIC and the RTC quickly unload the thousands of properties they have received as the result of bank and savings and loan failures. An exemption from liability for the FDIC and the RTC does not amount to much, because these agencies do not want to hold and manage property. They want to return it to the private sector as quickly as possible. But property that is polluted is hard to sell, if the buyer faces liability for the costs of cleaning up the pollution. It may be possible to sell the property, but the price that the FDIC or RTC would receive would reflect the cost of cleanup.

Because the price of the property would be depressed to offset the cost of cleaning up the property, the funds that the Congress has authorized to liquidate these properties would bear the burden of the pollution that has occurred. The FDIC and the RTC would realize less on the sale of these properties, so more of the liquidation burden would fall on the taxpayers.

Extending the exemption from Federal law and preemption of State law to the first purchaser is a way for the FDIC and the RTC to avoid these costs. If the purchaser doesn't have to clean up the property either, then the price of contaminated properties won't be depressed, at least not as much, and the FDIC or the RTC can realize more at the sale.

I am sure this makes a lot of sense to those who are managing the savings and loan bailout. They have enough problems getting money to prevent an economic catastrophe without also having to finance environmental cleanups. But that doesn't mean that the taxpayer won't still face the burden. If the first purchaser doesn't pay to clean up the property, then the Environmental Protection Agency or the State in which the property is located will be required to take on the job and finance the effort through the Federal or State Superfund program.

I know what the managers of the bill will say on this point. They will say that Congress created the Superfund program for this precise case. The pot of public money which is at the heart of Superfund is there to pay for cleanups at abandoned facilities where the responsible party is bankrupt or unable to pay cleanup costs. It may still be taxpayer money, but it was set aside for this purpose. So, let's use it.

But suppose for a moment that EPA comes in and spends public dollars to clean up a site that has been held by FDIC or RTC and is exempt from liability and has then been transferred to a private purchaser who is then also exempt. Who benefits? People living near the site clearly benefit because of the cleanup. That's why Congress set up Superfund and made it possible for EPA to take action directly.

But another big beneficiary is the owner of the property. The value of the property will no doubt increase substantially when the cleanup is completed. And the owner of the property will pocket that increase in value.

This is a very troubling aspect of this amendment. The FDIC or RTC is holding a property it wants to unload in a hurry. So, the price is already depressed. The property may be contaminated with hazardous wastes or toxic chemicals, so it is likely that the price is rock bottom. Therefore, the purchaser gets a very cheap property.

Then this legislation would grant any purchaser an exemption from liability against cleanup costs that EPA or a State might incur at the site.

Mr. President, when this amendment was offered to the banking reform bill at the end of the first session of this Congress, Senator GARN added a provision that was intended to address the problem of unjust enrichment that I have just described. It makes the exemption and preemption for the first purchaser conditional on the purchaser agreeing to clean up the property.

And this provision is in the amendment now being considered by the Senate. The person who purchases a polluted property from the FDIC, or the RTC, or one of the other listed agencies can enjoy an exemption from cleanup liability under Federal law and a limitation on liability under State law, but only if that person agrees to clean up the property consistent with the purpose of environmental law.

I very much appreciate the efforts of the Senator from Utah to fix the unjust enrichment problem, but I fear his amendment leaves us far short of a workable solution. For instance, the amendment does not say who the agreement is to be with. The first purchaser must agree to clean up the property. But an agreement is a transaction between two parties and the other party to the agreement is not specified in the Senator's amendment. Is it the FDIC or the RTC? Is it a State? Is it the EPA?

A second problem is the timing of this agreement. Nobody is going to buy a contaminated property from FDIC or

RTC without knowing the extent of their cleanup liability. This agreement that compels the first purchaser to clean up the property will define that liability. We could expect that the purchaser will want the agreement before the sale. These agreements will have to be concluded up front.

And if that is the case, the very purpose of the amendment will be defeated for it will take a very long time for the purchaser and any government agency to reach an agreement on the full extent of a cleanup. FDIC and RTC are not going to sell contaminated properties more rapidly, if the purchaser is required to agree to a cleanup plan as a condition of enjoying the exemption and preemption extended to the Federal agencies.

Again, I say to the Senator from Utah, the author of the amendment, that I have no problem fixing the basic liability problems of the lenders. We need to correct the erroneous court cases that have caused a fear in the lending community. We need to make it possible for FDIC and RTC to dispose of their assets promptly. I have no quarrel with those objectives.

But those problems are not cause to exempt a long list of Federal agencies, to provide a windfall to those who buy properties from the Federal Government, and to ride roughshod over the State laws we have carefully protected on other occasions. We can solve the problems created for lenders by Superfund and the underground storage tank program without causing new problems in the process.

Mr. President, last year when these same provisions were included in the banking reform bill, I submitted an amendment that addressed each of the problems I have raised today. We were unable to resolve these issues in that instance and so I have not repeated the exercise this year. I don't believe there would be any point in asking the Senate to vote on these questions now. It is unlikely that many of our colleagues want to become experts on lender liability this afternoon.

I would note that the Garn amendment was dropped from the banking bill last year because of strong opposition in the House. I assume that the House view on these questions has not changed and that favorable Senate action on this amendment today would leave us yet a long way from enactment of these provisions. I will not take more of the Senate's time to debate these issues now. But I will continue to press for changes in this legislation before it is enacted.

MINNESOTA POLLUTION
CONTROL AGENCY,
Saint Paul, MN, July 9, 1991.

Hon. DAVID DURENBERGER,
Subcommittee on Superfund, Ocean, and Water Protection, Committee on Environment and Public Works, U.S. Senate, Russell Senate Office Bldg., Washington, DC.

DEAR SENATOR DURENBERGER: The purpose of this letter is to provide you with the Minnesota Pollution Control Agency's (MPCA's) views on proposed legislation to limit lender liability of financial institutions in the cleanup of hazardous waste sites. The MPCA staff has been working on both federal and state Superfund sites, cleaning up hazardous waste sites as successfully as any state in the nation. We're speaking on the basis of our experience in practical application of Superfund laws and regulations when we oppose changes in the law that would exempt any interest group from the requirements of strict, joint and several liability.

We understand the real problems for lending institutions when properties they receive carry the heavy burden of Superfund liability. We believe that the regulations recently proposed by the U.S. Environmental Protection Agency (USEPA), while not perfect, address some of the problems by developing criteria defining innocent landowners and due diligence with respect to Superfund liability. This regulatory proposal may provide lending institutions with the relief they need and is the first logical step in resolving some of the lenders' issues.

However, amending federal law to exempt any interest group (such as federal lending and banking agencies like the Federal Deposit Insurance Corporation) from Superfund liability would be a disastrous move. We are strongly opposed to the current language contained in proposed legislation in which "A federal banking or lending agency shall be exempt from any law requiring that agency to grant covenants warranting that remedial action has been, or will in the future be, taken with respect to property acquired * * *"

We believe this exemption would tie the hands of MPCA's state Superfund program. Most cleanups in Minnesota are completed under the Minnesota Environmental Response and Liability Act of 1983. Only 42 sites in Minnesota are on the National Priorities List, while 178 are on Minnesota's state Superfund list and another estimated 600 are waiting for assessment. Any change in the law that would preempt that state Superfund would make cleaning up Minnesota's hazardous waste sites much more difficult.

And of course, exempting certain parties from liability at federal and state Superfund sites would open the door to other demands for relief. A barrage of responsible parties would lobby both the U.S. Congress and the Minnesota Legislature to protect special interests by amending federal and state Superfund laws.

The concept of strict, joint and several liability has been the straightforward foundation of out state Superfund law and those in many other states. To undermine this standard to protect the few may end up penalizing the many. In the end, it may be the public who bears the burden when sites are not cleaned up, valuable property lies wasted, property values decline, drinking-water aquifers degrade, and state agencies such as the MPCA sit helplessly by waiting for sufficient state funds to be available to address the problems or are wrapped up in costly litigation with other petitioners who choose to challenge the law.

Our position on the draft rules released June 5 is similar to that of the Association of State and Territorial Solid Waste Management Officals (ASTSWMO), and this organization has commented on our behalf. We support this regulatory approach to lender liability under Superfund and hope that you will represent this point of view in discussions about these issues in the subcommittee on Superfund. We would also like to thank you for your efforts to help us clean up hazardous waste sites in Minnesota.

Sincerely,

ANN GLUMAC,
Assistant Commissioner
(For Charles Williams, Commissioner).

ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS,
Washington, DC, July 25, 1991.

Hon. DAVID DURENBERGER,
Subcommittee on Superfund, Ocean and Water Protection, U.S. Senate, Washington, DC.

DEAR SENATOR DURENBERGER: The purpose of this letter is to provide our Association's views concerning the thrust of proposed legislation concerning efforts to limit lender liability of financial institutions as it relates to the liability for cleanup of hazardous waste sites. It is our view that the federal government first should attempt to resolve the confusion over appropriate lender liability through regulatory clarification, and only make significant statutory revisions in the closely knit fabric of Superfund liability should those regulatory measures prove insufficient. However, regardless of the federal resolution of this matter, we very strongly oppose any statutory change which would preempt State liability laws and undermine our ability to conduct cleanups at the thousands of non-Superfund sites for which States alone are responsible.

ASTSWMO is a non-profit organization representing the State directors for hazardous and nonhazardous waste management programs. Our members charged with monitoring CERCLA enforcement have reviewed a number of the proposed legislative efforts to limit lender liability, as well as the proposed rule recently published by the U.S. Environmental Protection Agency (USEPA). While we believe there are significant deficiencies in the June 24, 1991 proposed rule, our conclusion is that this rule can be corrected in its final form and that such regulatory clarification is preferable to amendment of the existing Superfund statutory requirements of strict, joint and several liability.

We recognize that there are real problems for federal lending institutions which receive polluted properties, but it is our view that those problems stem largely from insufficient specificity and scope in current regulations defining the criteria for innocent title. On the other hand, we think that beginning to unravel the necessarily rigorous requirements of strict, joint and several liability for one group of owners, even these government receivers, will only encourage other interest groups to press for similar relief. If loopholes are opened in the statutory criteria for liability, we see the potential for extended litigation as each one of these relief measures is explored by potentially responsible parties. The ruthless simplicity of the strict, joint and several doctrine is both its weakness and its strength. We are very apprehensive about undermining this financial pillar of the national cleanup program, even in the interests of federal receivers.

Consequently, we recommend that Congress first try the regulatory solution before considering amending the Superfund statute. We consider the inability of the banking community to quantify their exposure with some degree of specificity a particularly telling argument for requiring empirical results before weakening the federal liability statutes. If the regulatory clarifications should prove insufficient, we believe that the proper vehicle for such statutory modification is

the comprehensive 1993 reauthorization of CERCLA.

Regardless of the decision of the Congress regarding statutory change versus regulatory clarification, we wish to make clear our very strong opposition to any provisions in proposed federal legislation which would preempt State hazardous waste cleanup liability statutes. As you know, the numbers of sites requiring attention by States and not qualifying for cleanup under the federal Superfund program in substantial. Some estimates go as high as 20,000 potential cleanup sites, and when compared with the National Priority Listing of about 1200 sites, the burden on States is clear. It is our understanding that there are a few hundred potentially contaminated sites currently held by the FDIC and RTC, yet only a handful are in any way likely to become federal Superfund sites. While the federal government may elect to change the statutory standards for lender liability under the federal Superfund program, we believe it is manifestly wrong for the federal government to extend that same relief to federal institutions, or for that matter to any other financial institutions, for cleanups required under State statute.

Consequently, we are deeply concerned to find language such as the following contained in proposed legislation: "A Federal banking or lending agency shall be *exempt from any law* requiring that agency to grant convenants warranting that remedial action has been, or will in the future be, taken with respect to property acquired in the manner * * *" (extract of S-651, page 24, lines 15-20; italics added). We believe that such sweeping exemptions from State laws would eviscerate the State cleanup programs which are firmly based on responsible party financing, and generally are not as dependent on fund financing as the federal Superfund program. We ask that you ensure that these vital State cleanup programs are protected as the debate over this proposed lender liability legislation proceeds.

Sincerely,

DANIEL E. COOPER, P.E.,
President.

Mr. LAUTENBERG. Mr. President, I thank my distinguished colleague from Massachusetts for his comments and the support of those who have spoken.

I want to quickly summarize and then I think we ought to move on to see what kind of a vote count we are going to have.

We are not attempting, I want to make sure everyone understands, to tamper with the Superfund liability system. Suggestions about that mischaracterize the legislation. These provisions, as a matter of fact, leave that very much intact and do not have the sweeping impact that the other provision on lender liability has in this measure.

What we have here is a bipartisan response to a serious problem facing local taxpayers, again, supported by the U.S. Conference on Mayors, the National Association of Counties, the American Communities for Cleanup Equity, Sierra Club, and various of the environmental groups.

The mission is very simple: We prevent overreaching lawsuits that the law never intended to be brought in the first place, and we expedite settlements with those who simply generate and transport garbage, not anyone who transports, generates or is otherwise involved with truly hazardous waste streams.

So what we do in our legislation, Mr. President, is very simple. We tell a growing list of local communities, now numbering about 450, and their taxpayers, that we are not going to let the real polluters stop cleanups and unfairly shift the cost to them. Everyone knows that with the precarious tax base that we see in lots of small communities and the services that they have had to discontinue, that any kind of a significant legal bill or cost could very seriously impair the ability of these communities to function. The same is true for individuals and small businesses that also receive protection here.

Mr. President, enough is enough. I urge my colleagues to stand up for the local taxpayer, the small business person, and do so in an environmentally responsible way.

I remind my colleagues, what we are saying is that towns, municipalities, not-for-profits, individual small businesses who simply transport or generate trash, not hazardous material, should be protected, should have their liability limited and not be subjected to frivolous or whimsical kinds of diversionary lawsuits.

So on behalf of Senator RIEGLE and myself, I move to table the motion to strike that is proposed by the Senator from Rhode Island. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Chafee amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Carolina [Mr. SANFORD] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from New York [Mr. D'AMATO] is necessarily absent.

I further announce that, the Senator from North Carolina [Mr. HELMS] and the Senator from Delaware [Mr. ROTH] are absent due to illness.

I further announce that if present and voting, the Senator from North Carolina [Mr. HELMS] would vote "nay."

The PRESIDING OFFICER (Mr. AKAKA). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 44, as follows:

(Rollcall Vote No. 126 Leg.)

YEAS—52

Adams	Bingaman	Bumpers
Akaka	Boren	Burdick
Baucus	Bradley	Cohen
Bentsen	Bryan	Conrad
Cranston	Kerrey	Riegle
Daschle	Kerry	Robb
Dodd	Kohl	Rudman
Exon	Lautenberg	Sarbanes
Fowler	Leahy	Sasser
Garn	Levin	Seymour
Glenn	Lieberman	Shelby
Gore	Metzenbaum	Simon
Harkin	Mikulski	Specter
Heflin	Mitchell	Wellstone
Hollings	Moynihan	Wirth
Inouye	Nunn	Wofford
Kasten	Pryor	
Kennedy	Reid	

NAYS—44

Biden	Durenberger	McConnell
Bond	Ford	Murkowski
Breaux	Gorton	Nickles
Brown	Graham	Packwood
Burns	Gramm	Pell
Byrd	Grassley	Pressler
Chafee	Hatch	Rockefeller
Coats	Hatfield	Simpson
Cochran	Jeffords	Smith
Craig	Johnston	Stevens
Danforth	Kassebaum	Symms
DeConcini	Lott	Thurmond
Dixon	Lugar	Wallop
Dole	Mack	Warner
Domenici	McCain	

NOT VOTING—4

D'Amato	Roth
Helms	Sanford

So the motion to lay on the table the amendment (No. 2439) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WIRTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPLANATION—S. 657 LENDER LIABILITY

Mr. DOMENICI. Mr. President, the amendment provides that when the FDIC, RTC or other Federal banking agency obtains property through the exercise of their governmental functions, they will be given immunity from liability for preexisting environmental contamination. The immunity does not apply if the agency caused or contributed to the pollution. The agencies may then sell this property to an innocent purchaser, who has had no prior relationship with it. This purchaser must take reasonable steps to prevent the continued release of any hazardous or toxic substances.

The amendment also provides a limitation of liability with respect to insured depository institutions and other mortgage lenders. When these institutions acquire property through foreclosure or similar action, their liability under Federal law will be limited to the greater of the amount of the unpaid loan balance or the actual benefit received from a cleanup operation.

The amendment provides a similar limitation on liability if the insured depository institution or mortgage lender exercises financial control or financial oversight over the property, pursuant to the terms of an extension of credit. However, if the lender actively directs or conducts operations that result in the release or threatened release of a hazardous substance, the limitation does not apply.

The limitation does not apply if the lender caused or contributed to the release or threatened release of the hazardous substance.

Further, the limitation does not apply if the lender fails to take all reasonable steps, after it comes into possession of the property, to prevent the continued release of hazardous materials that the lender has discovered.

For example, if a lender forecloses on a commercial plant and discovers leaking oil drums it would be required to prevent the continuation of the leak.

Since the lender will not have an exemption from liability, but only a limitation on such liability, there will be a strong economic incentive for the lender to conduct environmental audits and assessments before making a loan. There will also be an economic incentive to attempt to monitor environmental factors during the life of the loan, since pollution occurring after the loan is made will adversely affect the value of the collateral.

In addition to these economic incentives, the amendment also mandates that the bank regulatory agencies promulgate regulations, within 180 days after the date of enactment, that will require banks and savings and loans to evaluate actual and potential environmental risks that may arise from property to be held as collateral, prior to making a loan secured by that property. The Secretary of the Department of Housing and Urban Development would have to promulgate equivalent regulations for other mortgage lenders.

THE TRUTH IN SAVINGS ACT AMENDMENT

Mr. MURKOWSKI. Mr. President, I rise today to offer an amendment to S. 2733, the GSE reform bill. My amendment is designed to address several technical problems that have arisen during implementation of the Truth in Savings Act which was enacted by this body last November as part of the FDIC Improvement Act of 1991.

Mr. President, the Federal Reserve Board recently issued for public comment proposed new regulation DD to implement the Truth in Savings Act. A review of these proposed regulations, all 132 pages, has highlighted several areas where technical corrections are in order.

WHAT THE ACT REQUIRES

Let me remind my colleagues what the Truth in Savings Act requires. This Act mandates that banks provide in account schedules the fees and interest rates applicable to the deposit accounts and places limitations on the manner in which institutions can calculate interest. Advertisements are subject to similar requirements.

This sounds simple enough. Many of my colleagues seemed confident that a provision this simple couldn't cost much to implement. In fact, my colleagues pointed out that most banks already provided this device so it wouldn't cost much to mandate this service.

Unfortunately, this is not the case. Ensuring that the account schedule fits exactly into the one required by the legislation imposes costs: lawyers have to review the new law and existing account schedules and advertisements; new accounts schedules have to be designed in the format required by the law as it is highly unlikely that any bank currently discloses and advertises fees in exactly the manner required; old schedules have to be retrieved and new ones distributed. Banks also have to audit compliance and prepare for examinations on compliance.

This process has to be repeated every time the bank changes the terms of the account, or develops a new advertisement, or designs a new product. The potential liability for violations, even for technical and harmless ones, adds to the cost.

COMMONSENSE AMENDMENTS

Mr. President, the Senate adopted the truth in savings provision on a 55–42 vote. My purpose in offering these technical amendments today is not to reopen this vote. My purpose is to make commonsense modifications to the Truth in Savings Act to ensure that the interests of consumers and bankers alike are best served.

My amendment addresses three issues.

First, disclosures for certificates of deposit. This provision would alter the disclosure requirements for the renewal of certain certificates of deposit. My amendment would establish different disclosure requirements based on the length of maturity of a particular certificate of deposit. The act currently requires that depository institutions provide 30 days advance notice of the renewal date of a certificate of deposit, even when the maturity date is shorter than 30 days.

Second, use of rate boards and other on-premise displays. This provision would allow banks to continue to use lobby rate boards and other on-premise signs to list account information such as interest rates without adding other additional and cumbersome terms required by the act so long as the on-premise sign discloses that the consumer should inquire about the fees and terms of the account being offered.

Third, extension of effective date. This provision would give depository institutions an additional 3 months to comply with final regulations. Currently, the act requires that regulations must be final by September 19, 1992, and banks must comply 6 months after final regulations are adopted.

CONCLUSION

Mr. President, these are important common sense amendments that would assist the regulators in implementing the Truth in Savings Act. I thank the managers of the bill, and the Senator from Connecticut, for working with the Senator from Alaska to make these needed technical corrections.

NEW PROGRAM AUTHORITY

Mr. SYMMS. Would the Secretary be allowed to reject a new program, such as a program to provide a secondary market for home equity lines of credit if it would replace business being done by existing private sector firms?

Mr. GARN. Yes, if one of the GSE's were to request approval of a new program that would enable it to enter a market already served by the private sector, such as a program to make a secondary market for home equity lines of credit, it is expected that the Secretary would give weight to the role already being served by private firms. However, the Secretary could not reject the new program solely because private sector firms were already serving the market. The test is whether the new program would have a deleterious effect on housing finance.

THE MURKOWSKI TRUTH IN SAVINGS AMENDMENT

Mr. DODD. I am concerned that the advance disclosure of maturity provisions will not give consumers adequate notice of the new APY so they can shop around for the best deal.

Mr. MURKOWSKI. I did not include an advance notice provision in the amendment because the Fed indicates that there is no problem, that banks routinely give consumers a grace period in which to make a decision without suffering any penalty.

Mr. DODD. I take the Senator's point but I am concerned that banks could change their policies adversely to consumers, as they did with respect to investable balances. To avoid any such problem, would the Senator support my view that the Fed should monitor banks' grace period policies to make sure that consumers have adequate time to make informed decisions; and, if a problem develops, that the Fed should take action to protect consumers' rights?

Mr. MURKOWSKI. I believe that is a fair solution. If there is no problem, so be it, but if a problem develops, the Fed should address it.

Mr. DODD. I wonder if the distinguished Senator from Utah [Mr. GARN], the ranking minority member of the Banking Committee, would indicate whether he agrees with the author of the amendment? It would make me feel more comfortable if I knew he shared Senator MURKOWSKI's views.

Mr. GARN. Yes, I think the approach described makes good sense.

RURAL HOUSING AND FINANCIAL INSTITUTIONS

Mr. DOLE. Mr. President, I am pleased that the managers of this bill have accepted my suggestion to have the proposed study on the Federal Home Loan Bank System consider the impact that any consolidation would have on rural housing and financial institutions. Access to affordable housing is an important issue—not just for our cities, but for our rural areas, too. We must ensure that the Federal Home

Loan Bank System remains responsive to the Housing needs of rural Americans.

The Federal Home Loan Bank of Topeka has done an outstanding job of helping meet the housing needs of the rural communities in its district, loaning $225 million in community investment funds since 1989 and leveraging $77 million in housing financing in 1990-91 with its affordable housing program funds. A triple-A rated institution, the bank had the highest return on equity and the fourth highest return on average assets in the FHLB system in 1991. It also ranks fourth in the system in the number of new commercial bank members.

PUBLIC ACCESS PRICING AND FEE STRUCTURES

Mr. CRANSTON. I commend the chairman on the diligence and thoroughness you demonstrated in undertaking this bill. Fannie Mae and Freddie Mac are two of the cornerstones of the Nation's housing finance system. They have been instrumental in ensuring the liquidity and nationwide availability of housing credit for middle and upper middle income homebuyers. The chairman's bill will redirect some of Fannie Mae's and Freddie Mac's efforts toward lower income Americans.

Until this legislation, efforts made by the entities in the lower income housing arena have been viewed as niche purchasing and boutique in nature. The Chairman's legislation will clarify that lower income mortgage purchasing is an integral part of the established business of Fannie Mae and Freddie Mac. In order for the Congress to monitor the business practices of Fannie Mae and Freddie Mac in the lower income arena, it is necessary to know the pricing and fees charged by the entities on differing mortgage products. That is, Congress must be able to compare the pricing and fees charged for mortgages originated in central cities as compared to suburban locales, in lower income versus higher income census tracts, and in urban-suburban versus rural communities. The bill embodies this requirement in sections 505 and 507. I am concerned that the Director may deem pricing and fees charged to be proprietary information and thus make it unavailable to the public.

Mr. RIEGLE. I share Senator CRANSTON'S support for public access to information on the activities of federally regulated entities. In FIRREA, public access to CRA ratings and improvements to HMDA are mandated by the committee. As a result of this mandate, we have accurate data on the lending practices of our banks. What we have discovered is the significant disparity between the lending activity to white and black families in this Nation. Some banks have made tremendous progress in reversing this shameful discriminatory practice. We know, however, that without public pressure which came from public access to the information, CRA lending would not have expanded to the extent it has.

Our intent is the same in the reporting requirements contained in the GSE legislation. It is important that information collected by the GSE's and information reported to the Director be made available to the public. Provisions which give the Director authority to deem information proprietary and thus restricted from the public are to be construed narrowly.

I am aware of the need for public access to the pricing and fees charged by the GSE's for differing mortgage products. While I expect there to be some differential based upon levels of risk incurred, the Congress must know the difference in pricing and fees based upon lender type—small versus large—borrower characteristics, and location of property along with any other categories of prices and fees. The Director may deem the price and fees charged by the entities to an individual originator to be proprietary, but a wholesale exclusion for the public of the pricing and fee structure would be unacceptable.

Our intent, is to ensure that Fannie Mae and Freddie Mac encourage lenders to originate lower income mortgages especially in our troubled central cities. I agree with the Senator that it is important that pricing and fee information be subject to public access.

CAPITAL LEVELS

Mr. METZENBAUM. If the Director of the new Office of Federal Housing Enterprises Oversight determines that an increase in the minimum capital levels required under section 202 of the Banking Committee bill is necessary to protect the financial health and security of an enterprise, does the bill permit the Director to do that?

Mr. RIEGLE. Yes, the Director may increase minimum capital levels if it is necessary to protect the financial health and security of an enterprise, and it is important that the Director act in such circumstances. Section 102 of the bill states that the Director's primary duty is to ensure that the enterprises are adequately capitalized and operating safely, and section 103 authorizes the Director to issue regulations concerning the financial health and security of the enterprises.

• Mr. D'AMATO. Mr. President, I am pleased that the Senate is finally proceeding to consideration of the Federal Housing Enterprise Regulatory Reform Act of 1992.

I am pleased to have played an active role in developing this bill. This bill is a sound and rational response to the need for enhanced regulation of Government-sponsored enterprises.

This bill represents legislative action at its best—it is a balanced bill that establishes strong capital standards and a strong regulatory structure to ensure the safety and soundness of Government-sponsored enterprises without imposing unnecessary burdens.

This bill is a forward looking bill that protects the taxpayer before there is a problem. Rather than just talk about the potential risk of financial failure of a GSE, the bill puts in place a regulatory structure designed to minimize any potential risk.

This legislation is a win-win situation for the American people. By ensuring the financial strength of the GSE's, we also ensure that the GSE's are able to provide vital assistance to home buyers by reducing the cost of financing a home.

This bill establishes tough capital standards, but also provides for the development of housing goals designed to help low- and moderate-income families as well as those in central cities and rural areas who need affordable housing.

During the hearing held by this committee last May to discuss Treasury, CBO and GAO's studies of the safety and soundness of Government-sponsored enterprises, I cautioned that we not overregulate the GSE's. As I put it then, it would be a shame if the waterboy blocked the quarterback's victory touchdown.

I believe that this bill provides a fair game plan without substantial interference. Indeed, the teams should continue to score winning touchdowns without worrying about the waterboy. If the Government-sponsored enterprises continue as key players in the mortgage market, we all win from the competition with lower mortgage costs.

I urge my colleagues to support this bill. I would hope that the Senate could pass the Federal Housing Enterprise Regulatory Reform Act of 1992 expeditiously so that we move this legislation to conference as soon as possible.•

Mr. DIXON. Mr. President, I rise today in support of S. 2733, the Federal Housing Enterprises Regulatory Reform Act. This bill has been a long time in coming and has been subject to extensive negotiations. It establishes improved capital standards and regulatory supervision over Fannie Mae and Freddie Mac. It also strengthens the public mission of these Government-sponsored enterprises or GSE's.

I have been most active on title V of the bill, the affordable housing provisions, and would like to speak about their importance today.

Since becoming chairman of the Subcommittee on Consumer and Regulatory Affairs, I have been quite concerned about implementation of the Community Reinvestment Act and about racial discrimination in home mortgage lending. The subcommittee has held two hearings on each of these two issues. Witnesses at these hearings testified that more cooperation was needed from the secondary market—

that is, from Fannie Mae and Freddie Mac—to expand community reinvestment lending and to combat mortgage discrimination.

The subcommittee also held a hearing last February specifically on redlining and the secondary market. Witnesses at the hearing raised serious questions about whether the policies and procedures of the GSE's contribute to discrimination in lending against minority neighborhoods and low- and moderate-income communities.

Freddie Mac presented the findings of its own study at the hearing which showed that lenders perceived the GSE's underwriting guidelines as discouraging lending to certain lower income people and to certain older, ethnic, or minority neighborhoods. The study also concluded that community lending need not be riskier lending and that the secondary market needs to better communicate the flexibility intended to exist within underwriting guidelines.

Community groups testified about how the standardizing influence of the GSE's underwriting guidelines leads to fewer loans in older, inner-city, lower income, or minority neighborhoods. Witnesses, who had been involved with CRA lending by banks, also claimed that banks often say that they cannot sell loans from their CRA portfolio to the GSE's and that over time this will cause CRA home mortgage lending to diminish significantly.

Both Fannie and Freddie have taken important steps since that hearing to do more for affordable housing. Jim Johnson, to his great credit, announced a $10 billion commitment to affordable housing just weeks after taking over as Fannie Mae's CEO last year. He has supported that commitment with staff, policy, and resource decisions. Freddie Mac has made less ambitious commitments in dollars and resources but it did undertake an important review of its underwriting guidelines; the changes it announced a few months ago to its general guidelines could well have a significant effect on access to mortgages for minority loan applicants.

These voluntary efforts to support affordable housing reinforce the need for a strong affordable housing title in this bill. Without legislation we have no real assurance that recent efforts will continue. This bill started with existing regulations by the Department of Housing and Urban Development. Those regulations require Fannie Mae to devote 30 percent of its business to affordable housing and a partially overlapping 30 percent to central cities. The bill improves those regulations in a number of detailed ways, including providing for rural areas and allowing for adjustments in these 30-percent goals over time.

Congress must send a strong message to the GSE's that they have important public purposes which must be fulfilled. Their responsibilities are not just to their shareholders who have benefited handsomely from the GSE's unique relationship to the Federal Government. Their responsibilities are also to the public: To maintain their financial safety, but also to assure that our housing finance markets work for the benefit of all Americans—not just the affluent.

This bill was in the works long before Los Angeles erupted. It does, however, address the issue of access to mortgage capital by racial minorities, by inner-city residents, and by all people who pay their bills but have modest means.

The bill takes a thoughtful and balanced approach, and I commend it to you today. It makes GSE's safer. Just as importantly, it really will help ensure that they better address the needs of moderate- and low-income Americans, and the needs of our cities and neighborhoods. I strongly urge the passage of this sound, thoughtful, and necessary piece of legislation.

Mr. RIEGLE. Mr. President, Section 704 of the bill establishes a study committee, composed of persons who are officers and directors of stockholder institutions of the Federal Home Loan Banks. This committee is to conduct a study of the Federal Home Loan Bank System, and will report to the Congress, the Federal Housing Finance Board, and the Federal home loan banks on its findings and recommendations. It is the expectation of the managers of this legislation that this study committee well select a chairperson from among its members with demonstrable experience and understanding of the activities and operations of the Federal Home Loan Bank System.

Mr. GARN. I totally agree. This study committee will perform an important function, and it is very important that the chairperson be someone knowledgeable and experienced in the activities and operation of the Home Loan Bank System.

Mr. LEVIN. Mr. President, I support the Federal Housing Enterprises Regulatory Reform Act. It is an improvement over the weak controls that now exist over the two housing enterprises, Fannie Mae and Freddie Mac. In addition, the bill managers have worked with me to include an amendment to stop compensation abuses at these enterprises.

Mr. President, as the S&L scandal continues to pull billions of taxpayer dollars from other pressing needs, the banking industry labors to avoid a taxpayer bailout, and the insurance industry and Pension Benefit Guaranty Corporation threaten us with new billion-dollar liabilities, this country has woken up to the fact that Federal regulation is not always a bad thing. Sometimes it is all that stands between the taxpayers and another multibillion-dollar millstone around their necks.

The checkered history of Fannie Mae demonstrates the need for tough Federal oversight. Fannie Mae, which has about $450 billion in assets, is the largest and one of the oldest of our Government-sponsored enterprises or GSE's. It was established in 1938, as a Federal agency to promote affordable housing through creation of a secondary market for home mortgages. Thirty years later, in 1969, it was reestablished as a publicly traded corporation with strong federal ties.

Since then, Fannie Mae has experienced great variations in financial performance. In the 1970's, suffering the same interest rate problems as S&L's, it began to lose money. By 1981, it was losing $1 million per day and was in danger of collapse. A new chief executive officer, David Maxwell, took the helm, helped stem the losses and helped steer Fannie Mae back to prosperity. Today, Fannie Mae is in a secure financial position, with a 1990 net income of $1.2 billion and daily earnings of about $4.5 million. In January 1991, Mr. Maxwell resigned and, upon his departure, received from Fannie Mae cash benefits worth $27 million. This unprecedented payment made Mr. Maxwell one of the highest paid executives in America that year.

This brief history demonstrates two things. First, it shows that, in as short a span as 10 years, Fannie Mae can experience significant swings in financial health. Second, it demonstrates that Fannie Mae is now so free of fiscal constraint that it can pay an employee tens of millions of dollars in cash—as he's walking out the door.

This type of excessive executive pay is a danger signal that can't be ignored when taxpayer dollars are at risk. In 1990 and 1991, the Subcommittee on Oversight of Government Management, which I chair, conducted a year-long examination of compensation abuses at federally insured financial institutions, particularly S&L's. We found federally insured funds used for sailboats, vacation homes, butlers, multimillion-dollar golden parachutes, and other types of excessive compensation, which drained healthy institutions of assets and helped drive ailing institutions into Federal takeovers.

Two of the more egregious cases involved Centrust Bank, an S&L in Florida, and Columbia Savings and Loan of Beverly Hills, CA. From 1988 to 1990, Centrust paid its CEO $6 million in compensation, despite losing money all 3 years. Columbia paid the same CEO $9 million, including a lump-sum retirement benefit of $5 million. While these levels of compensation remain among the highest paid by a federally insured financial institution, they pale in comparison to FNMA's $27 million sendoff.

Let us take a closer look at that $27 million. It had two elements: 1990 compensation of $7.5 million from salary, bonuses, stock, stock options and other

arrangements; and a lump-sum pension payment of $19.5 million. This huge pension payment, for just 10 years of employment, resulted from an executive pension plan that had two features unavailable to other Fannie Mae employees—it removed a limit capping pension benefits at 150 percent of annual compensation and it allowed a lump-sum payment of all benefits due. The $19.5 million is the actuarial equivalent of paying $1.4 million per year for the lifetime of Mr. Maxwell and his wife.

By the way, the $27 million payment was not the whole story. In January 1992, Fannie Mae was obligated to pay Mr. Maxwell an additional $5.5 million in pension benefits. In light of the public uproar over his previous paycheck, however, he declined the money. FNMA was thus spared making a second gargantuan payment to a departed executive.

The size of the Maxwell payout, widely reported in the press, produced a collective gasp from business observers. In 1990, average CEO compensation at the largest companies in the country was about $1.9 million. Average CEO pay at federally insured financial institutions and other GSE's was less. And $20 million for a departing executive was beyond the pale of all but the most extravagant corporate plans. The Fannie Mae CEO whom Maxwell had replaced, Allan Oakley Hunter, has called the $27 million payment ridiculous, stating that, "All the justifications they keep serving up for his salary are flagrantly misleading and a gross insult to those of us who formerly served the institution. * * * Executive compensation at Fannie Mae has run amok."

And what's happened since this firestorm of criticism? The 1992 proxy statement for Fannie Mae spends 11 of its 20 pages describing a myriad of compensation arrangements for its executives. The CEO, for example, received the following types of compensation in 1991 alone: a base salary of $600,000; an annual bonus of $480,000; a grant of 4,500 restricted shares of stock—selling in March 1992 for about $63; stock option gains of $143,125; a new stock option grant for 43,040 shares—with an exercise price about $7 per share below the March 1992 market price—which vests in 1992; distribution of 10,824 performance shares of stock; a contingent grant of an additional 13,020 performance shares; $40,000 to pay for two life insurance policies, health insurance, tax counseling, financial planning services and other benefits; and $7,853 under an employee thrift and savings plan. The proxy also states that its CEO owns 48,802 shares of Fannie Mae stock, has vested stock options on 23,000 shares with an average exercise price about $20 below the March 1992 market price, and is enrolled in a regular pension plan and a supplemental executive pension plan with a lump-sum payment feature.

The good news in this proxy statement is that CEO pay at Fannie Mae is significantly less than what was provided to David Maxwell. But it still adds up to millions of dollars.

When my subcommittee contacted Fannie Mae's regulators at HUD about such pay arrangements, we learned that none had the authority to review Fannie Mae's compensation decisions, and none did. The same was true for Freddie Mac whose CEO, we later learned, also receives lavish pay. In 1991, for example, Freddie Mac's CEO received $1,049,837 in salary, bonus and other cash benefits; 13,200 shares of restricted stock; a 1991 option on 35,400 shares; and more.

And they are not the only GSE employees receiving sky-high compensation. On July 15, 1991, the Washington Post business section published a chart entitled, "The Millionaires' Club: Local Executives Who Had More Than $1 Million in Total Compensation in 1990." Of the 30 individuals listed, 4 were from Fannie Mae and 2 from Sallie Mae. Freddie Mac was not mentioned. That means 6 out of the 30, or 20 percent, of Washington's best paid executives work at a GSE whose solvency is implicitly backed by the Federal Government.

Only one federally insured financial institution made the Washington's millionaires' chart. Why? Perhaps because regulations have the authority and responsibility to hold the line at sky-high salaries. The S&L bailout has shown all too painfully that the risk to taxpayer dollars is more than academic.

Congress has already gone on record about excessive executive pay when, last year, it clarified and strengthened regulators' authority to stop compensation abuses at federally insured financial institutions. A provision I authored, which was added on a bipartisan basis to last year's banking reform bill and is now law, directs federal bank and S&L regulators to prohibit compensation arrangements which are excessive or could lead to material financial loss to a federally insured institution. In determining whether compensation is excessive, the provision instructs regulators to consider a range of factors—not only pay at comparable institutions, but also such factors as the institution's financial condition, the cost of postemployment benefits, and any wrongdoing. The provision also requires the agencies to issue regulations to enforce this prohibition. Earlier this year, I worked with my colleague, Senator GARN, to make it clear that regulators could not use these regulations to set pay, but could and should use them to prohibit pay abuses.

The same system ought to apply to Fannie Mae and Freddie Mac, which together have issued or guaranteed securities in the range of $900 billion. While neither enterprise is explicitly insured by the Federal Government, in the event of a threatened collapse the Federal Government would almost certainly be called in for help. That's exactly what happened in 1987, when the Farm Credit System teetered on the brink of ruin and the federal Government's implicit guarantee was used to justify a multibillion-dollar line of Federal credit to revive the system. The housing market is too important to believe the same effort wouldn't be made for an ailing Fannie Mae or Freddie Mac.

That's why this legislation is so important. For once we need to act while the sun is shining and protect the taxpayer from a rainy day. That's why almost 1 year ago I cosponsored a bill introduced by Senator HERB KOHL to authorize even tougher Federal regulation of Fannie Mae, Freddie Mac and other GSE's that risk taxpayer dollars. I regret the Banking Committee did not see fit to follow that tougher bill, which would have established an independent regulator to oversee all Government-sponsored enterprises.

Instead, the bill before us today is limited to the two housing enterprises and places their regulator within the Department of Housing and Urban Development. Due to potential conflicts of interests, I think the better course of action would have been to place the regulator of housing enterprises outside of HUD. The committee has instead struck a middle course—placing the regulator within HUD but requiring independent confirmation by the Senate and giving the regulator statutory authority to issue regulations on safety and soundness without consulting the HUD Secretary. Those safeguards to help ensure the regulator's independence. They could have been stronger, but at least the regulator does not report to the HUD Secretary when it comes to safety and soundness.

But while the new regulator is empowered to insure regulations to ensure the safety and soundness of Fannie Mae and Freddie Mac, there is no explicit reference to stopping compensation abuses.

To correct this deficiency, I have worked with Senator RIEGLE and Senator GARN to include a new provision in the bill, which would make it clear that the new Federal regulator must exercise the same compensation oversight at Fannie Mae and Freddie Mac that already applies to federally insured financial institutions. That oversight would consist not only of prohibiting future compensation abuses and monitoring compensation practices, but also taking a hard look at the compensation arrangements already in place for Fannie Mae and Freddie Mac executives.

Specifically, the amendment would add a new section to the bill which would make it clear that the regulator

has the authority, without the HUD Secretary's review or approval, to prohibit excessive compensation. The amendment is intended to make the housing enterprises subject to the same type of compensation oversight that has long applied to all federally insured financial institutions. It is my hope that the new regulator will consult with the Federal Reserve, Comptroller of the Currency and Office of Thrift Supervision to ensure that S&L, bank and housing enterprise executives operate under the same prohibitions against compensation abuse.

The new section contains a board definition of compensation which is intended to require the regulator to consider all forms of compensation provided by an enterprise to an executive in exchange for services, including cash payments, fees, noncash benefits, financial counseling, insurance, perquisites, stock options, stock, stock-based compensation and postemployment benefits. It also instructs the regulator to calculate the present dollar value of postemployment benefits like retirement pay and lifetime medical insurance, to get a clear picture of this compensation's often hidden costs.

In determining when compensation is excessive, the section requires the regulator to consider a number of factors including total compensation received by the executive; actual services performed; the enterprise's financial condition; compensation practices at comparable financial institutions such as banks, S&L's and other GSE's; any wrongdoing and other relevant matters. This language does not require the regulator to establish that an executive's compensation would cause an enterprise to fall below a minimum or adequate level of capital—that would be too difficult a burden to meet. Instead, it authorizes the regulator to determine that compensation is excessive after considering each of the factors listed. These factors are similar to those which must be considered for federally insured financial institutions. Again, the intent is to create compensation oversight practices which parallel those applicable to federally insured financial institutions.

The amendment also revises bill language to be inserted in the enterprise charters requiring the boards of Fannie Mae and Freddie Mac to set reasonable and comparable pay. It changes the bill language by striking a phrase implying that the pay at Fannie Mae and Freddie Mac should be compared to the pay at major financial services companies. Since Fannie Mae and Freddie Mac have public purposes, enjoy Federal benefits, and pose taxpayer risks that don't apply to private sector companies, the more appropriate pay comparison is to publicly held financial institutions meaning federally insured banks and S&L's as well as other GSE's. Pay comparisons to private sector companies such as those on Wall Street would not be appropriate under the bill.

By the way, by specifying the appropriate pay comparison group in this part of the bill—that is, to federally insured banks and S&L's, and other GSE's—it is intended that the same comparison group be used in other portions of the bill calling for comparable pay at Fannie Mae and Freddie Mac. Those other provisions variously refer to other public and private entities involved in financial services and housing interests, other similar businesses, and comparable publicly held financial institutions. In each instance, the appropriate pay comparison group remains federally insured banks and S&L's, and other GSE's.

Fannie Mae and Freddie Mac, with their billions of dollars in assets and potential liabilities, pose risks to the Federal Treasury that cannot be ignored. While this bill is not as strong as I would have liked, it is a significant improvement over the status quo, and we should enact it as soon as possible. I thank Senator RIEGLE and Senator GARN for including the compensation provision, and I congratulate them for preparing this important legislation.

Mr. KOHL. Mr. President, I understand that in the manager's amendment to S. 2733 a number of changes were made at the request of the administration. As the Chairman knows, I have a long-term interest in maintaining the independence of the regulation of the housing Government-sponsored enterprises from the Secretary of Housing and Urban Development [HUD]. History has taught us that the regulator in charge of the public policy mission cannot effectively regulate that same entity for financial safety and soundness. Can the chairman assure me that these changes do not compromise or weaken the independence of the regulator in his bill in regard to HUD.

Mr. RIEGLE. That is correct. This bill in its original form and as amended maintains safety and soundness regulation independent of HUD.

Mr. KOHL. I understand the House bill gives HUD a strong role in regulating the safety and soundness regulation of Freddie Mac and Fannie Mae. Does the Chairman agree with this approach?

Mr. RIEGLE. No, and I intend to support a position which would keep safety and soundness regulation independent of the Secretary of HUD in conference. However, in order to properly coordinate national housing policies, I believe that regulations relating to the housing missions of Fannie Mae and Freddie Mac should be issued only with the review of the HUD Secretary.

Mr. KOHL. That is a reasonable approach that I can and will support.

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

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

AMENDMENT NO. 2440

(Purpose: To amend the Securities Exchange Act of 1934 with respect to limited partnership rollups)

Mr. DODD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD] for himself and Mr. BOND, proposes an amendment numbered 2440.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following new title:

TITLE _____—LIMITED PARTNERSHIP ROLLUP REFORM

SEC. _____01. SHORT TITLE.

This title may be cited as the "Limited Partnership Rollup Reform Act of 1992".

SEC. _____02. REVISION OF PROXY SOLICITATION RULES WITH RESPECT TO LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.

(a) AMENDMENT.—Section 14 of the Securities and Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

"(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.—

"(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under sections 14(a) and 14(d) as required by this subsection. Such rules shall—

"(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purposes of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title;

"(B) require the issuer to provide to holders of the securities that are the subject of the transaction such list of the holders of the issuer's securities as the Commission may determine in such form and subject to

such terms and conditions as the Commission may specify;

"(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a transaction—

"(i) on the basis of whether the solicited proxies, consents, or authorizations either approve or disapprove the proposed transaction; or

"(ii) contingent on the transaction's approval, disapproval, or completion;

"(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership rollup transaction, including requirements for clear, concise, and comprehensible disclosure, with respect to—

"(i) any changes in the business plan, voting rights, form of ownership interest or the general partner's compensation in the proposed limited partnership rollup transaction from each of the original limited partnerships;

"(ii) the conflicts of interest, if any, of the general partner;

"(iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the limited partnership rollup transaction;

"(iv) the valuation of the limited partnerships and the method used to determine the value of limited partners' interests to be exchanged for the securities in the limited partnership rollup transaction;

"(v) the differing risks and effects of the transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the transaction with less than all limited partnerships;

"(vi) a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and the general partner's evaluation, and a description, of alternatives to the limited partnership rollup transaction, such as liquidation;

"(vii) any opinion (other than an opinion of counsel), appraisal, or report received by the general partner or sponsor that is prepared by an outside party and that is materially related to the limited partnership rollup transaction and the identity and qualifications of the party who prepared the opinion, appraisal, or report, the method of selection of such party, material past, existing, or contemplated relationships between the party, or any of its affiliates and the general partner, sponsor, successor, or any other affiliate, compensation arrangements, and the basis for rendering and methods used in developing the opinion, appraisal, or report; and

"(viii) such other matters deemed necessary or appropriate by the Commission;

"(E) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

"(F) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

The disclosure requirements under subparagraph (D) shall also require that the soliciting material include a clear and concise summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (vii) of that subparagraph) with the risks of the limited partnership rollup transaction set forth prominently in the forepart thereof.

"(2) EXEMPTIONS.—The Commission may, consistent with the public interest, the protection of investors, and the purposes of this Act, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or, from the definition contained in paragraph (4).

"(3) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) or any other provision of this title or precludes the Commission from imposing, under subsection (a) or (d) or any other provision of this title, a remedy or procedure required to be imposed under this subsection.

"(4) DEFINITION.—As used in this subsection the term 'limited partnership rollup transaction' means a transaction involving—

"(A) the combination or reorganization of limited partnerships, directly or indirectly, in which some or all investors in the limited partnerships receive new securities or securities in another entity, other than a transaction—

"(i) in which—

"(I) the investors' limited partnership securities are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A; and

"(II) the investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A;

"(ii) involving only issuers that are not required to register or report under section 12 both before and after the transaction;

"(iii) in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933;

"(iv) which will result in no significant adverse change to investors in any of the limited partnerships with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; or

"(v) where each investor is provided an option to receive or retain a security under substantially the same terms and conditions as the original issue; or

"(B) the reorganization of a single limited partnership in which some or all investors in the limited partnership receive new securities or securities in another entity, and—

"(i) transactions in the security issued are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A;

"(ii) the investors' limited partnership securities are not reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A;

"(iii) the issuer is required to register or report under section 12, both before and after the transaction, or the securities to be issued or exchanged are required to be or are registered under the Securities Act of 1933;

"(iv) there are significant adverse changes to security holders in voting rights, the term of existence of the entity, management compensation, or investment objectives; and

"(v) investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

"(5) EXCLUSION.—For purposes of this subsection, a limited partnership rollup transaction does not include a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate.".

(b) SCHEDULE FOR REGULATIONS.—The Securities and Exchange Commission shall, not later than 12 months after the date of enactment of this Act, conduct rulemaking proceedings and prescribe final regulations under the Securities Act of 1933 and the Securities Exchange Act of 1934 to implement the requirements of section 14(h) of the Securities Exchange Act of 1934, as amended by subsection (a).

SEC. ____03. RULES OF FAIR PRACTICE IN ROLLUP TRANSACTIONS.

(a) REGISTERED SECURITIES ASSOCIATION RULE.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following new paragraph:

"(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6), include rules to prevent members of the association from participating in any limited partnership rollup transaction (as such term is defined in section 14(h)(4)) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to an appraisal and compensation or other rights designed to protect dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such term means any person who files an objection in writing under the rules of the association during the period in which the offer is outstanding and complies with such other procedures established by the association.".

(b) LISTING STANDARDS OF NATIONAL SECURITIES EXCHANGES.—Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following:

"(9) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in section 14(h)(4)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to an appraisal and compensation or other rights designed to protect dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership transaction who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such term means any person who files an objection in writing under the rules of the exchange during the period in which the offer is outstanding.".

(c) STANDARDS FOR AUTOMATED QUOTATION SYSTEMS.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following new paragraph:

"(13) The rules of the association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the Commission as a national market system security resulting from a limited partnership rollup transaction (as such term is defined in section 14(h)(4)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to an appraisal and compensation or other rights designed to protect dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership transaction who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the association during the period during which the offer is outstanding.".

(d) EFFECT ON EXISTING AUTHORITY.—The amendments made by this section shall not limit the authority of the Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934, or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective 18 months after the date of enactment of this Act.

Mr. DODD. Mr. President, I yield to the majority leader.

Mr. MITCHELL. Mr. President, I am advised that this is an amendment that is an important amendment that will require some debate. In view of the hour, I have consulted with the distinguished Republican leader, and we believe that it is best now to indicate that there will be no further rollcall votes this evening, and that we can come back in the morning and proceed to debate the amendment of the Senator from Connecticut, if that is agreeable. I believe that is agreeable.

Mr. RIEGLE. If the Senator will yield, I would like to indicate briefly that I strongly support the proposition he is advancing, namely the rollup legislation. There are some 70 cosponsors in the Senate. Sc we have an overwhelming bipartisan majority.

It is a very good amendment, but the problem that this Senator faces as a manager of the bill, is that this amendment is being offered to the managers' amendment. The managers' amendment is a package that the ranking minority member and I have worked out over a period of time that encompasses a variety of amendments on both sides, and so any amendment that is offered now that I would be prepared to accept, and the Senator from Utah as a ranking minority member is not in a position to accept as part of the managers' amendment, that puts me in the awkward spot of favoring the Senator's amendment, but not being able to accept it as part of the managers' amendment, because I am not able to have the support of the ranking minority member.

So if the Senator were in a position to offer it later on down the line to the bill as a whole, I could enthusiastically support his amendment, which in fact, I support. But under the agreement that I am operating with, which I have reached with the Senator from Utah, I am in the situation that while I support the Senator on the substance, I will not be able to support him in adding it to the managers' amendment.

So I want the record to be clear on that issue, because I think it is an important matter to be dealt with. I appreciate his yielding for that purpose. I want to suggest that the debate on this issue ensue tonight, and I gather if there is going to be a vote, it will occur tomorrow morning.

Mr. GARN. If the chairman will yield, I say to my friend from Connecticut, there is another problem. Normally, as the Senator knows, managers' amendments are usually accepted unanimously. It is not often that we get into so many amendments to a managers' amendment. There is a procedural problem in that if we agree to accept and take up amendments like this, there are several other amendments that will arise, as well. People have said: Well, I will not offer any amendments to the managers' amendment, but if they start appearing, then I will.

We could end up with five or six more amendments to the managers' amendment before we ever get to the bill. So, procedurally, there is a difference between offering it later to the bill, rather than to the managers' amendment.

MODIFICATION OF AMENDMENT NO. 2437

Mr. RIEGLE. If the Senator will yield further, and I appreciate his courtesy, because I know he is not feeling well today. We had one error in the package amendment we sent to the floor in that three paragraphs were inadvertently omitted.

I will ask unanimous consent that that change be made. It has been cleared on the Republican side, and if the Senator will yield for that purpose, and if there is no objection, I ask unanimous consent that the underlying managers' amendment be so modified.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is so modified.

The modification is as follows:

At the end of page 26 of amendment No. 2437, add the following:

(B) compensation practices at comparable publicly held financial institutions;

(C) any fraudulent act of omission, breach of fiduciary duty, or insider abuse by the executive officer with regard to the enterprise; and

(D) other factors that the Director determines to be relevant.

On page 2 of amendment No. 2437, line 15, strike "risk-based.".

Mr. RIEGLE. I thank the Chair, and I thank the Senator from Connecticut.

Mr. DODD. Mr. President, let me say that I appreciate the comments of my colleagues from Michigan and Utah regarding the managers' amendment. I just note that I understand that, and that those agreements are reached from time to time, but there are matters in the managers' amendment which are controversial, as well, which do not necessarily enjoy broad-based support.

Mr. President, I am prepared to enter into a unanimous consent agreement on the time for this amendment. I see my colleague from Texas, for whom I have the highest respect, indicating by the horizontal motion of his head that he does not necessarily agree with that idea, so I gather such a request would be unacceptable at this point.

Mr. President, I would be prepared to talk about this amendment a bit this evening, or to wait and debate it in the morning. I have no desire to keep people here this evening. We could settle on a time to begin tomorrow. In fact, I might ask the distinguished Senator from Michigan, if he is on the floor or the majority leader, what time he would like to commence in the morning to debate this amendment.

Mr. MITCHELL. Mr. President, I have discussed the matter with the distinguished manager, and he suggested that we return to the amendment at 10 a.m. So I am going to suggest that we shortly end the session of the day and return to the amendment of the Sen-

ator from Connecticut at 10 a.m., if that is agreeable.

Mr. DODD. It certainly is. Mr. President, I do not know that I want to start a lengthy statement on this amendment this evening. I will just yield to the majority leader.

Mr. MITCHELL. Mr. President, I suggest that we resume at 10 a.m., and the Senator can make his statement at the that time, and debate can begin at that time.

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

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

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate turn to morning business, with Senators allowed to speak therein.

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

RHODE ISLAND GENERAL ASSEMBLY ADDRESSES THE U.N. CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

Mr. PELL. Mr. President, I want to take this time to recognize the recent action by the General Assembly of the State of Rhode Island regarding the U.N. Conference on Environment and Development. On June 4, the General Assembly adopted a resolution calling on the President to: Exercise a leadership role at the Conference, to sign the Conventions on Climate Change and Biological Diversity, and to support Agenda 21. I ask unanimous consent that a copy of the text appear in the RECORD immediately following my remarks.

Mr. President, this resolution, which reaffirms the importance of UNCED, is a testament to the vision of the Rhode Island Assembly. The resolution brings home the fact that UNCED addressed issues that affect each of us. It shows that the Conference was not just a meeting in a distant city with no relevance to the daily lives of our citizens.

I urge my colleagues to take a few minutes to read the resolution and reflect upon the real change in public attitudes on the environment that it reflects. No longer is protection of the global environment viewed as a peripheral issue. It is now at the center of discussion not only at the international and national levels, but also at our State capitols. I only regret we did not take more of a leadership position.

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

HOUSE RESOLUTION

Whereas, it is acknowledged that the leaders and representatives of a large number of the world's nations will gather this week in Rio de Janeiro, Brazil, for the United Nations Conference on Environment and Development; and

Whereas, an American delegation, including the President of the United States and the Environmental Protection Administrator will be in attendance; and

Whereas, it is acknowledged that the earth grows more and more threatened every day due to overpopulation and pollution and gluttony of the earth's natural resources; and

Whereas, it is acknowledged that continued devastation of the earth's rainforests at the rate of an acre each second not only threatens the overall climate and environment of the earth but also destroys countless species of animal and plant life, including plant life that has the potential for important medicinal uses; and

Whereas, the continued pollution of the atmosphere by the use of fossil fuels raises the risk of a runaway greenhouse effect, which threatens life on the planet and ravages the earth's growing regions; and

Whereas, the continued use of chlorofluorocarbons (CFCs) threatens the earth's natural ozone layer which protects life from the harmful effects of solar radiation; and

Whereas, more than 3 million children died last year from waterborne disease, where most of the deaths could have been prevented by safe drinking water and decent sanitation; and

Whereas, once-fertile soils, attacked by overcultivation, overgrazing and overcutting, are turned to deserts at the rate of 15 million acres of productive land lost each year; and

Whereas, unmanaged deforestation and fishing is causing the disappearance of hundreds of species of life every year, with more on the threatened and endangered lists: Now, therefore, be it

Resolved, That this House of Representatives of the State of Rhode Island and Providence Plantations calls upon the President to play a major leadership role at the Earth Summit to halt the growing threats of pollution and defoliation of the planet; and be it further

Resolved, That this House of Representatives calls on the President to commit the United States to solving the crisis by signing the Global Warming Treaty to curb emissions of greenhouse gases: And be it further

Resolved, That this House calls upon the President to commit the United States to Agenda 21 at the Rio conference, that being a plan for the industrial nations to help poor countries develop their economies without ruining their environments: And be it further

Resolved, That this House calls upon the President to sign a biodiversity treaty to slow the loss of endangered species on the plants: And be it further

Resolved, That the Secretary of State be and she hereby is authorized and directed to transmit duly certified copies of this resolution to the President of the United States, the Rhode Island delegation to the United States Congress, the Environmental Protection Administrator, other delegates to the United Nations Conference on the Environment and Development and all statewide media outlets.

NATIONAL DEPOSIT LAW

Mr. JEFFORDS. Mr. President, I am here today to put to rest my colleagues' concerns about the bottle bill. There has been so much disinformation over the years on this issue that some may find it difficult to discern the facts. I urge my colleagues and their staffs to look into this issue. A lot has been written recently about America's disenchantment with Congress. Many Americans feel this place is run by special interests. Well, a national deposit law is a chance to prove that facts speak louder than PAC's.

This issue will soon come up for a vote. It is going to be an uphill battle. Regardless of the outcome, I believe it important to get my colleagues on the record.

But first, I need to ask my colleagues on the other side of the aisle a question. Where does Governor Clinton stand on a national bottle bill? On Earth Day, Governor Clinton supported a bottle bill and went so far as to predict that if he were President, he would get a national bottle bill passed. That was Earth Day.

Then, the Democratic leadership went to New Orleans, and a bottle bill pledge has never reappeared. Now, my staff has to listen to industry sources brag about how Governor Clinton got a phone call from Atlanta and has never mentioned a bottle bill again. What's going on here? Is he for a bottle bill, or not?

Some say Bush has not been an environmental President. Well, if it's true that industry got Governor Clinton to drop a bottle bill with a simple phone call, so much for anyone in the other party claiming their candidate to be more proenvironment. So, does Governor Clinton still support a bottle bill or does he not? If he does, let us see some action. How about a letter of support? Better yet, or in addition, Governor Clinton has said if he were President, a national deposit law would be enacted. Why wait? Governor Clinton, show us how you can lead your party to action on the environment this year. Show us how you can lead a Democratic-controlled Senate that won't even hold a hearing on this issue to make the right choice for America.

This is such an important chance to help America. A national deposit law is a low-cost means to solve a number of problems while putting Americans to work. It would reduce our need for new landfills, and foster and support State and local recycling programs. It is a commonsense, proven proposal that 70 percent of Americans support.

It has become popular to promote the idea that deposit legislation will mean the doom of curbside recycling programs. Nothing could be further from the truth. In fact, the bottle bill actually compliments curbside recycling efforts. According to the Container Recycling Institute, 17–35 percent more ma-

terials can be recovered from municipal solid waste in a combined curbside and bottle bill program than with curbside alone. Nine of the ten States with deposit legislation have such programs.

The city of Seattle discovered that they would see an increase of between 42 and 54 percent in beverage container recycling from a combined curbside and deposit legislation program. Cincinnati found that a deposit law combined with their curbside recycling program would reduce their current recycling costs by 25 percent and result in an additional 6,000-ton reduction in solid waste volume every year. Last, California found deposit legislation entirely compatible with curbside programs and concluded: "* * * the positive effect of the beverage container recycling program on curbside recycling was evident by the average overall 37 percent increase in volume of aluminum recycled and a 224-percent increase in revenue."

There has been no evidence to show that the implementation of this legislation would have a negative impact upon current programs. How many times do we have to show that deposit legislation is not incompatible with curbside and in fact improves upon curbside programs?

Even without curbside programs, the recovery rate for States with deposit legislation is markedly higher in comparison. Studies show that the 10 deposit States recycle 66 percent more metal, 954 percent more glass, and 1,033 percent more plastic than States without such legislation. In fact, deposit States produce 98 percent of the Nation's recycled plastic beverage containers. Ninety-eight percent is an amazing number when you consider that these States have only 30 percent of the Nation's population.

Some people claim that a deposit law will cost more than its worth, but deposit legislation reduces litter, actually saving the Government money. In Michigan, two studies found that beverage container roadside litter dropped 85 percent and showed savings of $18 million in solid waste management costs. The New York beer wholesalers projected that the State would save $50 million in litter pickup costs and $19 million in solid waste disposal costs. The city of Seattle concluded that deposit legislation would have saved them a minimum of $591,000.

Furthermore, recycling collection costs will drop because high volume plastics will be removed from the waste stream. In addition, the unclaimed deposits will go to finance environmental activities in the States. That could be millions and millions of dollars for the environment and recycling programs. I wonder if the bottlers are telling this to recycling coordinators.

And, litter is more than just unsightly. It can be dangerous. This amendment will protect children. In Massachusetts, glass-related injuries to children dropped 60 percent. Concerned about farmers? Beverage containers are estimated to cause losses of over $2 billion annually to farmers, as this hazardous litter injures farm animals and machinery. A national deposit law would reduce beverage container waste by 83 percent and keep an additional 4.7-million tons of beverage containers out of landfills and incinerators, and out of the streets where our children play.

But deposit legislation not only reduces pollution, it also saves energy. Recycling saves 95 percent of the energy required to produce new materials—equal to 23 million barrels of oil a year.

Now the bottlers say that deposit laws cost jobs—in glass, for instance. The decline in glass jobs, however, has been due to the rise in aluminum use, not deposit legislation. Furthermore, in my State and others we've seen an increase in the use of refillable glass bottles. In fact, statistics from the Beer Institute show that the market for refillable bottles is 400 percent higher in States which have deposit legislation than in others. For the other beverage container industries the facts are clear. California's program created 3,411 new jobs. Oregon's employment increased by 365 jobs. GAO estimates that Michigan created about 4,888 new jobs. Maine gained 1,257 jobs, while my State created about 400 jobs. Last, New York created 4,069 new jobs.

Finally, I expect to be asked why we should enact this law if State legislatures will not. The reason—GAO found that 70 percent of American's support deposit legislation. It's that simple. And if we cannot be representative of the wishes of 70 percent of the American people, what can we accomplish? Perhaps we should ask why the legislators are not being more responsive to their constituents. I heard that the bottlers have contributed about $4 million in campaign contributions. In votes on deposit legislation, I've found that bottlers outspent citizens by over 7 to 1. For seven times the money no wonder big money wins.

We are not being unreasonable with our proposal. Deposit legislation need not be enacted in every State. It is only applicable to States which do not achieve a 70-percent recovery rate for beverage containers within 3 years. But, as a compromise, if a State reaches a 60-percent recovery rate within 3 years, these States would have an additional 2 years to meet the goal. The proposal is very flexible in this regard. States may use any method they want to reach the 70-percent goal, after which, they need do nothing more. We are not asking for a recovery rate of 90 percent or even 80 percent which nearly every bottle bill State has achieved.

You may ask, why all the fuss? Simply put, this country uses over 120 billion beverage containers every year. Most of these go right into the trash and from there to the landfill or incinerator. This is criminal. We have the power to put an end to this terrible waste, and we should.

Mr. President, I thank you, and I yield the floor.

THE DEATH OF SCOTT SLOAN

Mr. WARNER. Mr. President, I wish to call the attention of my colleagues to a personal tragedy involving the family of one of Congress' most valuable staffers, Stanley Sloan, the Congressional Research Service's senior specialist in international security policy. All of us in Congress who have grappled over the years with the issues of NATO and the United States' role as the leader of the Western alliance, with conventional arms control, and with new foreign policy opportunities after the cold war are familiar with the breadth and depth of Stan's work.

Last Thursday, Stan and Monika Sloan's 16-year-old son Scott was one of four teenagers killed in a tragic automobile accident in Virginia. Scott was a gifted baseball player and a budding poet, and was truly the center of his parents' lives. Stan and Monika made the time in their own busy professional lives to be deeply involved with Scott. For years, Stan has been active in the Babe Ruth League in Vienna, VA.

Mr. President, I know my colleagues will want to join with me in extending our heartfelt sympathy and support to Stan Sloan and his family in their bereavement.

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on June 19, 1992, during the recess of the Senate, received a message from the President of the United States transmitting sundry nominations and a treaty which were referred to the appropriate committees.

(The nominations received on June 19, 1992, are printed in today's RECORD at the end of the Senate proceedings.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, 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.)

FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND THE REPUBLIC OF ESTONIA—MESSAGE FROM THE PRESIDENT—PM 252

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred jointly to the Committee on Commerce, Science, and Transportation and the Committee on Foreign Relations:

To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94-265; 16 U.S.C. 1801, *et seq.*), I transmit herewith an Agreement between the Government of the United States of America and the Government of the Republic of Estonia Concerning Fisheries off the Coasts of the United States, with annex, signed at Washington on June 1, 1992. The agreement constitutes a governing international fishery agreement within the requirements of section 201(c) of the Act.

Fishing industry interests of the United States have urged prompt implementation of this agreement to take advantage of opportunities for seasonal cooperative fishing ventures.

GEORGE BUSH.

THE WHITE HOUSE, *June 23, 1992.*

MESSAGES FROM THE HOUSE RECEIVED DURING THE RECESS

ENROLLED BILL SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on June 19, 1992, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

H.R. 5132. An act making dire emergency supplemental appropriations for disaster assistance to meet urgent needs because of calamities such as those which occurred in Los Angeles and Chicago, for the fiscal year ending September 30, 1992, and for other purposes.

Under the authority of the order of the Senate of January 3, 1991, the enrolled bill was signed on Friday, June 19, 1992, during the recess of the Senate, by the President pro tempore [Mr. BYRD].

MESSAGES FROM THE HOUSE

At 11:50 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of the reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5373. An act making appropriations for energy and water development for the fiscal year ending September 30, 1993, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 192. A concurrent resolution to establish a Joint Committee on the Organization of Congress.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker has signed the following bill and joint resolution:

S. 250. An act to establish national voter registration procedures for Federal elections, and for other purposes; and

H.J. Res. 470. Joint resolution to designate the month of September 1992 as "National Spina Bifida Awareness Month."

At 4 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 2703) to authorize the President to appoint Gen. Thomas C. Richards to the Office of Administrator of the Federal Aviation Administration.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1624. An act to authorize the American Battle Monuments Commission to establish a memorial in the District of Columbia, or its environs, to honor members of the Armed Forces who served in World War II, and to commemorate the participation of the United States in that conflict;

H.R. 3711. An act to authorize grants to be made to State programs designed to provide resources to persons who are nutritionally at risk in the form of fresh nutritious unprepared foods, and for other purposes;

H.R. 4505. An act to designate the facility of the United States Postal Service located at 20 South Montgomery Street in Trenton, New Jersey, as the "Arthur J. Holland United States Post Office Building";

H.R. 4771. An act to designate the facility under construction for use by the United States Postal Service at FM 1098 Loop in Prairie View, Texas, as the "Esel D. Bell Post Office Building";

H.R. 4786. An act to designate the facility of the United States Postal Service located at 20 South Main in Beaver City, Utah, as the "Abe Murdock United States Post Office Building";

H.R. 5412. An act to authorize the transfer of certain naval vessels to Greece and Taiwan; and

H.J. Res. 509. Joint resolution to extend through September 30, 1992, the period in which there remains available for obligation certain amounts appropriated to the Bureau of Indian Affairs for the school operations cost of Bureau-funded schools.

ENROLLED BILL SIGNED

At 7:05 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 2703. An act to authorize the President to appoint General Thomas C. Richards to the Office of Administrator of the Federal Aviation Administration.

MEASURES REFERRED

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

H.R. 1624. An act to authorize the American Battle Monuments Commission to establish a memorial in the District of Columbia, or its environs, to honor members of the Armed Forces who served in World War II, and to commemorate the participation of the United States in that conflict; to the Committee on Rules and Administration.

H.R. 4505. An act to designate the facility of the United States Postal Service located at 20 South Montgomery Street in Trenton, New Jersey, as the "Arthur J. Holland United States Post Office Building"; to the Committee on Governmental Affairs.

H.R. 4771. An act to designate the facility under construction for use by the United States Postal Service at FM 1098 Loop in Prairie View, Texas, as the "Esel D. Bell Post Office Building"; to the Committee on Governmental Affairs.

H.R. 4786. An act to designate the facility of the United States Postal Service located at 20 South Main in Beaver City, Utah, as the "Abe Murdock United States Post Office Building"; to the Committee on Governmental Affairs.

H.R. 5373. An act making appropriations for energy and water development for the fiscal year ending September 30, 1993, and for other purposes; to the Committee on Appropriations.

H.R. 5412. An act to authorize the transfer of certain naval vessels to Greece and Taiwan; to the Committee on Armed Services.

The following joint resolution, received by the Senate on June 12, 1992, was read the first and second times by unanimous consent, and referred as indicated:

H.J. Res. 320. Joint resolution authorizing the government of the District of Columbia to establish, in the District of Columbia or its environs, a memorial to African-Americans who served with Union forces during the Civil War; to the Committee on Rules and Administration.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

S. 2877. A bill, Interstate Transportation of Municipal Waste Act of 1992.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3460. A communication from the President of the United States, transmitting, pursuant to law, a proclamation that extends nondiscriminatory treatment to the products of Romania; to the Committee on Finance.

EC-3461. A communication from the Director of the United States Arms Control and Disarmament Agency, transmitting, pursuant to law, the report on verification of the START Treaty; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES SUBMITTED DURING RECESS

Under the authority of the order of the Senate of June 19, 1991, the following reports of committees were submitted on June 19, 1992, during the recess of the Senate:

By Mr. BENTSEN, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 3040. An act to provide a program of Federal supplemental compensation, and for other purposes (Rept. No. 102-300).

By Mr. BURDICK, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute and an amendment to the title:

S. 976. A bill entitled the "Resource Conservation and Recovery Act Amendments of 1991" (Rept. No. 102-301).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance, without amendment:

S. 2880. An original bill to authorize appropriations for fiscal years 1993 and 1994 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Customs Service, and for other purposes (Rept. No. 102-302).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. BOND (for himself, Mr. DURENBERGER, Mr. SEYMOUR, Mr. COCHRAN, Mr. MCCAIN, Mr. DANFORTH, Mr. BURNS, Mr. COATS, and Mr. DOMENICI):

S. 2878. A bill to amend the Social Security Act to improve and make more efficient the provision of medical and health insurance information, and for other purposes; to the Committee on Finance.

By Mr. LEAHY:

S. 2879. A bill to prohibit the Secretary of Agriculture from spending or obligating any appropriated funds to purchase, procure, or upgrade computers used by certain farmer service agencies of the Department of Agriculture prior to the implementation by the Secretary of reforms of the field structure and organization of the farmer service agencies, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BENTSEN, from the Committee on Finance:

S. 2880. An original bill to authorize appropriations for fiscal years 1993 and 1994 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Customs Service, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mr. DOLE:

S. 2881. A bill to amend title XI of the Social Security Act to allow an adult from each family or household applying for benefits under title IV or XIX of the Social Security Act to attest to the citizenship status of the other members of the family or household, and for other purposes; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. HOLLINGS):

S. 2882. A bill to authorize appropriations for the National Telecommunications and Information Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE:

S. 2883. A bill to amend title VII of the Tariff Act of 1930 to include interim processors within industries producing processed agricultural products, and for other purposes; to the Committee on Finance.

By Mr. COCHRAN (for himself, Mr. PRYOR, Mr. LOTT, Mr. HEFLIN, Mr. LUGAR, Mr. SHELBY, and Mr. BUMPERS):

S. 2884. A bill to expand the meat inspection programs of the United States by establishing a comprehensive inspection program to ensure the quality and wholesomeness of all fish products intended for human consumption in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ROBB:

S. 2885. A bill to modify the boundary of Appomattox Court House National Historical Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MITCHELL (for himself and Mr. DOLE):

S.J. Res. 320. A joint resolution approving the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Romania; to the Committee on Finance.

By Mr. KOHL (for himself, Mrs. KASSEBAUM, Mr. AKAKA, Mr. BROWN, Mr. BURNS, Mr. D'AMATO, Mr. INOUYE, Mr. KASTEN, Mr. LEVIN, Mr. MOYNIHAN, Mr. SIMON, Mr. STEVENS, and Mr. WELLSTONE):

S.J. Res. 321. A joint resolution designating the week beginning March 21, 1993, as "National Endometriosis Awareness Week"; to the Committee on the Judiciary.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND (for himself, Mr. DURENBERGER, Mr. SEYMOUR, Mr. COCHRAN, Mr. MCCAIN, Mr. DANFORTH, Mr. BURNS, Mr. COATS, and Mr. DOMENICI):

S. 2878. A bill to amend the Social Security Act to improve and make more efficient the provision of medical and health insurance information, and for other purposes; to the Committee on Finance.

MEDICAL AND HEALTH INSURANCE INFORMATION REFORM ACT

Mr. BOND. Mr. President, I rise today to introduce the Medical and Health Insurance Information Reform Act of 1992 on behalf of myself, Mr. DURENBERGER, Mr. SEYMOUR, Mr. COCHRAN, Mr. MCCAIN, Mr. DANFORTH, Mr. BURNS, and Mr. COATS. This is the administration's health and human services provision for reforming the administration of health care costs.

Mr. President, each health care bill in the country effectively has at least a 10 percent surcharge added to it because of high administrative costs and health fraud. Billions of dollars each year are wasted from family's budgets, employee's paychecks, employer's budgets and from the State and Federal government's budget. It is hard to imagine a more complicated system than the one we have in health care with about 1,500 different insurers and millions of health providers from hospitals to doctors to pharmacists to medical laboratories and more. Each insurer, in turn, can require different information for billing purposes making the doctor or hospital or consumer's job of getting insurance to pay for covered services a paperwork hassle of the first order. It's like having 1,500 IRS' with 1,500 different 1040 forms.

We already have the technology and know-how to computerize, simplify and steamline this entire process. It should be no surprise because, in fact, in other sections such as banking and securities this computerization has already taken place.

As obvious as the need for reducing the misery of this predicament, is, the benefits from computerizing all of these various health transactions has many other benefits. In addition to reducing administrative costs, we will also have a greater ability to track down health fraud—which amounts to billions more in waste each year. We will have the tools to use the data generated from the computerization to increase the quality of health care and the ability to compare the value of health care services and insurance plans.

ADMINISTRATIVE COSTS

Everyone, it seems, has a story to tell about the landslide of paperwork that results when one gets sick.

I know we do in our family, and I suppose other families can replicate that system. I know of too many people who can proudly show off stacks of paperwork several inches or several feet thick dealing with one particular illness.

Anyone who has ever dealt with Medicare certainly knows what I am talking about. Or it might be the seemingly simple act of turning in all of those receipts to the insurance company from that shoebox and facing up to filling out the paperwork is a daunting prospect. But the life of that burdensome paper forms does not end when you mail the forms in, its life of torment has only just begun. When those forms reach the insurance company they are painstakingly entered into a computer by hand at the insurance company.

Doctors and hospitals, in fact everyone in health care down to your corner druggist, must go through this unpleasant exercise each day with each bill they must submit and the process is very similar.

Imagine having to fill out your tax forms every day of the year instead of just to meet the April deadline. In most cases, somewhere in the process,

a paper claim form is entered that suits the requirements of whichever insurance company is to receive it. The claim is mailed to the insurance company where it is entered by hand into the insurance company's computer. If there is any information missing or the slightest bit incorrect, for instance, if the number for one of the codes is copied incorrectly, another paper form is sent back with the original paper form with an explanation of why the insurance company couldn't pay and the process of filling out the paper form starts over again.

Sound confusing? Well it is. And it is costing American consumers of health care billions of dollars. And it is pointless.

The unbelievable hassle and exasperation with the health insurance paper blizzard results mainly from the lack of any standardization in the information that insurers and other payors require from patients, doctors, hospitals and other health providers.

Computerizing health care does not end with just billing information but includes any information that has to be communicated back and forth between the provider and the payor. This means determining whether the insurance company will cover a particular doctor visit, how much they will pay and how much coinsurance, if any, the patient is responsible for.

This legislation will begin the process of getting the much needed standards in place so that the hundreds of computer systems out there can talk to each other and send this information back and forth and eliminate the paper and thus eliminate the paperwork hassle for consumers and providers.

This confusing, disjointed system is a haven for the dishonest health provider or consumer to bilk the system. Health fraud is estimated by the FBI to be upwards of $150 billion a year. While that may seem to be a bit high to many of us, it is safe to say that the cost is in the tens of billions. Health fraud may be as simply as billing two insurance companies for the same service, or charging for a complicated, in-depth examination when only a simple examination was actually performed—a practice known as up-coding. The possibilities are many and the cost is high. Computerizing health care billing information will give us the tools to track that fraud in ways that are impossible to do under the paper-based maze we have today.

Computerizing health care will improve the quality of health care in many different ways. The most obvious and perhaps most important would be for a patient's medical history to be immediately available in an emergency when seconds count and access to critical medical information in those seconds can mean the difference between life and death.

Questions in medical practice today about what exactly defines quality of care and how to study variations in medical procedures in various regions of the country are questions that can be answered with the wealth of data that will be available to researchers and clinicians through computerization. The ability to compare health care quality and outcomes from medical care will revolutionize how health care is delivered in this country.

Consumers, for the first time, will have access to the information they need to compare the value of insurance plans and health services. Consumers will be able to be wise purchasers of health care as never before. The ability of all purchasers of health services, from individual consumers, employers, unions to insurance companies themselves to compare the quality and cost of health providers is perhaps the most important benefit of computerization.

Mr. President, there are numerous compelling reasons for computerization of health care data interchange system that currently relies mostly on paper. I began working on this important effort last year and in February of this year introduced S. 2306, the Health Insurance Simplification and Portability Act that is very similar in many ways to the bill I am introducing today. I have also been working in the Appropriations Committee to getting funding for much needed pilot projects that will get the ball rolling toward computerization health care and achieving the billions of dollars of savings that are possible.

This bill, the Medical and Health Insurance Information Reform Act is a key piece of the President's health reform plan he proposed on February 6 of this year. We will be working with the administration and others who see this effort as key to making our health system work better, improving the quality of health care and saving billions of dollars in the process.

Mr. President, I invite my colleagues to have their staffs review this information, to join us in cosponsoring it, and to join us in advocating that we move ahead to reduce the necessary paperwork hassle that costs billions of dollars and masks some of the vitally needed changes that are so apparent in the health care system today.

Mr. President, I ask unanimous consent that a copy of the bill, a summary of the proposed act, and a letter from Secretary Louis W. Sullivan to the Vice President transmitting this bill be printed in the RECORD.

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

S. 2878

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 "Medical and Health Insurance Information Reform Act of 1992".

SEC. 2. MEDICAL AND HEALTH INSURANCE INFORMATION REFORM.

The Social Security Act is amended by adding at the end the following:

"TITLE XXII—MEDICAL AND HEALTH INSURANCE INFORMATION REFORM.

"PART A—COMPARATIVE VALUE INFORMATION

"COMPARATIVE VALUE INFORMATION PROGRAMS FOR HEALTH CARE PURCHASING

"SEC. 2200. (a) PURPOSE.—In order to assure the availability of comparative value information to purchasers of health care in each State, the Secretary shall determine whether each State is developing and implementing a health care value information program that meets the criteria and the schedule set out in subsection (b).

"(b) CRITERIA FOR STATE PROGRAMS.—A State's health care value information program shall be determined by the Secretary to meet the criteria and the schedule of this subsection if—

"(1) the State begins promptly after enactment of this section to develop (directly or through contractual or other arrangements with coalitions of health care purchasers, one or more States, other entities, or any combination of such arrangements) information systems regarding comparative health care values;

"(2) the information contained in such systems covers at least the average prices of common health care services (as defined in subsection (c)) and information related to the value of each health insurance plan available in the State, including premium costs and the value of benefits, and, where available, measures of the variability of those prices within the State or other market areas;

"(3) the information described in paragraph (2) is made available within the State beginning not later than one year after enactment of this section, and is revised as frequently as reasonably necessary, but at intervals of no greater than one year; and

"(4) not later than four years following the enactment of this section, the State has developed information systems that provide comparative quality and outcomes data with respect to health insurance plans and hospitals and made the information broadly available within the relevant market areas.

"(c) DEFINITION.—For purposes of this section, 'common health care services' includes such procedures as the Secretary may specify and any additional health care services which a State may wish to include in its comparative value information program.

"(d) FEDERAL IMPLEMENTATION.—If the Secretary finds, at any time, that a State has not developed a health care value information program, or has failed to implement it (on a continuing basis) in accordance with the criteria and schedule set out in subsection (b), he shall take the actions necessary, directly or through grant or contract, to implement a comparable program in such State. Fees may be charged by the Secretary for the informational materials provided pursuant to such program. Any amounts so collected shall be deposited in the appropriation account from which the Secretary's costs of developing and providing such materials were met, and shall remain available for such purposes until expanded.

"(3) COMPARATIVE VALUE INFORMATION CONCERNING FEDERAL PROGRAMS—The head of each Federal agency with responsibility for the provision of health insurance, or of health care services, to individuals shall promptly develop health care value information relating to each program that he administers, and covering types of data comparable

to the types of data that a State program meeting the criteria of this part would provide. Such information shall be made generally available to States and to providers and consumers of health care services.

"(f) INFORMATION FOR RESEARCH FROM INSURERS.—

"(1) The Secretary, after consulting with insurers, providers, and others, shall promulgate (and may modify from time to time) requirements for the periodic submission by insurers to the Secretary on a sample basis of health care data relevant to research concerning health care services, and shall promulgate an effective date for those requirements, to be at least one year after their promulgation.

"(2) Each insurer shall comply with the requirements specified by the Secretary under paragraph (1) by the effective date specified by the Secretary.

"(3) For provisions imposing an excise tax with respect to noncompliance with Federal requirements under this subsection, see section 5000A of the Internal Revenue Code of 1986.

"(g) RELEASE OF MEDICARE INFORMATION.—

"(1) The Department of Health and Human Services shall make available, under section 552 of title 5, United States Code, all records of claims filed under the programs established by title XVIII of the Social Security Act, without regard to the consent of the physician or other individual who furnished the item or service in question.

"(2)(A) Paragraph (1) shall not affect any prohibition against disclosure under section 552a of title 5, United States Code, with respect to any individual to whom an item or service was furnished.

"(B) The requirement of paragraph (1) does not apply to information received by the Department of Health and Human Services, or by any of its contractors, before the date of enactment of the Medical and Health Insurance Information Reform Act of 1992.

"(h) DEVELOPMENT OF MODEL SYSTEM.—

"(1) The Secretary shall, directly or through grant or contract, develop model systems to facilities gathering of health care cost, quality, and outcomes data and analyzing such data in a manner that will permit the valid comparison of such data cost, quality, and outcomes among providers and among health plans. The Secretary shall support experimentation with different approaches to achieve the objectives of the preceding sentence in the most cost effective manner (relative to the accuracy and timeliness of the data secured) and shall evaluate the various methods to determine their relative success. When he considers it appropriate, the Secretary may establish standards for the collection and reporting of health care cost, quality, and outcomes data in order to facilitate analysis and comparisons among States and nationally.

"(2) There are authorized to be appropriated such sums as are necessary for each fiscal year beginning with fiscal year 1993, to enable the Secretary to conduct the activities required by paragraph (1), including evaluation of the different approaches tested under such paragraph and their relative cost effectiveness.

"GRANTS FOR THE DEVELOPMENT OF STATE PROGRAMS

"SEC. 2201. (a) GRANT AUTHORITY.—The Secretary may make grants to each State to enable such State to plan the development of its health care value information program described in section 2200, and if necessary, to initiate the implementation of such program. Each State seeking such a grant shall submit an application therefor, containing such information as the Secretary finds necessary to assure that the State is likely to develop and implement a program in accordance with the criteria and schedule of section 2200(b).

"(b) OFFSET AUTHORITY.—If, at any time within the three year period following the receipt by a State of a grant pursuant to subsection (a), the Secretary is required by section 2200(d) to implement a health care information program in such State, he may recover the amount of the grant under subsection (a) by offset against any other amount payable to such State under this Act. The amount of the offset shall be made available (from the appropriation account with respect to which the offset was taken) to the Secretary to carry out section 2200(d) in such State.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

"PART B—STORAGE AND TRANSMISSION OF MEDICAL AND HEALTH INSURANCE INFORMATION AND PRIORITY OF PAYMENT

"PREEMPTION OF STATE QUILL PEN LAWS

"SEC. 2210. After 1993, no effect shall be given to any provision of State law that requires medical or health insurance records (including billing information) to be maintained in written, rather than electronic, form.

"PROMULGATION OF REQUIREMENTS BY SECRETARY

"SEC. 2211. (a) HEALTH INSURANCE INFORMATION PRIVACY AND CONFIDENTIALITY PROTECTION.—

"(1) The Secretary, after taking into consideration the Insurance Information and Privacy Protection Model Act of the NAIC, shall promulgate by January 1, 1993, (and may modify from time to time) requirements concerning health insurance information privacy and confidentiality protection for individuals. There shall be included a requirement that information that identifies individuals shall not be redisclosed (with such limited exceptions as the Secretary may provide) except to the extent necessary to carry out the purpose for which the information was collected.

"(2) The Secretary, in promulgating requirements under paragraph (1), shall take into consideration the following principles concerning information that identifies individuals:

"(A) Such information should be collected only to the extent necessary to carry out the purpose for which the information is collected.

"(B) Such information collected for one purpose should not be used for another purpose without the individual's informed consent.

"(C) Such information should be disposed of when no longer necessary to carry out the purpose for which it was collected.

"(D) Methods to ensure the accuracy, reliability, relevance, completeness, and timeliness of such information should be instituted.

"(E) Individuals should be notified (in advance of the collection of such information) as to whether the furnishing of such information is mandatory or voluntary, as to what the record keeping practices are concerning such information, and as to what uses will be made of such information.

"(F) Individuals should be permitted to inspect and correct such information concerning themselves.

"(b) STANDARDS AND REQUIREMENTS FOR THE ELECTRONIC RECEIPT AND TRANSMISSION OF HEALTH INSURANCE INFORMATION.—

"(1) By January 1, 1994, the Secretary shall determine whether problems relating to standards for the electronic receipt and transmission of health insurance information cause significant administrative costs. If the Secretary determines that such problems do cause significant administrative costs, the Secretary, after consulting with the Accredited Standards Committee X-12 of the American National Standards Institute, insurers, providers, and others, shall promulgate (and may modify from time to time) standards concerning the electronic receipt and transmission of claims, payment, eligibility, and enrollment information (including requirements, consistent with those promulgated under subsection (a), to protect privacy and confidentiality), and shall promulgate an effective date for those standards, to be at least one year after the promulgation of the standards.

"(2) By January 1, 1994, the Secretary shall determine whether problems relating to the receipt and transmission of health insurance eligibility verification cause significant administrative costs. If the Secretary determines that such problems do cause significant administrative costs, the Secretary, after consulting with the Accredited Standards Committee X-12 of the American National Standards Institute, insurers, providers, and others, shall promulgate (and may modify from time to time) requirements concerning the receipt and transmission of health insurance eligibility verification, and shall promulgate an effective date for those requirements, to be at least one year after the promulgation of the requirement.

"(3) By January 1, 1994, the Secretary shall determine whether the proportion of health insurance claims and payment information received and transmitted by paper will continue to cause significant administrative costs. If the Secretary determines that the proportion will continue to cause significant administrative costs, the Secretary, after consulting with the Accredited Standards Committee X-12 of the American National Standards Institute, insurers, providers, and others, shall promulgate (and may modify from time to time) a requirement that insurers receive and transmit a specified proportion of (or all) health insurance claims and payment information electronically (with such exceptions as the Secretary may specify from time to time), and shall promulgate an effective date for that requirement, to be at least one year after the promulgation of the requirement.

"(c) HEALTH INSURANCE CLAIM FORMS.—

"(1) By January 1, 1994, the Secretary, after consulting with insurers, providers, and others, shall promulgate (and may codify from time to time) requirements for the format and content of basic claim forms under health insurance plans.

"(2) The Secretary shall determine whether the variety of information requested by insurers (in addition to the information requested in basic claim forms) causes administration costs that are disproportionate to the benefits derived from that information. If the Secretary determines that the variety of information requested does cause such costs, the Secretary, after consulting with insurers, providers, and others, shall publish (and may modify from time to time) recommendations concerning what additional information should be allowed to be requested and in what format.

"(d) PRIORITY AMONG INSURERS.—By January 1, 1994, but after June 30, 1993, the Sec-

retary, after consulting with the NAIC, shall promulgate (and may modify from time to time) rules for determining the liability of insurers when benefits are payable under two or more health insurance plans.

"(e) FURNISHING OF INFORMATION AMONG INSURERS.—By January 1, 1995, but after June 30, 1994, the Secretary shall determine whether problems relating to the availability of information among insurers when benefits are payable under two or more health insurance plans cause significant mistaken benefit payments or administrative costs. If the Secretary determines that such problems do cause significant mistaken benefit payments or administrative costs, the Secretary shall promulgate (and may modify from time to time) requirements concerning the transfer among insurers (and annual updating) of appropriate information (which may include requirements for the use of unique identifiers, and for the listing of all individuals covered under a health insurance plan), and shall promulgate an effective date for those requirements (to be not earlier than one year after the promulgation of the requirements).

"STATE PROGRAMS

"SEC. 2212. The Secretary shall determine from time to time, for each State, whether—

"(1) the State has in effect standards, requirements, and rules (for insurers other than administrators of self-insured employee plans) substantially the same (or, for section 2214, at least as protective of privacy and confidentiality) as those described in sections 2214 through 2219, and

"(2) the State maintains an effective enforcement mechanism for those State requirements.

"APPLICATION OF FEDERAL REQUIREMENTS

"SEC. 2213(a) ADMINISTRATORS OF SELF-INSURED EMPLOYEE PLANS.—The provisions in each of sections 2214 through 2219 apply to administrators of self-insured employee plans.

"(b) OTHER INSURERS.—The provisions in each of sections 2214 through 2219 apply to activities (of insurers other than administrators of self-insured employee plans) in a State only if—

"(1) with respect to a section, the Secretary determines that the State does not meet the requirements of section 2212, or

"(2) with respect to a section, the State fails to provide such information from time to time as requested by the Secretary to enable the Secretary to make a determination under section 2212.

"HEALTH INSURANCE INFORMATION PRIVACY AND CONFIDENTIALITY PROTECTION

"SEC. 2214. As of January 1, 1994, each insurer shall comply with the requirements promulgated by the Secretary under section 2211(a).

"IDENTIFICATION NUMBERS

"SEC. 2215. As of January 1, 1994, each insurer shall—

"(1) for each of its beneficiaries that has a social security number, use that number, and

"(2) for each provider that has a unique identifier for purposes of title XVIII and that furnishes health care items or services to a beneficiary under a health insurance plan of that insurer, use that identifier.

"STANDARDS AND REQUIREMENTS FOR THE RECEIPT AND TRANSMISSION OF HEALTH INSURANCE INFORMATION

"SEC. 2216. If the Secretary promulgates standards or requirements under section 2211(b), each insurer, by the effective date specified by the Secretary for those standards or requirements, shall comply with them.

"HEALTH INSURANCE CLAIM FORMS

"SEC. 2217. As of January 1, 1995, each insurer shall comply with the requirements promulgated by the Secretary under section 2211(c)(1).

"PRIORITY AMONG INSURERS

"SEC. 2218. As of January 1, 1995, each insurer shall comply with the rules promulgated by the Secretary under section 2211(d).

"FURNISHING OF INFORMATION AMONG INSURERS

"SEC. 2219. If the Secretary promulgates requirements under section 2211(e), each insurer, by the effective date specified by the Secretary for those requirements, shall comply with them.

"NONCOMPLIANCE WITH FEDERAL REQUIREMENTS

"SEC. 2220. For provisions imposing an excise tax with respect to noncompliance with Federal requirements under this part, see section 5000A of the Internal Revenue Code of 1986.

"NO EFFECT ON SCOPE OF BENEFITS COVERED

"SEC. 2221. Nothing in this part shall be construed to specify what items and services are covered under a health insurance plan.

"PART C—MEDICAL DATA REQUIREMENTS

"PROMULGATION OF REQUIREMENTS BY SECRETARY

"SEC. 2230. (a) PROMULGATION OF REQUIREMENTS FOR HOSPITALS.—

"(1) By January 1, 1995, but after June 30, 1994, the Secretary shall promulgate requirements for hospitals concerning electronic medical data. In developing the requirements, the Secretary shall consult with the American National Standards Institute, insurers, hospitals, and other interested parties (and shall take into consideration, in developing requirements under paragraph (2)(A), the data set used by the utilization and quality control peer review program under part B of title XI).

"(2) The requirements promulgated under paragraph (1) shall include—

"(A) the definition of a standard set of data elements for use by utilization and quality control peer review organizations,

"(B) the definition of a set of data elements for use by intermediaries and carriers under the programs established by title XVIII (that shall include the standard set of data elements defined under subparagraph (A)),

"(C) standards for an electronic patient care information system with data obtained at the point of care (including requirements, consistent with those promulgated under section 2211(a), to protect privacy and confidentiality),

"(D) the specification of, and manner of presentation of, the individual data elements of the sets and system under the preceding subparagraph, and

"(E) standards concerning the transmission of electronic medical data.

"(3) The Secretary may from time to time (after consulting with the American National Standards Institute, insurers, hospitals, and other interested parties) modify the requirements promulgated under the preceding paragraphs.

"(b) PROMULGATION OF REQUIREMENTS FOR OTHER HEALTH CARE PROVIDERS.—

"(1) The Secretary may promulgate requirements concerning electronic medical data for providers that are not hospitals. In developing the requirements, the Secretary shall consult with the American National Standards Institute, insurers, providers other than hospitals, and other interested parties.

"(2) The requirements promulgated under paragraph (1) may include—

"(A) the definition of a set of data elements for use by intermediaries and carriers under the programs established by title XVIII,

"(B) the specification of, and manner of presentation of, the individual data elements of the set under subparagraph (A), and

"(C) standards concerning the transmission of electronic medical data.

"(3) The Secretary may from time to time modify the requirements promulgated under paragraph (1).

"MEDICARE REQUIREMENTS FOR HOSPITALS

"SEC. 2231. (a) GENERAL RULE.—As of January 1, 1996, each hospital that has entered into an agreement under section 1866 shall (except as otherwise provided by subsection (b))—

"(1) maintain an electronic patient care information system that meets the requirements of subparagraphs (C) and (D) of section 2230(a)(2),

"(2) upon request of the Secretary or of a utilization and quality control peer review organization (with which the Secretary has entered into a contract under part B of title XI), transmit electronically the data set specified under subparagraphs (A) and (D) of section 2230(a)(2) with respect to a specified discharge,

"(3) upon request of the Secretary, or of a fiscal intermediary or carrier (as defined in both cases in title XVIII), transmit electronically any data (with respect to a claim) from the data set specified under subparagraphs (B) and (D) of section 2230(a)(2), and

"(4) transmit the data specified under paragraphs (2) and (3) in accordance with the requirements of section 2230(a)(2)(E).

"(b) WAIVERS.—

"(1) The Secretary may waive the requirements of subsection (a) until January 1, 1998, for a hospital that—

"(A) is in the process of developing a system specified under section 2230(a)(2)(C) and that executes agreements with its fiscal intermediary and its utilization and quality control peer review organization that the hospital will meet the requirements of subsection (a) by a specified date (not later than January 1, 1998), or

"(B) is a small rural hospital (as defined by the Secretary).

"(2) The Secretary may waive the requirements of subsection (a)(1) for a hospital that—

"(A) agrees to obtain from its records the data elements that are needed to meet the requirements of paragraphs (2) and (3) of subsection (a), and

"(B) agrees to subject its data transfer process to a quality assurance program specified by the Secretary.

"ELECTRONIC TRANSMISSION TO FEDERAL AGENCIES

"SEC. 2232. As of January 1, 1998, the head of any Federal agency may require any provider that is required to transmit a data element (utilized by that agency in carrying out health care or research programs) specified under section 2230(a)(2)(D) or 2230(b)(2)(B)—

"(1) to transmit the data element electronically in accordance with the requirements of section 2230(a)(2)(E) or 2230(b)(2)(C), as applicable, and

"(2) to present the data element in the manner prescribed under section 2230(a)(2)(D) or 2230(b)(2)(B), as applicable.

"PART D—GENERAL PROVISIONS

"DEFINITIONS

"SEC. 2240. For the purposes of this title—

"(1) The term 'administrator' has the meaning given that term in section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

"(2) The term 'employee welfare benefit plan' has the meaning given that term in section 3(1) of the Employee Retirement Income Security Act of 1974.

"(3) The term 'health insurance plan' means any contract or arrangement under which an entity bears all or part of the cost of providing health care items and services, including a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance subscriber contract (including any self-insured health insurance plan), but does not include (except for purposes of sections 2211(d), 2211(e), 2218, and 2219)—

"(A) coverage only for accident, dental, vision, disability, or long term care, medicare supplemental health insurance, or any combination thereof,

"(B) coverage issued as a supplement to liability insurance,

"(C) workers' compensation or similar insurance, or

"(D) automobile medical-payment insurance.

"(4) The term 'insurer' means any entity that offers a health insurance plan under which that entity is at risk for all or part of the cost of benefits under the plan, and includes any agent of that entity.

"(5) The term 'NAIC' means the National Association of Insurance Commissioners.

"(6) The term 'provider' means a physician, hospital, pharmacy, laboratory, or other person licensed or otherwise authorized under applicable State laws to furnish health care items or services.

"(7) The term 'administrator of a self-insured employee plan' means an insurer that is an administrator of an employee welfare benefit plan.

"(8) The term 'utilization review' means review of the medical necessity, appropriateness, and quality of health care items and services.".

SEC. 3. CONFORMING AMENDMENT.

The first sentence of section 1866(a)(1) of the Social Security Act is amended—

(1) by striking "and" at the end of subparagraph (P),

(2) by striking the period at the end of subparagraph (Q) and inserting a comma and "and", and

(3) by adding at the end the following:

"(R) in the case of hospitals, to comply with the requirements of section 2231.".

SEC. 4. FAILURE TO SATISFY CERTAIN HEALTH INSURANCE REQUIREMENTS.

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to taxes on group health plans) is amended by adding at the end the following new section:

"SEC. 5000A. FAILURE TO SATISFY CERTAIN HEALTH INSURANCE REQUIREMENTS.

"(a) GENERAL RULE.—

"(1) ADMINISTRATORS OF SELF-INSURED EMPLOYEE PLANS.—There is hereby imposed, on any administrator of a self-insured employee plan, a tax on any failure to comply with a requirement under section 2214, 2215, 2216, 2217, 2218, or 2219 of that Act. The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall determine whether any administrator of a self-insured employee plan meets the requirements of those sections.

"(2) OTHER INSURERS.—There is hereby imposed, on any insurer other than an administrator of a self-insured employee plan, a tax on any failure to comply with a requirement under section 2214, 2215, 2216, 2217, 2218, or 2219 of that Act with respect to an activity in a State that is subject to Federal regulation pursuant to section 2213(b) of the Social Security Act. The Secretary of Health and Human services shall determine whether any insurer meets the requirements of those sections.

"(3) RESEARCH DATA REQUIREMENTS.—There is hereby imposed on any insurer a tax on any failure to comply with a requirement under paragraph (2) of section 2200(f) of the Social Security Act. The Secretary of Health and Human Services shall determine whether any insurer meets the requirements of that paragraph.

"(b) AMOUNT OF TAX.—The amount of tax imposed by subsection (a) for a taxable year in which an insurer fails to comply with a requirement described in that subsection shall be equal to $100 for each such failure.

"(c) CONTROLLED GROUPS.—

"(1) EMPLOYERS.—In the case of an insurer that is an employer, for purposes of this section all persons that are treated as part of the same employer (within the meaning of section 414) as the insurer shall be treated as the same person.

"(2) OTHER INSURERS.—In the case of an insurer that is not an employer, for purposes of this section—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or businesses (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(d) LIMITATIONS ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person liable for tax did not know, and by exercising reasonable diligence would not have known, that the failure existed.

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) the failure was due to reasonable cause and not to willful neglect, and

"(B) the failure is corrected during the 30-day period beginning on the 1st date the person liable for the tax knew, or by exercising reasonable diligence would have known, that the failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of that tax would be excessive relative to the failure involved.

"(e) DEFINITIONS.—For purposes of this section—

"(1) the terms 'insurer' and 'administrator of a self-insured employee plan' have the meanings given to those terms by section 2230 of the Social Security Act, and

"(2) the term 'State' has the meaning given to that term by section 1101(1) of the Social Security Act.".

(b) NONDEDUCTIBILITY OF TAX.—Paragraph (6) of section 275(a) of that Code (relating to nondeductibility of certain taxes) is amended by inserting "47," after "46,".

(c) CLERICAL AMENDMENTS.—The table of sections for chapter 47 of that code is amended by adding at the end the following new item:

"Sec. 5000A. Failure to satisfy certain health insurance requirements."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1994.

SEC. 5. PILOT GRANTS.

(a) COMMUNICATION LINKS.—

(1) The Secretary of Health and Human Services may make grants to at least two, but not more than five, community organizations, or coalitions of health care providers, health insurers, and purchasers, to establish, and document the efficacy of, communication links between the information systems of health insurers and of health care providers.

(2) To carry out this subsection there are authorized to be appropriated such sums as may be necessary for fiscal year 1993, to remain available until expended.

(b) REGIONAL OR COMMUNITY BASED CLINICAL INFORMATION SYSTEMS.—

(1) The Secretary may make grants to at least two, but not more than five, public or private non-profit entities for the development of regional or community based clinical information systems.

(2) To carry out this subsection there are authorized to be appropriated such sums as may be necessary for fiscal year 1993, to remain available until expended.

(c) AMBULATORY CARE DATA SETS.—

(1) The Secretary may make grants to public or private non-profit entities to develop and test, for electronic medical data generated by physicians and other entities (other than hospitals) that provide health care services—

(A) the definition of a set of data elements, and

(B) the specification of, and manner of presentation of, the individual data elements of the set under subparagraph (A).

(2) To carry out this subsection there are authorized to be appropriated such sums as may be necessary for fiscal year 1993, to remain available until expended.

SUMMARY OF PROPOSED MEDICAL AND HEALTH INSURANCE INFORMATION REFORM ACT OF 1992

SHORT TITLE

Section 1 assigns the draft bill the short title "Medical and Health Insurance Information Reform Act of 1992".

MEDICAL AND HEALTH INSURANCE INFORMATION REFORM

Section 2 would add a new title XXII to the Social Security Act, as follows:

TITLE XXII—MEDICAL AND HEALTH INSURANCE INFORMATION REFORM

Part A—Comparative value information

Comparative Value Information Programs for Health Care Purchasing

Section 2200(a) would require the Secretary of Health and Human Services, in order to

assure that comparative value information is available to health care purchasers, to determine whether each State is developing and carrying out, on a timely basis, a health care value information program described in subsection (b).

Section 2200(b) would enumerate the criteria for State programs. The State must begin promptly after enactment of this bill to develop its comparative value information program. It may do so directly or through a variety of arrangements with others. The program must provide information on the average prices of common health care services and information related to the value of each health insurance plan available in the State, including premium costs and the value of benefits, and, where available, information on the variability of those prices within the State or other market areas. The data must be available within the State not later than one year after enactment, and must be updated no less frequently than annually. Finally, within four years after enactment, the State must also provide comparative quality and outcomes data on health insurance plans and hospitals and make the information broadly available in the market areas served by those plans and hospitals.

Section 2200(c) would authorize the Secretary to specify the content of the list of "common health care services" about which the State must provide comparative price data, and would permit the State to add any other services to the list it wished.

Section 2200(d) would provide for back-up Federal action if the Secretary found that a State had not developed or implemented a health care value information program that comports with subsection (b). In such a case, the Secretary would be directed to take necessary steps to implement such an information system in the State. He could charge fees for the informational materials provided and would be authorized to retain and expend those collections to carry out this function.

Section 2200(e) would direct the head of any Federal agency with responsibility for arranging for the provision of health insurance (e.g. the Office of Personnel Management) or for the provision of health care services (e.g. the Department of Health and Human Services and the Department of Veterans' Affairs) to make comparative value information available to States, health care providers, and consumers. The types of information to be provided would be comparable to those provided by a State that was implementing a program consistent with the preceding subsections.

Section 2200(f) would direct the Secretary, after consulting with health insurers, health care providers, and others, to promulgate requirements for health insurers to furnish periodically to the Secretary, on a sample basis, health care data relevant to health care services research. Provisions currently in the Privacy Act would permit the Secretary to make this information available to researchers (with appropriate privacy safeguards). Insurers that did not provide the required data would be subject to an excise tax (see section 4 of this draft bill, below).

Section 2200(g) would require the Secretary to make available, under the Freedom of Information Act, all Medicare claims records, including records that identify individual physicians or other individuals that furnish items or services under Medicare. However, Privacy Act protections against the release of information that identifies Medicare beneficiaries would remain in force; no personal identifiers of individual beneficiaries would be released, nor would claims records be released when beneficiaries could be identified by inference. This new requirement for release of records would apply only to information received by Medicare after the date of enactment of this draft bill.

Section 2200(h) would direct the Secretary, directly or through grant or contract, to develop model systems for gathering health care cost, quality, and outcomes data, and to do so in a manner that would allow valid comparisons of those types of data among providers and among health plans. He would support experimentation with various approaches to achieve the most cost-effective method, and evaluate the different experiments. When appropriate, the Secretary could establish national standards for uniform data gathering that would thereby allow analysis and comparisons across the country.

Grants for the Development of State Programs

Section 2201(a) would authorize the Secretary to make grants to States to assist them in planning and initiating their health care information programs. The application submitted to the Secretary must contain the information he needs to conclude that the State (rather than the Secretary) is likely to be conducting the comparative value information program in the State.

Section 2201(b) would provide for recouping any program development grants made if, within the following three years, the State fails or ceases to operate a program meeting the statutory criteria. The funds would be recouped by offsets against any other amounts payable to the State under the Social Security Act, and would be available to the Secretary for his activities made necessary by the State's failure to implement a comparative information program.

Section 2201(c) would authorize the appropriation of such sums as are necessary for grants to States under this subsection, to remain available until expended.

Part B—Storage and transmission of medical and health insurance information and priority of payment

Preemption of State Quill Pen Laws

Section 2210 would prohibit States from requiring medical or health insurance information (including billing information) to be kept in written, rather than electronic, form.

Promulgation of Requirements by Secretary

Section 2211(a) would direct the Secretary, after taking into consideration the Insurance Information and Privacy Protection Model Act of the National Association of Insurance Commissioners (NAIC), to promulgate requirements concerning health insurance information privacy and confidentiality. There would be included the requirement (with such limited exceptions as the Secretary may provide) that information that identifies individuals shall not be redisclosed except to the extent necessary to carry out the purpose for which the information was collected. The Secretary would be required to take into consideration the following principles concerning information that identifies individuals:

Information should be collected only to the extent necessary to carry out the purpose for which the information is collected.

Information collected for one purpose should not be used for another purpose without the individual's informed consent.

Information should be disposed of when no longer necessary to carry out the purpose for which it was collected.

Methods to ensure the accuracy, reliability, relevance, completeness, and timeliness of information should be instituted.

Individuals should be notified (in advance of the collection of information) as to whether the furnishing of information is mandatory or voluntary, as to what the record keeping practices are concerning the information, and as to what uses will be made of the information.

Individuals should be permitted to inspect and correct information concerning themselves.

Section 2211(b)(1) would direct the Secretary to determine whether problems relating to standards for the electronic receipt and transmission of health insurance information cause significant administrative costs. If the Secretary found that such costs were generated, he would, after consulting with the Accredited Standards Committee X-12 of the American National Standards Institute, health insurers, health care providers, and others, promulgate standards concerning the electronic receipt and transmission of claims, payment, eligibility, and enrollment information (including privacy and confidentiality protection requirements).

Section 2211(b)(2) would direct the Secretary to determine whether problems relating to the receipt and transmission of health insurance eligibility verification cause significant administrative costs. If the Secretary found that such costs were generated, he would, after consulting with the Accredited Standards Committee X-12 of the American National Standards Institute, health insurers, health care providers, and others, promulgate requirements concerning the receipt and transmission of health insurance eligibility verification.

Section 2211(b)(3) would direct the Secretary to determine whether the proportion of health insurance claims and payment information received and transmitted by paper would continue to cause significant administrative costs. If the Secretary found that such costs would continue to be generated, he would, after consulting with the Accredited Standards Committee X-12 of the American National Standards Institute, health insurers, health care providers, and others, require a specified proportion of (or all) such information to be received and transmitted electronically (with such exceptions as he might specify).

Section 2211(c)(1) would direct the Secretary, after consulting with insurers, providers, and others, to promulgate requirements concerning the form and content of basic claim forms under health insurance plans.

Section 2211(c)(2) would direct the Secretary to determine whether the variety of information requested by health insurers (in addition to the information requested in basic claim forms) causes administrative costs that are disproportionate to the benefits derived from that information. If the Secretary found that such costs were generated, he would, after consulting with health insurers, health care providers, and others, publish recommendations concerning what additional information should be allowed to be requested and in what format.

Section 2211(d) would direct the Secretary, after consulting with the NAIC, to promulgate rules for determining the priority of payment when two health insurance policies cover the same individual.

Section 2211(e) would direct the Secretary to determine whether difficulties relating to the transfer of information among health in-

surers that cover the same individual cause significant mistaken payments or administrative costs. If the Secretary found that such payments or costs were generated, he would promulgate requirements for the transfer (and annual updating) of information (that could include requirements for the use of unique identifiers, and for the listing of all individuals covered under a health insurance plan).

State Programs

Section 2212 would direct the Secretary to determine, for each State, whether there were in effect State requirements substantially the same as those under section 2211(a) (health insurance information privacy and confidentiality protection), section 2211(b) (receipt and transmission of health insurance information), section 2211(c)(1) (claim forms), section 2211(d) (priority among insurers), section 2211(e) (furnishing of information among insurers), and section 2215 (identification numbers), and whether the State effectively enforced its requirements.

Application of Federal Requirements

Section 2213 would provide for Federal backup authority to be effective in a State (with respect to a specific area mentioned in section 2212) only if the Secretary made a negative finding under section 2212 (or if the State did not provide sufficient information to enable the Secretary to make the determination). However, self-insured employee welfare benefit plans (as defined by the Employee Retirement Income Security Act of 1974 (ERISA)), no matter where located, would be subject to Federal requirements.

Health Insurance Information Privacy and Confidentiality Protection

Section 2214 would require health insurers (in States that did not have an equivalent program) to meet the Federal requirements concerning the protection of privacy and confidentiality promulgated by the Secretary under section 2211(a).

Identification Numbers

Section 2215 would require health insurers (in States that did not have an equivalent program) to use social security numbers for their beneficiaries and Medicare unique identifiers for hospitals, physicians, and others who furnish items and services.

Standards and Requirements for the Receipt and Transmission of Health Insurance Information

Section 2216 would require health insurers (in States that did not have an equivalent program) to meet the standards and requirements (if any) concerning the receipt and transmission of health insurance information promulgated by the Secretary under section 2211(b).

Health Insurance Claim Forms

Section 2217 would require health insurers (in States that did not have an equivalent program) to meet the requirements concerning the form and content of health insurance claim forms promulgated by the Secretary under section 2211(c)(1).

Priority Among Insurers

Section 2218 would require health insurers (in States that did not have an equivalent program) to follow the rules determining the liability of insurers promulgated by the Secretary under section 2211(d).

Furnishing of Information Among Insurers

Section 2219 would require health insurers (in States that did not have an equivalent program) to meet the requirements (if any) concerning the furnishing of information among insurers promulgated by the Secretary under section 2211(e).

Noncompliance With Federal Requirements

Section 2220 would contain a cross-reference to a new section in the Internal Revenue Code of 1986 (added by section 4 of this draft bill), that would impose an excise tax for noncompliance with the Federal requirements of sections 2214, 2215, 2216, 2217, 2218, and 2219, when implemented by the Secretary.

No Effect on Scope of Benefits Covered

Section 2221 would prevent part B from being construed to specify what items and services are covered under a health benefits plan.

Part C—Medical data requirements

Promulgation of Requirements by Secretary

Section 2230(a) would require the Secretary, after consulting with the American National Standards Institute and others, to promulgate requirements for hospitals concerning electronic medical data. The Secretary would specify a standard set of data for use by Medicare peer review organizations (after taking into consideration the data set used by the Medicare utilization and quality control peer review program), a set of data for use by intermediaries and carriers, standards for an electronic patient care information system with data obtained at the point of care (including privacy and confidentiality protection requirements), the specific set of data elements to be used in each of the above, and standards for the transmission of data.

Section 2230(b) would permit the Secretary, after consulting with the American National Standards Institute and others, to promulgate requirements for health care entities other than hospitals concerning electronic medical data. The Secretary would specify a set of data, the specific set of data elements to be used, and standards for the transmission of data.

Medicare Requirements for Hospitals

Section 2231(a) would require hospitals that participate in Medicare to maintain an electronic patient care information system that met the standards specified by the Secretary under section 2230(a), and would require the hospitals to furnish electronically data to the Secretary, to peer review organizations, and to carriers and intermediaries, from the appropriate data sets specified by the Secretary under section 2230(a).

Section 2231(b) would permit waivers of the requirements under section 2231(a) for hospitals that were in the process of developing an electronic patient care information system, for small rural hospitals, and for hospitals that abstracted (for electronic transmission) data from paper records (if a hospital agreed to subject its data transfer process to quality assurance procedures specified by the Secretary).

Electronic Transmission to Federal Entities

Section 2232 would permit Federal agencies to require data elements utilized for an agency health care or research program and specified under section 2230 to be transmitted electronically.

Part D—General provisions

Definitions

Section 2240 defines terms used in title XXII, as follows:

(1) "Administrator" has the meaning given that term in section 3(16)(B) of the Employee Retirement Income security Act of 1974 (ERISA).

(2) "Employee welfare benefit plan" has the meaning given that term in section 3(1) of ERISA.

(3) "Health insurance plan" means any contract or arrangement under which an entity bears all or part of the cost of providing health care items and services, including a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance subscriber contract (including any self-insured health insurance plan). The term does not include insurance limited to accident, dental, vision, disability, long term care, medicare supplemental insurance, or any combination thereof; coverage supplementing liability insurance; workers' compensation or similar insurance; or medical coverage under automobile insurance. However, the provisions concerning priority among insurers and information sharing among insurers do apply to the specific types of insurance otherwise excluded.

(4) "Insurer" means any entity that offers a health insurance plan under which that entity is at risk for all or part of the cost of benefits under the plan, and includes any agent of that entity.

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Provider" means a physician, hospital, pharmacy, laboratory, or other person licensed or otherwise authorized under applicable State laws to furnish health care items or services.

(7) "Administrator of a self-insured employee plan" means an insurer (see definition (4)) that is an administrator (see definition (1)) of an employee welfare benefit plan (see definition (2)).

(8) "Utilization review" means review of the medical necessity, appropriateness, and quality of health care items and services.

Conforming Amendment

Section 3 would add (to the provisions in the agreements that hospitals enter into with Medicare) the requirements of section 2231.

Failure to Satisfy Certain Health Insurance Requirements

Section 4 would provide that any insurer subject to Federal regulation pursuant to proposed section 2213 of the Social Security Act is subject to an excise tax on any failure to comply with a requirement under proposed sections 2214, 2215, 2216, 2217, 2218, or 2219 of that Act. The excise tax imposed on administrators of self-insured employee welfare benefit plans that failed to comply with any of those requirements would be $100 for each failure. The excise tax on other insurers that failed to comply would be $100 for each failure to comply in a State in which Federal backup authority applied. In addition, any insurer that failed to comply with a requirement for the furnishing of sample health care data to the Secretary under proposed section 2200(f) of the Social Security Act would be subject to a $100 excise tax for each failure.

The excise tax would generally not apply if the violation could not have been discovered through the exercise of reasonable diligence or if the violation were corrected within 30 days after it had been discovered. In addition, the Secretary would be given authority (to be exercised in consultation with the Secretary of Health and Human Services) to waive the tax if the violation were due to reasonable cause and not willful neglect to the extent payment of the tax would be excessive relative to the failure involved.

Pilot grants

Section 5(a) would authorize the Secretary to make grants to at least two, but not more than five, community organizations, or coa-

litions of health care providers, insurers, and purchasers, to establish, and document the efficacy of, communication links between the information systems of health insurers and of health care providers. Appropriations of "such sums as may be necessary" would be authorized for fiscal year 1993, to remain available until expended

Section 5(b) would authorize the Secretary to make grants to at least two, but not more than five, public or private non-profit entities for the development of regional or community based clinical information systems. Appropriations of "such sums as may be necessary" would be authorized for fiscal year 1993, to remain available until expended.

Section 5(c) would authorize the Secretary to make grants to public or non-profit private entities for the development and testing of an electronic medical data set (and the specification of its elements) for physicians and other health care providers (other than hospitals).

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, June 16, 1992.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed for consideration by the Congress is a draft bill "To amend the Social Security Act to improve and make more efficient the provision of medical and health insurance information, and for other purposes."

The "President's Comprehensive Health Reform Program," released February 6th, sets forth the Administration's plan for reforming the health care system. Key elements of this plan include streamlining health care administration to reduce costs and improve quality and providing comparative value information for health purchasing.

This draft bill would implement the President's proposals concerning the medical and health insurance information system. The provisions of this bill would eliminate unnecessary costs and burdens in the system while strengthening administrative activities that improve the quality of health care. Automating the insurance claims process will eliminate the enormous and needless paperwork burden of the system. Automation of health care records will result in quality improvements that will add value to each health care dollar spent. Consumers will be better informed of the health care choices by making use of information required by the bill concerning costs and benefits of care.

The bill has three major components:

All Americans will benefit from the automating of insurance claims processing and payment. The paperwork burden of the health care system will be lifted from patients, providers and insurers. The result will be billions of dollars in reductions in health care administrative costs.

Quality and coordination of care for patients will be improved, as physicians and hospitals will have rapid and easy access to a patient's medical history through automation of medical records. A vast array of medical information will be available via computer access to enable scientific medical review and quality assurance. Organization of an access to medical information will permit analyses of patterns of health care and patient outcomes. This can accelerate advances in knowledge of safe and effective medical practices. Health Care costs will be reduced as duplicative tests are eliminated. Patient privacy and confidentiality will be protected through the development of uniform requirements.

Consumers and purchasers will be given access to comparative information about the quality and cost of health care. With this information, purchasers can better choose the provider and health plans that provide them the best value for their dollar. Competition will return to the health care market, leading to a reduction in excessive prices and inefficient delivery of care.

The provisions of the draft bill are described in detail in the enclosed section-by-section summary.

The Omnibus Budget Reconciliation Act of 1990 requires that all revenue and direct spending legislation meet a pay-as-you-go requirement. That is, no such bill should result in an increase in the deficit; and, if a bill does, it triggers a sequester if the bill's costs are not fully offset. The provisions in this draft bill would not increase direct spending.

We urge the Congress to give the draft bill its prompt and favorable consideration.

We are advised by the Office of Management and Budget that enactment of this draft bill would be in accord with the program of the President.

Sincerely,

LOUIS W. SULLIVAN, M.D.

Mr. McCAIN. Mr. President, I rise today with my colleague KIT BOND and others for the introduction of the Medical and Health Insurance Information Reform Act of 1992. I thank my colleague from Missouri, Senator BOND, for his leadership on this issue, and all the hard work he has put into pulling all of the pieces of this legislation together. I do not think it would have been possible to have this very important package before this body today without his dedicated efforts.

As we grapple with the question of how best to reform our Nation's health care delivery system, there are a number of issues on which many already agree. One is the fact that far too much of our health care dollar is being consumed by administrative costs—and much of it unnecessarily.

Some of our colleagues have been hailing the virtues of the Canadian health care system, as a possible model for reform of our own system. While I do not support many of the trade-offs that would come with a Canadian-style system, one of the greatest strengths of the Canadian system is the fact that the eligibility, billing, and claims processing functions are automated. As a consequence, much less of their health dollar is consumed by administrative costs. This leaves more for the actual delivery of services. I believe this is a positive area where we could and should learn from the Canadian experience. And, not only does it involve costs, it involves efficiency.

The legislation we are introducing today draws from the Canadian experience. It would establish a 5-year framework for developing an electronic billing and claims-processing system. Specifically, it would:

Standardize computer language so that all medical computers can speak to one another;

Require all insurers to transmit claims electronically;

Require hospitals to computerize their medical records;

Require that uniform claim forms be established;

Require that States publish tables for consumer use, showing average prices for common health care services, premium costs for various types of policies, and the value of benefits for each health insurance plan; and

Implement a credit-card type system for the transmission of data.

Mr. President, automating our billing and claims-processing system ought to be one of the goals of health reform. In fact, it is an issue on which most of those who are working on the issue of health reform agree. This legislation also ties into legislation I have introduced over the last year that would result in the automation of the billing and claims-processing systems for the Department of Defense and the Indian Health Service. I believe this legislation represents a workable solution and ought to be enacted at the earliest possible moment. If implemented now, we would save some $20 billion by the end of the decade—and that is even with the expenditures on hardware and software. This is money that could be spent for the provision of care, rather than subsidizing inefficiency.

Again, I thank my colleague from Missouri for his efforts in developing this system. I believe, Mr. President, that it is clear that administrative costs are a major burden which cures no one, which provides care for no one and, frankly, we have a way out of this, and we ought to act as rapidly as possible.

Mr. President, I yield back the remainder of my time allotted me from my colleague from Missouri.

Mr. BOND Mr. President, I commend my colleague from Arizona who has been a leader on health matters generally and has paid particular attention to concerns of the aging. His cosponsorship and support is vitally important.

Mr. President, I yield 5 minutes to the Senator from Montana.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I thank my good friend from Missouri for yielding to me, and I also thank him for introducing this legislation.

Mr. President, I am pleased to be an original cosponsor of the Medical and Health Information Reform Act of 1992. I commend Senator BOND for his leadership on this bill and look forward to working with him and the other cosponsors on moving this legislation through the Congress.

Last year, Secretary Sullivan put us on the path toward a more efficient, less costly way to administer our health care system. He envisions a state-of-the-art, electronic national

billing network that would simplify insurance claims and information for health care consumers and health care professionals alike.

I am sure my colleagues saw the article in Sunday's Washington Post about the marvels of such a system. Imagine patients coming into a doctor's office with their automated medical insurance cards in hand-cards quite similar to the automatic banking cards many of us carry today—and slipping that card into doctor's terminal.

With such a system, the patient's entire medical history could be right at the doctor's fingertips, making medical diagnosis and treatment less complicated.

Furthermore, billing would be greatly simplified. The system could be connected to computers in the patient's insurance office. This would enable the insurance company to immediately inform the health care provider, via this electronic link-up, whether the services provided were covered by the patient's insurance policy. The doctor's office could then automatically credit, bill the insurance company, and inform the patient on the spot the amount he or she is responsible for.

What a tremendous way to cut down on the enormous amount of paperwork and paper forms involved in medical billing and diagnosis. What a marvelous way to reduce the headaches and hassles for both patients and health care providers. And, what a smart way to reduce wasted time and wasted expenses. In fact, Secretary Sullivan has estimate that such an automated billing system would initially save some $4 billion a year and some $20 billion by the year 2000.

But, this is just the beginning. Someday, this entire country will be electronically linked with tiny glass wires of fiber optic cable, cables so small that they look like fishing line but so powerful that one could transport the information—voice, video, and data—contained in the entire Library of Congress from Washington, DC, to Los Angeles in a matter of seconds.

Imagine what we could do for health care then, particularly for those who live in remote, more rural areas like Montana. With a fiber optic network, not only could we have the world's most efficient electronic medical billing system, but we could also utilize the ability of optical fiber to carry video images for two-way interactive video conferencing.

Such interactive conferencing would enable a rural health practitioner in Plevna, MT, to consult with a specialist in Billings or at Johns Hopkins regarding the condition of a patient face to face. Such a system would make it possible for an individual living on a ranch in northwestern Montana to dial up a doctor in Great Falls to discuss and visually point out a particular health condition and to determine whether it is necessary for that patient to travel 100 or so miles for a personal office visit.

The possibilities of what fiber optics can bring to this Nation are endless, and that is one of the reasons why I have introduced the Communications Competitiveness and Infrastructure Modernization Act which will encourage the swift deployment of fiber optic technology in America.

Today, however, we are not necessarily talking about fiber optic technology. What we are talking about here today is one very small step toward the electronic wiring of this Nation.

The Medical and Health Information Reform Act would assist in bringing about Secretary Sullivan's vision of an electronic billing system for the health care industry by ensuring such things as the standardization of health care billing and insurance information and making sure that insurers and providers can talk to each other electronically.

Mr. President, as we prepare to enter the Information Age of the 21st century, it is time for America to take full advantage of the technology that is available to us. In the case of medical billing, an electronic network will greatly simplify our lives and save a great deal of money.

I thank Senator BOND for looking ahead, because not only does this start us down the path of reforming the way we deliver Medicare and the way we keep our records and to cut the paperwork and everything that the Senator from Arizona and the Senator from Missouri have summed up what this does, but this is just a beginning on what we can do in reforming our health care especially in rural areas.

There are certain organizations now that are starting templates on and starting a library of outcomes; in other words, a patient comes in, is diagnosed, is treated, but we do not have any library on what the outcome of that treatment was. I think we could cut millions and billions of dollars out of our health care whenever we know certain outcomes when patients are treated in certain ways for certain diseases, but someday this entire country will be electronically linked with tiny glass wires called fiber optics and fiber optic cable. They will be so small that they look like a fishing line. They will be so powerful that one could transmit the information, voice, video, and data contained in the entire Library of Congress in Washington, DC, to Los Angeles in a matter of seconds.

This is where we are going technologywise in this country. There is going to take some policy change to really make that happen but we can make it happen.

Imagine what we can do for health care then, particularly for those who live in remote rural areas such as my State of Montana, and I am sure that the Senator from Missouri understands that and also the Senator from Arizona, and I know the Senator from Minnesota.

With fiber optic networks not only could we have the world's most efficient electronic medical billing system, but we could also utilize the ability of optical fiber to carry video images for two-way interactive video conferencing.

Also in the diagnostic area, such interactive conferencing would enable a rural health practitioner in Plevna, MT to consult with a specialist in Billings or at the Mayo Clinic, or Johns Hopkins, all of the recognized centers and that information should be made available even to the people in the remote areas of our country.

Such a system would make it possible for an individual living on a ranch to dial up a doctor anywhere and discuss and visually point out the particular health condition and to determine whether it is necessary for that patient to travel hundreds of miles for a personal visit.

So, this is just one step but it is a visionary step that I think the Senator from Missouri has come up and really touched the nerve of where we are going today in this country.

And that is the use of this technology to ensure that every American, no matter where they are, and no matter what their economic situation is, has available health care and also stream lining the billing and also the making of that library for our outcome of certain treatments.

So if we want to modernize medicine, the technology is there, all we have to do as a government is to promote that technology and to allow it to continue, and I congratulate Dr. Sullivan and the good Senator from Missouri for introducing this legislation.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. I thank our colleague from Montana who has been a leader in promoting the use of advanced technology in this and many other areas.

I now yield the remainder of my time to the distinguished Senator from Minnesota who has a long history as a leader in the health care reform field and in many areas. We are delighted to have him as cosponsor of this measure.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I rise today in support of the Medical and Health Insurance Information Reform Act of 1992. I begin as others have by commending my distinguished colleague from Missouri for his commitment to reducing administrative costs and a broader commitment to improving access to health care for all Americans at a lower cost. I am proud to be a cosponsor of S. 2306, the Health Simplification and Portability Act, which addresses some of the issues in the bill that is being introduced today.

Mr. President, we in the Congress are presently engaged in heated debate about how to reform our health care system. There are many proposals on the table offering myriad ways to address these pressing problems.

Mr. President, despite the debate, there is consensus on the issue of health care costs. Expenditures are rising at over 10 percent a year, and threatening to top the $1 trillion mark in the next few years. We must get control of the wildly escalating health care spending. At the same time, there are millions of Americans who do not have any health insurance coverage at all.

I have said repeatedly that in order to expand access to health care for those presently uninsured and to reduce the costs of care, we must get more for less. We can only do that one way—through productivity.

Reducing administrative costs through electronic billing is a prime example of productivity. The goal is to save billions of dollars in administrative cost, reduce paperwork, and redtape, as well as reduce fraud and abuse in our health care system.

But, electronic billing does more than simply save money. It will improve the quality of health care too. Hospitals and physicians will have access to expanded clinical information. That means, very simply, that they will practice better, more up-to-date medicine.

In addition, it can provide information for consumers and health care purchasers. This will help people understand the value of the services they are buying and make better choices for their own health care.

This means more quality for less cost. That is precisely what productivity is all about.

I commend the administration for its efforts to promote these goals. Secretary Sullivan convened a forum on administrative costs last fall, bringing together representatives from the private and the public sector. They all sat down to discuss how to streamline the paperwork in our diverse and fragmented health care system, and this is one of the major products of that discussion.

I am proud to say that health care organizations in Minnesota are already far long in this field. Through a new technology developed by United Health Care and Medica, in the Twin Cities, the capability now exists to link up the offices of physicians and other providers with third-party payers.

This means that physicians will be able to submit their bills electronically and have them adjudicated electronically, at a savings that will be in the millions of dollars. It is predicted that electronic billing will save up to $1 per claim. This system is already being implemented. It won't be long before virtually every physician in the Twin Cities is wired to this common link.

The bill being introduced today complements the efforts already underway in the private sector. The bill addresses some of the impediments to electronic billing, including lack of uniform standards for data and data formats. It will also eliminate legal barriers to electronic records, and protect patient privacy and confidentiality. This bill promotes efficiency by encouraging the kinds of efforts that are underway in Minnesota.

Mr. President, I submit that this represents the Federal Government at its best—providing an environment in which productivity can occur. I urge my colleagues on both sides of the aisle to support this bill.

I urge my colleagues on all sides of the aisle to join as cosponsors and try to get this bill passed this year.

Mr. SEYMOUR. Mr. President, I am here today in support of the Medical and Health Insurance Information Act of 1992. We all know of the many problems which plague our health care system today, but there are two in particular which stand out and should be addressed. First, there is an inordinate amount of paperwork that Americans must deal with when making their health insurance claims. Second, there is a large amount of duplicity in health insurance paperwork that drastically increases health care administrative costs. All groups proposing health care reform agree that simplifying paperwork and reducing administrative costs are two goals which must be met when implementing any health care reform package. It has been estimated that reducing administrative costs and paperwork could save upward of $20 billion per year in health care expenditures. The Medical and Health Insurance Information Reform Act of 1992 is a logical step in reducing these problems in our health care system today.

Mr. President, this bill will not only attack these two problems head-on, but it will also provide a wealth of medical data to physicians and hospitals for medical studies. The bill will provide each American with an electronic card which would contain their health insurance information as well as their medical history. All necessary billing would be done electronically, thereby reducing the paperwork that the individual would have to complete.

Insurance companies would also benefit from the reduction of paperwork at the administrative level. By handling the billing electronically, there would be a reduction in the amount of duplicated paperwork which is now produced, as well as the amount of time it takes to deal with errors which are made when making insurance claims. Both of these changes would streamline billing procedures, making them more efficient and reducing administrative costs.

Mr. President, the increase in cost savings of this bill is staggering. It has been estimated that electronic billing will save some $4 billion in administrative costs annually. Electronic billing will also reduce fraud within the health insurance system. By automating the system, double billings and other types of fraud can be easily observed; whereas today, this type of fraud is lost under the piles of paperwork insurance handlers must go through every day. The FBI has estimated that health insurance fraud costs as much as $150 billion to the insurance industry every year. This estimate exemplifies the need to control fraud and the enormous savings which can be made by reducing health care fraud through electronic billing.

The bill also provides hospitals, physicians, and medical researchers with access to improved and expanded clinical data. Hospitals could benefit from this by looking for and reducing the use of unnecessary and costly medical procedures. The savings from this has been estimated to be approximately $20 billion annually. Furthermore, the expanded access to clinical data will allow epidemiological studies to be done very easily. In this way, researchers will be able to follow trends in disease and search for new treatments and ways to combat these illnesses. The need for such data collection has been clearly shown with the establishment of cancer registries, which find trends of cancer within a population. With this data, scientists are able to determine the probable environmental cause of the cancer and propose a solution to combat the source of the disease. Senator BOND'S bill would require that all medical data be uniform so that it could be used by researchers from around the country. This data would not only help follow trends in all illnesses, but it could lead to better procedures in disease prevention.

Finally, this bill would allow a patient to walk into any hospital in the United States, present his or her card, and give that hospital immediate access to that person's medical insurance and medical history. This would ensure that that person would receive immediate and thorough care, rather than wasting time gathering the proper paperwork and finding the proper medical information on the person's medical history. This could be very useful in the case of a major accident or illness.

Mr. President, health care reform is a problem which needs to be addressed now. Electronic billing is a step in the right direction in solving many of the problems which need to be addressed in health care reform. Furthermore, electronic billing is a solution upon which many diverse groups agree will yield positive results in both the short and long term. The American people would benefit from this bill since it reduces the confusing paperwork they must complete in order to receive health care. Furthermore, American physi-

cians would benefit from this bill since their paperwork would also be reduced, allowing them more time to concentrate on their main job of treating patients. Finally, American insurance companies would benefit economically from this bill due to the streamlined billing and reduced fraud.

Mr. President, I would like to conclude by pointing out that all the health care reform proposals which have been put before the Congress include the goal of reducing administrative costs. From those supporting a single-payer system to those who support tax incentive proposals, all agree that this common goal is necessary to reduce the tremendous amount of money our country spends on health care every year. Senator BOND's bill is a logical and needed change which can bring true savings in a short timeframe and have both positive fiscal and medical effects in the long term. This solution goes beyond party politics and gives a solution to part of the health care crisis our country faces today. I would like to add my support to this bill as an original cosponsor and urge my colleagues, both Democrat and Republican, to join me in support of the Medical and Health Insurance Information Act of 1992.

By Mr. LEAHY:

S. 2879. A bill to prohibit the Secretary of Agriculture from spending or obligating any appropriated funds to purchase, procure, or upgrade computers used by certain farmer service agencies of the Department of Agriculture prior to the implementation by the Secretary of reforms of the field structure and organization of the farmer service agencies, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PURCHASE OF COMPUTER EQUIPMENT BY CERTAIN FARMER SERVICE AGENCIES

Mr. LEAHY. Mr. President, during this year, the Committee on Agriculture has undertaken a major effort to see how the Department of Agriculture is managed.

The billions spent at USDA each year come out of the pockets of the taxpayers. It is our job to make sure that the Department is doing everything it can to cut waste and eliminate fraud.

This has been a bipartisan effort. My colleague DICK LUGAR and I have established a special oversight staff and conducted a number of oversight hearings.

USDA now has over 10,000 offices representing four different farm service agencies. The committee has been grappling with the question of whether it is time to merge these agencies into one streamlined system that will be easier for farmers, and easier on the taxpayers wallet.

After our hearing on the field structure of the Department, Secretary Madigan announced that the administration would establish a special SWAT team to propose closing unnecessary offices. Secretary Madigan has also committed to deciding whether there will be an entirely new structure for USDA field offices.

A few weeks after our hearing on USDA field offices, and the commitment of Secretary Madigan to consider reorganizing USDA, we held another hearing on computer purchases at the Department.

At that hearing we learned that some of USDA's past computer purchases have wasted millions of dollars.

The Farmers Home Administration spent $200 million for a new computer system, but still maintains its basic loan files on color coded index cards. Its computer systems are so poorly designed that FMHA has to enter a farmer's basic information three times—first, when he applies for a loan, second, when the loan is approved, and a third time if the loan is renegotiated.

These are the mistakes of the past. But I am afraid that USDA is about to repeat these mistakes.

When I asked the Assistant Secretary of Administration to halt spending on new computer purchases until the Secretary of Agriculture decides whether the four farm service agencies should be merged—he refused. He said he had to ask the Secretary.

Unless something is done, USDA plans to spend about $200 million on new computers next year, before the Department undertakes the reorganization that Secretary Madigan promised us he would consider.

It defies logic that USDA would commit millions of dollars for computer systems before knowing which field offices will be closed or consolidated.

Well it has now been 3 weeks since I asked USDA to give me a commitment not to spend taxpayers' money on computers—until it knew whether USDA would be reorganized.

Senator LUGAR and I followed up with a letter asking the Secretary to stop the spending. Secretary Madigan has not answered my question.

In just a few weeks the Appropriations Committee will mark up the appropriations bill for 1993.

That is why today I am introducing legislation to stop the Department of Agriculture from wasting millions of taxpayers dollars this year.

This legislation will prohibit the Secretary of Agriculture from spending any funds in fiscal year 1993 for computers, computer software, and computer hardware for the farm service agencies, until the Secretary has reported to Congress what its decision is for restructuring USDA's field offices.

Let's put this in simple terms. If you were building a house, would you buy a furnace before you decided whether there would be one or four bedrooms?

Does it make any sense for the Department to spend about $200 million on new computers before it knows whether it will have one consolidated farm service agency or four separate agencies? Of course it does not.

Now obviously, we do not want to stop USDA from spending to maintain its existing computer systems and there inevitably will be debates about which of these budget requests are for routine maintenance and which are for new systems that may be unnecessary if USDA's office structure is entirely reorganized.

Thus the bill requires that if the Comptroller General certifies that such expenditures are necessary for routine maintenance, they may go forward.

Two years ago, in the 1990 farm bill, I set up a base closing commission to help USDA review and consolidate unnecessary research facilities. USDA opposed the commission then, and still refuses to use it today.

Last month I introduced legislation, an expanded version of the commission in the farm bill, to set up a bipartisan reform commission to give USDA a blueprint for restructuring the overall field office system. Again we offered a tool to USDA to review and consolidate offices in their field structures.

I hope the Secretary soon sees the wisdom of supporting my proposal, but if he does not I am sure that my colleagues will see the wisdom of requiring the Secretary to tell us how USDA should be reorganized before the taxpayers spend $200 million on new computers for its farm agencies.

I ask unanimous consent that the letter to Secretary Madigan be printed in the RECORD.

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

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, DC, June 10, 1992.

Hon. EDWARD MADIGAN,
Secretary of Agriculture, Department of Agriculture, Washington, DC.

DEAR SECRETARY MADIGAN: We urge you to postpone USDA purchases and acquisitions of computer technology, beyond that which is necessary to maintain existing systems, until such time as the likely operating structure of the Department is ascertained and a corresponding information management plan has been completed.

During a hearing before the Senate Committee on Agriculture, Nutrition and Forestry on June 3, 1992, it became clear that the money invested by USDA in computer technology over the past several years has been spent without a clear understanding of what was being purchased, or what was operationally required to increase efficiency within the Department. It is our belief that future computer investment must not occur until a thorough review of the information requirements of the Department, in total, is conducted.

Even more importantly, new computer technology investment should not be made until the field agency reorganization, which we all agree must occur, has been completed. It would be highly inappropriate for USDA to invest monies (according to GAO approximately $2 billion over the next 5 years) before determining the organizational makeup of the those agencies.

We request that, with the exception of purchases needed to maintain existing systems, you curtail computer technology purchases until a strategic plan or vision for Department reorganization is completed.

Thank you for your attention to this request.

Sincerely,

PATRICK LEAHY,
Chairman.
RICHARD LUGAR,
Ranking Member.

By Mr. DOLE:

S. 2881. A bill to amend title XI of the Social Security Act to allow an adult from each family or household applying for benefits under title IV or XIX of the Social Security Act to attest to the citizenship status of the other members of the family or household, and for other purposes; to the Committee on Finance.

AMENDMENT TO MULTIPLE SIGNATURE PROVISIONS OF THE SOCIAL SECURITY ACT

Mr. DOLE. Mr. President, while we have seen renewed debate in recent months over welfare policy and spending, there is widespread agreement that we need to do more to simplify the administration of our welfare programs and promote better coordination between them. Today I am introducing legislation to help do just that. Specifically, my bill eliminates a Medicaid and Aid to Families With Dependent Children [AFDC] provision that requires all adult members in a household to sign a written declaration attesting to their own and their children's citizenship status as a condition of eligibility for these programs. Instead, one adult would be permitted to sign for the entire household. A household member would not be required to attest to the status of a newborn, who is by definition a U.S. citizen, until the next redetermination.

The so-called multiple signature rule in existing law has been found by welfare officials to be administratively burdensome and error-prone, as well as a barrier to participants. Congress in the 1990 farm bill eliminated a similar requirement for the Food Stamp Program for these same reasons with the administration's support. I want to stress that this legislation would not remove the requirement that State agencies verify the alien status of Medicaid and AFDC applicants and recipients. That important responsibility remains, and it would not be hindered by this bill. It is my understanding that the Department of Health and Human Services agrees that the multiple signature rule is administratively complex, especially in light of existing food stamp procedures, and that its elimination would not interfere with the States' alien verification process.

I want to thank the Kansas Department of Social and Rehabilitation Services for bringing this issue to my attention. Although the change I am proposing is fairly narrow in scope, I think anything we can do to improve the administration, accessibility and coordination of our welfare programs is worthwhile.

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. 2881

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADULT IN FAMILY OR HOUSEHOLD ALLOWED TO ATTEST TO CITIZENSHIP STATUS OF FAMILY OR HOUSEHOLD MEMBERS UNDER AFDC AND MEDICAID.

(a) IN GENERAL.—Section 1137(d)(1)(A) of the Social Security Act (42 U.S.C. 1320b-7(d)(1)(A)) is amended to read as follows:

"(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b), a declaration in writing, under penalty of perjury—

"(i) by the individual, or

"(ii) in the case of an individual who is an adult member of a family or household applying for or receiving such benefits, by another adult member of such family or household on such individual's behalf, or

"(iii) in the case of an individual who is a child, by an adult member of such individual's family or household on the individual's behalf, or

"(iv) in the case of an individual born into a family or household receiving such benefits, by an adult member of such individual's family or household on the individual's behalf no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to benefits provided on or after October 1, 1992.

By Mr. INOUYE (for himself and Mr. HOLLINGS):

S. 2882. A bill to authorize appropriations for the National Telecommunications and Information Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION AUTHORIZATION ACT OF 1992

• Mr. INOUYE. Mr. President, I rise today to introduce the authorization act for the National Telecommunications and Information Administration [NTIA] for fiscal years 1992 and 1993. This bill is noncontroversial and I urge my colleagues' support.

The bill I am offering today authorizes funding for NTIA for fiscal years 1992 and 1993. The bill also authorizes continued funding for the PEACESAT Program and for a study of the communications needs of rural health care practitioners. It authorizes funding for children's educational television and includes a new provision to encourage Federal Government agencies to make more efficient use of the radio frequency spectrum.

NTIA serves as the principal adviser to the executive branch on domestic and foreign telecommunications issues, develops plans and policies on behalf of the President for submission before various regulatory bodies, manages the Federal use of the radio frequency spectrum, and conducts a variety of research activities.

The Nation faces a number of important telecommunications issues as we head into the 21st century. How will we take full advantage of the new wireless communications technologies? How shall we improve the Nation's telecommunications infrastructure? How can we ensure a diversity of views in the face of increasing concentration in the media industry? And how will we coordinate the U.S. agency responses to these questions to ensure that the U.S. Government is working in a coordinated fashion?

NTIA needs to play an active role in developing answers to all these questions. NTIA's position as the expert adviser to the President on telecommunications matters makes it uniquely qualified to address these issues. NTIA has the opportunity to play a leadership role in resolving policy disputes and pushing our regulatory agencies toward more long-term solutions to these issues.

In these circumstances, congressional oversight over the activities of NTIA is especially important. The time has come to renew our interest in and oversight of this important Government agency. The bill I am introducing today recognizes NTIA's increasingly important role and also provides the Congress with a mechanism for continuing our oversight over the long-term development of our Nation's telecommunications policy.

For these reasons, this bill authorizes funding for the NTIA in the amount of $17,600,000 for fiscal year 1992 and $21,823,000 for fiscal year 1993, along with such sums as are necessary for additional expenses. The authorization amount for fiscal year 1992 is identical to the figure appropriated by Congress for fiscal year 1992. The figure for fiscal year 1993 is identical to the amount requested by the President in his fiscal year 1993 budget submission.

Mr. President, this NTIA authorization bill also contains language to reauthorize funding for the Pan-Pacific Educational and Cultural Experiments by Satellite Program. This program, commonly known as PEACESAT, provides essential telecommunications services to the inhabitants of several Pacific nations.

The PEACESAT Program allows for the exchange of medical information that, in one case, helped to stem an outbreak of cholera, provides edu-

cational programming for schoolchildren, and permits the exchange of information about cultural events and traditions among the communities. Because of their low level of economic activity and limited infrastructure, PEACESAT often provides the inhabitants of these communities with their only contact with the developed world.

The PEACESAT Program began in 1971 by using an old NASA experimental satellite. In 1985, the PEACESAT Program came to a halt as the satellite used to carry the PEACESAT Program ran out of station-keeping fuel. Congress appropriated $3.3 million over the next 5 years to find a substitute satellite and to fund the construction of Earth terminals to be used with the new satellite.

NTIA has made substantial progress in re-establishing the PEACESAT Program. It secured the use of a National Oceanic and Atmospheric Administration [NOAA] satellite until 1995. It contracted for the construction and installation of Earth terminals in the Pacific region that are compatible with the new satellite. Through these efforts, the PEACESAT Program once again provides needed communications to several thousand people in the Pacific Basin.

The PEACESAT Program has generated substantial good will toward the United States. This area of the world is becoming increasingly important to United States strategic interests, especially given the activities of Japan in the region. Continued funding of the minimum operations of the PEACESAT Program is essential to allowing this program to provide this value to the United States and the people of the Pacific Basin.

The bill I am introducing today authorizes $400,000 in funding for fiscal year 1992 and $1,500,000 in funding for fiscal year 1993. The amount of $400,000 is the minimum necessary to keep the PEACESAT Program in operation and is identical to the amount that was appropriated for fiscal year 1992. This amount is essential for the operation of the satellite and the administration of the program. The current satellite used by the PEACESAT Program, a GOES satellite, is scheduled to expire in 1995. Satellite capacity must be acquired several years in advance of the date of actual use. Additional funding for fiscal year 1993 is necessary to begin the process of acquiring additional satellite capacity. For this reason, the bill authorizes a higher amount for fiscal year 1993.

We expect NTIA to continue to monitor the PEACESAT Program, to ensure that additional Earth terminals are installed in the Pacific region and that the PEACESAT Program continues to expand. We also expect NTIA to continue its efforts to locate and contract for additional satellite capacity necessary to replace the GOES satellite beyond the end of 1994. Should NTIA and the managers of the PEACESAT Program determine that the next satellite could best be provided in cooperation with some other country, the amendments included in this bill will allow the United States to consider using that satellite, as long as the administration and management of the PEACESAT Program remains based in the United States.

This bill also includes an additional authorization of $1 million in funding to the Secretary of Commerce to convene, along with the Secretary of Health and Human Services, a panel to consider ways of satisfying the communications needs of rural health care providers. This provision is supported by the National Rural Health Association and is identical to the provision that passed the Congress last year.

Two years ago, the Office of Technology Assessment [OTA] released a significant report detailing the severe difficulties faced by rural health care providers, especially nurse practitioners, in keeping up with the latest advances in medical science. The report makes clear that the lack of adequate telecommunications facilities makes it very difficult for rural health practitioners to provide health care using the same advanced and essential information that is available to those serving the urban areas.

Often the rural health care provider is a solo practitioner and does not share the advantage his or her urban counterpart has in being able to consult with a number of specialists. Rural providers are unable to attend conferences unless they leave the community without health care coverage. Additionally, rural practitioners do not have access to continuing education offerings and considerable library holdings that are typically available to urban practitioners in large teaching hospitals. Consequently, rural providers often practice in professional isolation, with numerous barriers to practicing state-of-the-art health care delivery. As a result, the quality of health care delivery in rural areas can be directly affected.

Enhanced telecommunications can be designed to provide the capacity to move information from sources such as the National Institutes of Health and the divisions of the Public Health Service to rural health care delivery systems more rapidly and broadly. Such telecommunications abilities can improve decisionmaking and health service delivery in rural areas. Telecommunications systems can make remote services available locally and improve the flow of educational and administrative information, including patient and provider education and administration, as well as patient care.

The study authorized by this bill is intended to be the first step toward a wide-ranging plan to address the needs of rural health care providers. The OTA report identified the problems suffered by rural health care providers; the study authorized by this bill will begin to set forth a plan for solving these problems. It is my intention to seek additional funding to implement the recommendations of this study once it is completed. I strongly urge my colleagues to join me in supporting this effort to address the needs of rural health care providers through improved communications facilities and services.

This legislation also authorizes funding for the National Endowment For Children's Educational Television. The Endowment was created to provide funding for educational and instructional children's television programs. The act creating the Endowment provides that programming produced with funding from the Endowment must first be made available to public television. After the programming is run on public television it will be made available to commercial broadcasters and cable systems at a very low cost. The bill I am introducing today authorizes $5 million in funding for fiscal year 1993 and $6 million in funding for fiscal year 1994. Congress appropriated $2 million in funding for fiscal year 1992; the President has not proposed any funding for the Endowment for fiscal year 1993.

There is clearly a need to devote greater attention to the educational needs of our Nation's youth. This Endowment is designed to begin to address this need. If we are to ensure that our children are prepared for the future, we must expand our efforts to reach and teach our Nation's children. It is well documented that television programming can be an effective way to teach children and to motivate them to learn.

Finally, the bill includes provisions to encourage Federal Government licensees to make more efficient use of the spectrum. Federal Government agencies make extensive use of the spectrum, for drug enforcement, police and public safety, and for military and defense activities. Many Federal Government agencies, however, received licenses to use the spectrum several years ago. While these users often provide essential services, they do not always make the most efficient use of the spectrum. For instance, trunking and narrowband technologies were developed many years ago, but many Federal Government agencies have been resistant to implementing these spectrum-efficient technologies. In hearings before my Subcommittee on Communications on S. 218, the Emerging Telecommunications Technologies Act of 1991, several witnesses testified as to the need for the Federal Government to make more efficient use of its frequencies.

In response to this concern, the bill I am introducing today would encourage NTIA to promote more efficient use of the Federal Government's spectrum. In particular, the language included in the bill would recognize the Secretary's authority to withhold or refuse to grant assignments to Federal Government users in order to promote the goal of making more efficient and cost-effective use of the spectrum. This language would, for instance, authorize NTIA to withhold granting an assignment if it believed that the proposed service could be provided more efficiently using another technology such as trunking or narrowband or by employing the services of a private sector entity. I believe that the NTIA should have this authority, and should use this authority, in order to promote spectrum efficiency. The bill also directs the Secretary to adopt a plan to migrate Federal agency users to more spectrum-efficient technologies. I believe that this language will assist NTIA in its efforts to promote spectrum-efficiency without tying its hands to particular solutions. I intend to exercise particular oversight over the spectrum management practices of the NTIA to ensure that it meets these goals.

Mr. President, this bill contains several important and noncontroversial provisions. I urge my colleagues' support.

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. 2882

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 Telecommunications and Information Administration Authorization Act of 1992".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATION.

There are authorized to be appropriated for the administration of the National Telecommunications and Information Administration $17,600,000 for fiscal year 1992 and $21,823,000 for fiscal year 1993, and such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs.

SEC. 3. PEACESAT PROGRAM.

(a) FINDINGS.—Section 2(a) of the Act entitled "An Act to authorize appropriations for activities of the National Telecommunications and Information Administration for fiscal years 1990 and 1991", approved November 15, 1990 (Public Law 101-555; 104 Stat. 2758), is amended—

(1) in paragraph (2) by striking "the Soviet Union and";

(2) in paragraph (8)—

(A) by striking "since 1988, significant progress has been" and inserting in lieu thereof "in fiscal years 1988 and 1989, significant progress was"; and

(B) by striking "negotiating to acquire" and inserting in lieu thereof "acquiring"; and

(3) by striking all after paragraph (8) and inserting in lieu thereof the following new paragraphs:

"(9) because these activities exhausted the funds previously appropriated for the PEACESAT program, Congress authorized to be appropriated $1,000,000 for fiscal year 1990 and such sums as necessary for fiscal year 1991 for use by the Secretary of Commerce in the negotiation for and acquisition of satellite capacity and equipment under subsection (c)(1) of this section and the management and operation of satellite communications services under subsection (c)(2) of this section;

"(10) while no funds were appropriated for fiscal year 1990 because of the availability of carry-over funds, Congress appropriated $1,000,000 for fiscal year 1991 for the ongoing maintenance and operation of the GOES-3 satellite, for the administration of the PEACESAT program, for the acquisition and installation of earth stations and the training of engineers to operate the earth stations, and for the study of a long-term solution to the satellite needs of the PEACESAT program;

"(11) with these funds, the PEACESAT program has been re-established, over 20 new earth terminals have been installed (some at the expense of the individual user groups), and the use of the PEACESAT network is expanding;

"(12) while the PEACESAT program has now been re-established, additional funding continues to be necessary for the ongoing administrative and operational expenses of the PEACESAT program and especially for the acquisition of satellite capacity after 1994;

"(13) the importance of the PEACESAT program to the educational and cultural communications in the Pacific Ocean region makes it imperative that the Secretary of Commerce and the PEACESAT users explore every available option for long-term satellite capacity, including the possibility of using foreign-owned satellites or engaging in joint ventures with foreign entities to satisfy these long-term needs for transmission capacity; and

"(14) whether or not a domestic or foreign-owned satellite is used for transmission, it is essential to the achievement of United States policy goals that the headquarters, management, and operation of the PEACESAT program be located and conducted in the United States.".

(b) AUTHORIZATION.—The first sentence of section 2(d) of such Act of November 15, 1990 (104 Stat. 2758), is amended by striking all through "fiscal year 1991" and inserting in lieu thereof "There are authorized to be appropriated $400,000 for fiscal year 1992 and $1,500,000 for fiscal year 1993".

SEC. 4. COMMUNICATIONS FOR RURAL HEALTH PROVIDERS.

(a) PURPOSE.—It is the purpose of this section to improve the ability of rural health providers to use communications to obtain health information and to consult with others concerning the delivery of patient care. Such enhanced communications ability may assist in—

(1) improving and extending the training of rural health professionals; and

(2) improving the continuity of patient care in rural areas.

(b) ADVISORY PANEL.—The Secretary of Commerce, in conjunction with the Secretary of Health and Human Services, shall establish an advisory panel (hereafter in this section referred to as the "Panel") to develop recommendations for the improvement of rural health care through the collection of information needed by providers and the improvement in the use of communications to disseminate such information.

(c) COMPOSITION OF PANEL.—The Panel shall be composed of individuals from organizations with rural constituencies and practitioners from health care disciplines, representatives of the National Library of Medicine, and representatives of different health professions schools, including nurse practitioners.

(d) SELECTION OF CONSULTANTS.—The Panel may select consultants to provide advice to the Panel regarding the types of information that rural health care practitioners need, the procedures to gather and disseminate such information, and the types of communications equipment and training needed by rural health care practitioners to obtain access to such information.

(e) REPORT TO CONGRESS.—No later than 1 year after the Panel is established under subsection (b), the Secretary of Commerce shall prepare and submit, to the Committee on Commerce, Science, and Transportation and the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report summarizing the recommendations made by the Panel under subsection (b).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Commerce to carry out this section $1,000,000 to remain available until expended.

SEC. 5. NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISIONS.

Section 394(h) of the Communications Act of 1934 (47 U.S.C. 394(h)) is amended—

(1) by striking "1991 and" and inserting in lieu thereof "1991,"; and

(2) by inserting ", $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994" immediately after "1992".

SEC. 6. FEDERAL GOVERNMENT MOBILE RADIO SERVICES.

(a) ASSIGNMENTS FOR MOBILE RADIO SERVICES.—In awarding assignments for mobile radio services, the Secretary of Commerce shall promote efficient and cost-effective use of the spectrum to the maximum extent feasible.

(b) AUTHORITY TO WITHHOLD ASSIGNMENTS.—The Secretary of Commerce shall have the authority to withhold or refuse to award an assignment for mobile radio service in order to further the goal of making efficient and cost-effective use of the spectrum.

(c) PLAN FOR MORE EFFICIENT SPECTRUM USE.—By June 1, 1993, the Secretary of Commerce shall adopt a plan for Federal agencies with existing mobile radio systems to use more spectrum-efficient technologies that are at least as spectrum-efficient and cost-effective as readily available commercial mobile radio systems.●

By Mr. RIEGLE:

S. 2883. A bill to amend title VII of the Tariff Act of 1930 to include interim processors within industries producing processes agricultural products, and for other purposes; to the Committee on Finance.

INCLUSION OF INTERIM PROCESSORS WITHIN INDUSTRIES PRODUCING PROCESSED AGRICULTURAL PRODUCTS

● Mr. RIEGLE. Mr. President, I am introducing legislation to provide U.S. tart cherry producers with the ability to utilize U.S. trade laws to obtain re-

lief from the unfair practices of our trading partners, especially in the area of processed agricultural products.

My legislation is similar to that introduced in the House and considered by the Ways and Means Committee during its markup of H.R. 5100, the Trade Expansion Act of 1992, last week.

As a report by the U.S. International Trade Commission [ITC] states, current U.S. law excludes "interim processors as potentially part of an industry producing a processed product." Accordingly, producers of interim processed products, like tart cherry concentrate are not considered part of U.S. industry for purposes of determining injury from imports. My bill would amend U.S. trade law to provide standing for growers and interim processors of tart cherries and tart cherry products, thus allowing them standing to file cases with regard to alleged unfair practices of our trading partners connected with processed agricultural products.

In the 1988 omnibus trade bill, Congress amended U.S. law to ensure that processed agricultural products, like pork, would be considered part of U.S. industry seeking relief from unfair trade practices being perpetrated in the U.S. market. Accordingly, it is reasonable and fair that Congress provide access to U.S. trade laws for industries that take processed agricultural products one step further to "interim processing," such as tart cherry concentrate producers.

Red tart cherry producers are an important part of the U.S. agriculture sector. According to a publication on agriculture statistics, my State of Michigan leads the Nation in tart cherry production, accounting for 75 percent of the U.S. output. However, the majority of U.S. imports of tart cherries are grown in Serbia on partially state-owned farms. These cherries, which are used in concentrate for juices, are shipped into Germany and Austria where they are turned into market-ready products, like tart cherry concentrate. This dumping costs Michigan 25 million pounds of cherries or 15 percent of its production annually.

Shoring up this industry's access, and that of other "interim processors," to our trade laws is not only equitable, but also common sense when it comes to promoting U.S. agriculture and the livelihoods of our fruit growers and processors. For these reasons, I urge my colleagues to support this legislation.

I ask unanimous consent that the full text of the bill be printed in the RECORD at this point.

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

S. 2883

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCLUSION OF INTERIM PROCESSORS WITHIN INDUSTRIES PRODUCING PROCESSED AGRICULTURAL PRODUCTS.

(a) IN GENERAL.—Section 771(4)(E) of the Tariff Act of 1930 (19 U.S.C. 1677(4)(E)) is amended—

(1) by striking clause (i) and inserting the following:

"(i) IN GENERAL.—Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers, and the interim processors (if any), of the raw agricultural product may be considered part of the industry producing the processed product if—

"(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

"(II) there is a substantial economic relationship between the producers or growers and the interim processors (if any) of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include the price, added market value, or other economic interrelationships (regardless of whether such economic relationship is based upon any legal relationship).";

(2) by striking clause (ii) and inserting the following:

"(ii) PROCESSING.—For purposes of this paragraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if the domestic market for the processed agricultural product utilizes the raw agricultural product in an amount equal to not less than 10 percent of the total domestic production of the raw agricultural product, whether or not interim processing occurs.";

(3) in clause (iii)—

(A) by inserting "and any interim processed product," after "raw agricultural product" in subclause (I); and

(B) by inserting "or any interim processed product" after "raw agricultural product" in subclause (II); and

(4) by striking clause (iv) and inserting the following:

"(iv) INTERIM PROCESSING AND PROCESSORS; RAW AGRICULTURAL PRODUCT.—For purposes of this subparagraph—

"(I) The term 'interim processing' means the crushing, breaking, chopping, reduction, or other processing of a raw agricultural product primarily for the purpose of incorporating such product into the processed agricultural product.

"(II) The term 'interim processor' means a person that engages in the business of interim processing, whether or not in combination with any other business.

"(III) The term 'raw agricultural product' means any farm or fishing product.".

(b) CONFORMING AMENDMENTS.—Section 771(9)(G) of the Tariff Act of 1930 (19 U.S.C. 1677(9)(G)) is amended—

(1) by striking out "or" at the end of clause (ii);

(2) by inserting "or" at the end of clause (iii); and

(3) by inserting immediately after clause (iii) the following new clause:

"(iv) interim processors and one or more of the entities described in clause (i), (ii), or (iii).".

SEC. 2. RELATIVE HEALTH OF DOMESTIC INDUSTRY IN DETERMINING MATERIAL INJURY.

Section 771(7)(C) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(C)) is amended by adding at the end thereof the following new clause:

"(vi) HEALTH OF DOMESTIC INDUSTRY.—In making a determination under section 703(a), 705(b), 733(a), and 735(b), the Commission in each case—

"(I) may not consider the relative overall health of the domestic industry to be dispositive of the issue of material injury or the threat thereof, but

"(II) shall consider the relative health of the domestic industry only in the context of the import impact referred to in subparagraph (B)(i)(III).".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act apply with respect to investigations initiated under section 702 or 732 (as the case may be) of the Tariff Act of 1930 on or after the date of the enactment of this Act.•

By Mr. COCHRAN (for himself, Mr. PRYOR, Mr. LOTT, Mr. HEFLIN, Mr. LUGAR, Mr. SHELBY, and Mr. BUMPERS):

S. 2884. A bill to expand the meat inspection programs of the United States by establishing a comprehensive inspection program to ensure the quality and wholesomeness of all fish products intended for human consumption in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

FISH SAFETY ACT OF 1992

• Mr. COCHRAN. Mr. President, today I am introducing the Fish Safety Act of 1992. This same bill was approved by the Senate during the 101st Congress in September 1990, but it was not passed by the other body.

This bill will establish a comprehensive and mandatory program of inspection to ensure the safety of fish and fish products for the consuming public. Seafood consumers should have the same safety assurance they now have under the Federal meat and poultry inspection programs. Mississippi has a dynamic gulf coast seafood industry which produces a significant amount of the Nation's shrimp, oysters, and other fish products. With nearly 100,000 acres in production, Mississippi produces nearly 80 percent of the Nation's supply of farm-raised catfish.

It makes sense now, as it did in 1990, that the Secretary of Agriculture, with the staffing, expertise, and experience available to him, should manage this program with the collaboration of the Secretaries of Health and Human Services, and Commerce. This arrangement was strongly supported by both industry and consumer groups when it was presented to the Senate nearly 2 years ago.

The Department of Agriculture, through its Food Safety and Inspection Service would be authorized to conduct inspection of fish, fish products, and fish processing establishments. The bill also provides for consumer education, research, and civil and criminal penalties.

Standards will be used to identify unsafe levels of certain contaminants based on analysis by the Food and Drug Administration. Standards for sanita-

tion and labeling will be established by the Department of Agriculture. Fish and fish products which do not meet these standards will be removed from the commercial market.

The Fish Safety Act of 1992 is based upon the modern Hazard Analysis Critical Control Point principles recommended by the National Academy of Sciences. Further, imported fish and fish products must meet inspection standards as stringent as those affecting domestic fish products. Domestic and imported fish and fish products that satisfy standards will receive a Federal seal and processing establishments must be certified by the Department of Agriculture.

The Department of Commerce would be authorized, with the State, to establish a system to identify and classify growing and fishing waters for the coasts and the Great Lakes. In addition, the Secretary of Commerce would monitor fish products to determine instances or trends that may pose threat to the health of consumers.

With the comprehensive programs outlined in this bill, the citizens of the United States can have confidence and the best possible guarantee that the fish and fish products they will be consuming are wholesome and fit for human consumption.

I hope Senators will support this bill.●

By Mr. ROBB.

S. 2885. A bill to modify the boundary of Appomattox Court House National Historical Park, and for other purposes; to the Committee on Energy and Natural Resources.

BOUNDARY MODIFICATION OF APPOMATTOX COURT HOUSE NATIONAL HISTORICAL PARK

● Mr. ROBB. Mr. President, I rise today to introduce legislation to expand the boundary of the Appomattox National Historic Park in Appomattox County, VA.

Over the past few years, we have fought what some might consider a second Civil War in Virginia over the commemoration of Civil War battlefields. I am pleased to say that the expansion of the Appomattox Park contemplated in this legislation has the support of both preservationists and the local community.

The Appomattox Battlefield, is, of course, the site of the final surrender of the Confederate Army. The existing park protects historic land relating only to the surrender itself. The legislation I am introducing today would add parcels of land that would help honor the soldiers who fought in the last days of the battle and provide insight into the military events that led to the surrender. One of the tracts is the site of the last trenches dug by the Confederate Army during the Battle of Appomattox.

The legislation would adjust the boundary of the park to accommodate the acquisition of these additional parcels of land: The 133 acres immediately adjacent to the park's westerly boundary; 170 acres to the west of the first tract; and approximately 2 acres 3 miles removed from the park. The first two tracts would be purchased from willing sellers by the Conservation Fund and donated to the Federal Government. I am advised that the third tract would be donated to the park by the owner. The legislation has the support of the Civil War Battlefield Foundation and the Appomattox County Board of Supervisors. Congressman L.F. PAYNE has already introduced identical legislation in the House.

I hope that the Senate will see fit to move swiftly on this legislation.●

By Mr. KOHL (for himself, Mrs. KASSEBAUM, Mr. AKAKA, Mr. BROWN, Mr. BURNS, Mr. D'AMATO, Mr. INOUYE, Mr. KASTEN, Mr. LEVIN, Mr. MOYNIHAN, Mr. SIMON, Mr. STEVENS, and Mr. WELLSTONE):

S.J. Res. 321. Joint resolution designating the week beginning March 21, 1993, as "National Endometriosis Awareness Week"; to the Committee on the Judiciary.

NATIONAL ENDOMETRIOSIS AWARENESS WEEK

● Mr. KOHL. Mr. President, I rise with 12 of my colleagues to introduce a joint resolution that will encourage increased knowledge of and attention to a debilitating disease that has affected more than 5 million women in this country. I am pleased that Senators KASSEBAUM, AKAKA, BROWN, BURNS, D'AMATO, INOUYE, KASTEN, LEVIN, MOYNIHAN, SIMON, STEVENS, and WELLSTONE have joined me in introducing a joint resolution that would designate the week of March 21, 1993, as National Endometriosis Awareness Week.

Endometriosis—a disease that affects women of all races and income groups—strikes when tissue that usually resides in a woman's uterus travels to the abdominal lining, abdomen, ovaries, and other organs. This causes internal bleeding, inflammation, and other problems, including infertility. And the symptoms include painful menstruation, miscarriages, and chronic fatigue. The current treatments include surgery, administration of hormones, and pain medications. Some patients must undergo hysterectomies and ovary removals in extreme cases.

Unfortunately, the disease has no cure and often goes undiagnosed until it is too late. Women who have complained of symptoms of endometriosis have fallen victim to misdiagnoses and skepticism from their doctors because not enough is known about the disease. I hope that by introducing this joint resolution, women will become more aware of the warning signs of endometriosis and everyone will realize the need for more research for a cure. Perhaps, as a result, there will be earlier diagnoses and treatment, and fewer women will suffer. A similar resolution has been introduced in the House of Representatives by my colleague from Wisconsin, Mr. MOODY.

I ask unanimous consent that the text of this 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. 321

Whereas endometriosis is a chronic, debilitating disease that currently affects 5,000,000 women and 10 men in the United States;

Whereas endometriosis does not discriminate among socio-economic groups or ethnic or religious backgrounds;

Whereas endometriosis can affect the entire body by causing fatigue, flu-like symptoms, urological, bowel, heart, and respiratory problems, and thyroid disorders;

Whereas millions of dollars are spent every year on surgeries, gynecological care, and drugs for women with endometriosis;

Whereas endometriosis affects not only the woman who has the disease, but also her spouse, family, and career;

Whereas many working hours are lost every year due to endometriosis;

Whereas there is no guarantee that a hysterectomy, a bilateral salpingo-oophorectomy, which is the removal of the fallopian tubes and ovaries, pregnancy, or even menopause will cure endometriosis; and

Whereas there is a great need for an increase in the awareness of endometriosis, and for education, support, and funds for research concerning the disease: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning March 21, 1993, is designated as "National Endometriosis Awareness Week". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate ceremonies and activities.●

ADDITIONAL COSPONSORS

S. 290

At the request of Mr. MCCAIN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 290, a bill to establish an Indian Substance Abuse Program, and for other purposes.

S. 652

At the request of Mr. KOHL, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 652, a bill to protect the privacy of telephone users by amending section 3121 of title 18, United States Code.

S. 703

At the request of Mr. ROCKEFELLER, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 703, a bill to amend the Harmonized Tariff Schedule of the United States to correct the tariff rate inversion on certain iron and steel pipe and tube products.

S. 781

At the request of Mr. SARBANES, the name of the Senator from Florida [Mr.

GRAHAM] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 1002

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1002, a bill to impose a criminal penalty for flight to avoid payment of arrearages in child support.

S. 1343

At the request of Mr. DECONCINI, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 1343, a bill to encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

S. 1451

At the request of Mr. BIDEN, the names of the Senator from Oregon [Mr. PACKWOOD], the Senator from Maryland [Ms. MIKULSKI], the Senator from Illinois [Mr. DIXON], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of S. 1451, a bill to provide for the minting of coins in commemoration of Benjamin Franklin and to enact a fire service bill of rights.

S. 1677

At the request of Mr. DASCHLE, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 1677, a bill to amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the Medicaid Program, and for other purposes.

S. 2239

At the request of Mr. PRYOR, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 2239, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 2278

At the request of Mr. SHELBY, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 2278, a bill to amend section 801 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, to require life imprisonment without parole, or death penalty, for first degree murder.

S. 2362

At the request of Mr. MCCAIN, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 2362, a bill to amend title XVIII of the Social Security Act to repeal the reduced Medicare payment provision for new physicians.

S. 2484

At the request of Mr. KASTEN, the names of the Senator from Mississippi [Mr. COCHRAN], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 2484, a bill to establish research, development, and dissemination programs to assist State and local agencies in preventing crime against the elderly, and for other purposes.

S. 2509

At the request of Mr. NICKLES, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 2509, a bill to provide grants to establish an integrated approach to prevent child abuse, and for other purposes.

S. 2514

At the request of Mr. BUMPERS, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 2514, a bill to amend the Internal Revenue Code of 1986 to allow taxpayers a bad debt deduction for certain partially unpaid child support payments and to require the inclusion in income of child support payments which a taxpayer does not pay, and for other purposes.

S. 2528

At the request of Mr. AKAKA, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2528, a bill to amend chapter 37 of title 38, United States Code, to establish a pilot program for furnishing housing loans to Native American veterans, and for other purposes.

S. 2540

At the request of Mr. COATS, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 2540, a bill to amend the Internal Revenue Code of 1986 to provide for the establishment of individual medical savings accounts to assist in the payment of medical and long-term care expenses and other qualified expenses, to provide that the earnings on such accounts will not be taxable, and for other purposes.

S. 2560

At the request of Mr. SIMON, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 2560, a bill to reclassify the cost of international peacekeeping activities from international affairs to national defense.

S. 2624

At the request of Mr. GLENN, the names of the Senator from New Mexico [Mr. BINGAMAN], and the Senator from California [Mr. SEYMOUR] were added as cosponsors of S. 2624, a bill to authorize appropriations for the Interagency Council on the Homeless, the Federal Emergency Management Food and Shelter Program, and for other purposes.

S. 2656

At the request of Mr. FORD, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 2656, a bill to amend the Petroleum Marketing Practices Act.

S. 2660

At the request of Mr. WOFFORD, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 2660, a bill to amend the Agriculture Trade Act of 1978 to make modifications in the Market Promotion Program.

S. 2667

At the request of Mr. HEFLIN, the names of the Senator from Missouri [Mr. BOND], and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of S. 2667, a bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the Act with respect to alternate uses of new animal drugs and new drugs intended for human use.

S. 2682

At the request of Mr. BUMPERS, the names of the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Florida [Mr. GRAHAM], and the Senator from Tennessee [Mr. GORE] were added as cosponsors of S. 2682, a bill to direct the Secretary of the Treasury to mint coins in commemoration of the 100th anniversary of the beginning of the protection of Civil War battlefields, and for other purposes.

S. 2697

At the request of Mr. MCCAIN, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 2697, a bill to provide transitional protections and benefits for Reserves whose status in the reserve components of the Armed Forces is adversely affected by certain reductions in the force structure of the Armed Forces, and for other purposes.

S. 2707

At the request of Mr. RIEGLE, the names of the Senator from Arkansas [Mr. BUMPERS], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 2707, a bill to authorize the minting and issuance of coins in commemoration of the Year of the Vietnam Veteran and the 10th anniversary of the dedication of the Vietnam Veterans Memorial, and for other purposes.

S. 2726

At the request of Mr. BIDEN, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 2726, a bill to implement and authorize Weed and Seed activities, and for other purposes.

S. 2794

At the request of Mr. DOLE, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2794, a bill to relieve the regulatory burden on depository institutions, particularly on small depository institutions, and for other purposes.

S. 2804

At the request of Mrs. KASSEBAUM, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2804, a bill to establish

a program to provide technical assistance to employers and labor unions, in order to assist in preparing the workplace to employ women in apprenticeable occupations and other nontraditional occupations, and for other purposes.

S. 2851

At the request of Mr. JOHNSTON, the names of the Senator from Connecticut [Mr. DODD], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 2851, a bill to provide for the management of Pacific yew on public lands, and on national forest lands reserved or withdrawn from the public domain, to ensure a steady supply of taxol for the treatment of cancer and to ensure the long-term conservation of the Pacific yew, and for other purposes.

S. 2866

At the request of Mr. DOMENICI, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 2866, a bill to establish a program, to be known as the "ADEPT" Program, for the provision of international assistance in the deployment of energy and energy-related environmental practices and technologies, and for other purposes.

S. 2873

At the request of Mr. BREAUX, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 2873, a bill to amend the Internal Revenue Code of 1986 to establish medical care savings benefits.

S. 2877

At the request of Mr. BAUCUS, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2877, a bill entitled the "Interstate Transportation on Municipal Waste Act of 1992."

SENATE JOINT RESOLUTION 248

At the request of Mr. CONRAD, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Joint Resolution 248, a joint resolution designating August 7, 1992, as "Battle of Guadalcanal Remembrance Day."

SENATE JOINT RESOLUTION 255

At the request of Mr. D'AMATO, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of Senate Joint Resolution 255, a joint resolution to designate September 13, 1992 as "Commodore Barry Day."

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of Senate Joint Resolution 255, supra.

SENATE JOINT RESOLUTION 260

At the request of Mr. COCHRAN, the names of the Senator from West Virginia [Mr. BYRD], the Senator from California [Mr. CRANSTON], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Wisconsin [Mr. KASTEN], the Senator from Ohio [Mr. GLENN], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of Senate Joint Resolution 260, a joint resolution designating the week of October 18, 1992, through October 24, 1992, as "National School Bus Safety Week."

SENATE JOINT RESOLUTION 262

At the request of Mr. KASTEN, the names of the Senator from North Carolina [Mr. SANFORD], the Senator from Tennessee [Mr. GORE], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of Senate Joint Resolution 262, a joint resolution designating July 4, 1992, as "Buy American Day."

SENATE JOINT RESOLUTION 288

At the request of Mr. LIEBERMAN, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of Senate Joint Resolution 288, a joint resolution designating the week beginning July 26, 1992, as "Lyme Disease Awareness Week."

SENATE JOINT RESOLUTION 303

At the request of Mr. PELL, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of Senate Joint Resolution 303, a joint resolution to designate October 1992 as "National Breast Cancer Awareness Month."

SENATE JOINT RESOLUTION 304

At the request of Mr. ROTH, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Idaho [Mr. CRAIG], the Senator from Michigan [Mr. RIEGLE], the Senator from Texas [Mr. GRAMM], the Senator from California [Mr. CRANSTON], the Senator from Virginia [Mr. ROBB], the Senator from Arizona [Mr. MCCAIN], and the Senator from Missouri [Mr. BOND] were added as cosponsors of Senate Joint Resolution 304, a joint resolution designating January 3, 1993, through January 9, 1993, as "National Law Enforcement Training Week."

SENATE JOINT RESOLUTION 306

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of Senate Joint Resolution 306, a joint resolution designating October 1992 as "Italian-American Heritage and Culture Month."

SENATE JOINT RESOLUTION 307

At the request of Mr. MCCAIN, the names of the Senator from Nevada [Mr. BRYAN], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 307, a joint resolution designating the month of July 1992 as "National Muscular Dystrophy Awareness Month."

SENATE JOINT RESOLUTION 319

At the request of Mrs. KASSEBAUM, the names of the Senator from Utah [Mr. GARN], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 319, a joint resolution to designate the second Sunday in October of 1992 as "National Children's Day."

SENATE CONCURRENT RESOLUTION 81

At the request of Ms. MIKULSKI, the names of the Senator from Connecticut [Mr. DODD], the Senator from Arkansas [Mr. PRYOR], the Senator from California [Mr. CRANSTON], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Concurrent Resolution 81, a concurrent resolution expressing the sense of the Congress regarding visionary art as a national treasure and regarding the American Visionary Art Museum as a national repository and educational center for visionary art.

SENATE CONCURRENT RESOLUTION 113

At the request of Mr. MOYNIHAN, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of Senate Concurrent Resolution 113, a concurrent resolution concerning the 25th anniversary of the reunification of Jerusalem.

SENATE RESOLUTION 300

At the request of Mr. GORE, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of Senate Resolution 300, a resolution relating to suspension of assistance and cooperative programs with the former Yugoslavia.

SENATE RESOLUTION 314

At the request of Mr. DECONCINI, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of Senate Resolution 314, a resolution concerning the provision of humanitarian aid to civilian populations in and around Sarajevo.

AMENDMENTS SUBMITTED

FREEDOM FOR RUSSIA AND EMERGING EURASIAN DEMOCRACIES AND OPEN MARKETS SUPPORT ACT

KERREY AMENDMENT NO. 2436

(Ordered to lie on the table.)

Mr. KERREY submitted an amendment intended to be proposed by him to the bill (S. 2532) entitled the "Freedom for Russia and Emerging Democracies and Open Markets Support Act;" as follows:

On page 52, after line 13, add the following new section:

SEC. 21. INTERNATIONAL EXCHANGE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The President shall establish and carry out a program of professional, vocational, and technical exchange between United States citizens and citizens of the independent states of the former Soviet Union and of the Baltic states.

(b) DESCRIPTION OF PROGRAM.—(1) Exchanges under this section may be arranged—

(A) by the Federal Government; or

(B) by private sponsors, including businesses and individuals.

(2) The President is authorized to award grants to carry out paragraph (1)(B). Nongovernment sponsors awarded grants under this section shall be selected under such

terms and conditions as may be prescribed by the President, giving preference—

(A) to sponsors who agree to pay a relatively larger share of the cost of sponsoring the exchanges;

(B) to exchanges of more than 4 months duration:

(C) to sponsors who propose to bring citizens of the independent states of the former Soviet Union and the Baltic states to the United States; and

(D) to sponsors hosting participants engaged in the fields of agricultural production, processing, and marketing; agri-business; oil and mineral exploration and extraction; government; education; natural resource management; environmental protection; telecommunications; finance; health care; and small business.

(c) DELEGATION OF AUTHORITY.—The President shall delegate the authorities of this section to such agency or agencies of the United States as he may designate. In carrying out this section, the head of each such agency shall utilize, to the maximum extent practicable, the staff and other resources otherwise available to such agency.

(d) ADDITIONAL AUTHORITIES AVAILABLE.—The authority provided by this section is in addition to any other authority which may be exercised by the President.

(e) DEADLINE FOR IMPLEMENTATION.—Not later than 90 days after the date of enactment of this section, the first exchanges under this section shall be arranged.

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the President such sums as may be necessary to carry out this section for each of the fiscal years 1993 through 1998.

(2) Funds authorized to be appropriated by paragraph (1) are authorized to remain available until expended.

(g) DEFINITION.—For purposes of this section, the term "Baltic states" refers to the countries of Latvia, Lithuania, and Estonia.

FEDERAL HOUSING ENTERPRISES REGULATORY REFORM ACT

RIEGLE AMENDMENT NO. 2437

Mr. RIEGLE proposed an amendment to the bill (S. 2733) to improve the regulation of Government-sponsored enterprises, as follows:

On page 11, in the subsection heading on line 10, strike "EXCLUSIVE AUTHORITY." and everything that follows and insert in lieu thereof "AUTHORITY EXCLUSIVE OF THE SECRETARY.—The Director is authorized, without the review or approval of the Secretary, to—

(1) issue regulations concerning the financial health and security of the enterprises, including the establishment of risk-based capital standards;

(2) develop and propose to the Secretary any other regulations necessary and proper to carry out this Act and ensure that the purposes of the charter Acts are accomplished;

(3) establish annual budgets, financial reports, and annual assessments for the costs of the Office;

(4) examine each enterprise's financial and operating condition;

(5) determine capital levels of the enterprises;

(6) undertake administrative and enforcement actions under this Act;

(7) appoint conservators for the enterprises;

(8) monitor and enforce compliance with housing goals under this Act;

(9) conduct research and financial analysis;

(10) submit annual and other reports required under this Act; and

(11) perform such other functions as are necessary to carry out this Act and ensure that the purposes of the charter Acts are accomplished.

(b) AUTHORITY SUBJECT TO THE SECRETARY'S REVIEW.—Except as provided in subsection (a), the Director may issue any regulations necessary to carry out this Act and ensure that the purposes of the charter Acts are accomplished, including regulations—

(1) concerning the housing finance missions of the enterprises, including the affordable housing and other housing provisions under title V of this Act; and

(2) to establish and monitor compliance with fair lending requirements;

subject to the Secretary's review and approval.

(c) DELEGATION OF AUTHORITY.—The Director may delegate to employees of the Office any of the functions, powers, and duties of the Director, as the Director considers appropriate.

(d) INDEPENDENCE IN PROVIDING INFORMATION TO CONGRESS.—The Director is not required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress any recommendations, testimony, or comments if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the Secretary or the President.

(e) APPROVAL OF NEW PROGRAMS.—

(1) IN GENERAL.—The introduction of a new program by an enterprise pursuant to its charter Act shall be subject to prior approval by both the Secretary and the Director, except as provided in paragraph (5).

(2) APPROVAL PROCEDURE.—Not later than 45 days after submission of the request for approval of a new program or notice under paragraph (5)(A), the Secretary and the Director shall approve the new program or transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report explaining why the new program has not been approved. The 45-day period may be extended for one additional 15-day period if the Secretary or the Director requests additional information from the enterprise, but the 45-day period may not be extended for any other reason. If the Secretary and the Director fail to transmit the report within the 45-day period or 60-day period, as the case may be, the enterprise may proceed as if the new program had been approved.

(3) APPROVAL BY THE DIRECTOR.—

(A) IN GENERAL.—The Director shall approve a new program unless the Director determines that the program would risk significant deterioration of the financial condition of the enterprise.

(B) UNDERCAPITALIZED INSTITUTIONS.—If an enterprise is undercapitalized, the Director shall approve a new program only if the Director determines that the program will likely improve or not worsen the financial and capital condition of the enterprise.

(4) APPROVAL BY THE SECRETARY.—The Secretary shall approve a new program unless the Secretary determines that the program is not authorized by the relevant charter Act or would have a deleterious effect on housing finance.

(5) SPECIAL APPROVAL PROCEDURE FOR AN ADEQUATELY CAPITALIZED ENTERPRISE.—

(A) NOTICE.—If an adequately capitalized enterprise plans to introduce a new program, it shall submit a written notice to the Secretary and the Director.

(B) APPROVAL BY THE DIRECTOR.—A new program submitted by an enterprise in accordance with subparagraph (A) shall not be subject to approval by the Director.

(C) APPROVAL BY THE SECRETARY.—Within 20 business days after submission of the notice, the new program shall be deemed approved unless the Secretary determines that there is a substantial probability that the program is not authorized by the relevant charter Act or would have a deleterious effect on housing finance, in which case the Secretary shall inform the enterprise, by written notice, that the new program has not been approved under this paragraph, and the procedures of paragraph (2) shall apply.

(D) EFFECTIVE DATE.—This paragraph shall become effective on the date final regulations establishing the risk-based capital test are issued under section 201(e).

(E) TRANSITION PERIOD.—For the purposes of this paragraph, the capital classification of an enterprise shall be determined without regard to section 204(c).

(6) HEARING.—If the Secretary or the Director does not approve a new program, the Secretary or the Director, as the case may be, shall provide the enterprise with a timely opportunity to review and supplement the administrative record in an administrative hearing.

SEC. 104. PERSONNEL.

(a) IN GENERAL.—

(1) DIRECTOR'S POWERS.—The Director may appoint and fix the compensation of employees and agents necessary to carry out the functions of the Director and the Office.

(2) COMPENSATION.—

(A) EXCLUSION FROM GENERAL SCHEDULE PAY RATES.—Employees other than the Director may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

(B) COMPARABILITY OF COMPENSATION WITH FEDERAL BANK REGULATORY AGENCIES.—In fixing and directing compensation under paragraph (1), the Director shall consult with, and maintain comparability with compensation at, the Federal bank regulatory agencies.

(b) DEPUTY DIRECTOR.—

(1) IN GENERAL.—The Office shall have a Deputy Director who shall be appointed by the Director from among individuals who—

(A) are citizens of the United States,

(B) have a demonstrated understanding of financial management or oversight, and

(C) have a demonstrated understanding of mortgage security markets and housing finance.

(2) LIMITATION.—An individual may not be appointed as Deputy Director if the individual has served as an executive officer or director of an enterprise at any time during the 18-month period immediately preceding the nomination of such individual.

(3) POWERS, FUNCTIONS, AND DUTIES.—The Deputy Director shall—

(A) have such powers, functions, and duties as the Director shall prescribe, and

(B) serve as acting Director in the event of the death, resignation, sickness, or absence of the Director, until the return of the Director or the appointment of a successor under section 101.

(c) FEDERAL AGENCIES.—

(1) IN GENERAL.—With the consent of any executive agency, independent agency, or department, the Director may use information, services, staff, and facilities of such agency or department on a reimbursable basis, in carrying out the duties of the Office.

(2) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The Director shall reimburse the Department of Housing and Urban Development for reasonable costs incurred by the Department that are directly related to the operations of the Office.

(d) OUTSIDE EXPERTS AND CONSULTANTS.—Notwithstanding any provision of law limiting pay or compensation, the Director may appoint and compensate such outside experts and consultants as the Director determines necessary to assist the work of the Office.

(e) EQUAL OPPORTUNITY REPORT.—Not later than 180 days after the effective date of this Act, the Director shall submit to the Congress a report containing—

(1) a complete description of the equal opportunity, affirmative action, and minority business enterprise utilization programs of the Office; and

(2) such recommendations for administrative and legislative action as the Director may determine to be appropriate to carry out such programs.

SEC. 105. FUNDING.

(a) ANNUAL ASSESSMENT.—The Director shall levy an annual assessment on the enterprises sufficient to pay for the estimated expenses of the Office.

(b) ALLOCATION OF ANNUAL ASSESSMENT TO THE ENTERPRISES.—

(1) AMOUNT OF PAYMENT.—Each enterprise shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) that bears the same ratio to the total annual assessment that the total assets of each enterprise bears to the total assets of both enterprises.

(2) TIMING OF PAYMENT.—The annual assessment shall be payable semiannually on September 1 and March 1 of each year.

(3) DEFINITION.—For the purpose of this section, the term "total assets" means the sum of—

(A) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(B) the unpaid principal balance of outstanding mortgage backed securities issued or guaranteed by the enterprise that are not included in subparagraph (A); and

(C) other off-balance-sheet obligations as determined by the Director.

(c) RECEIPTS FROM ANNUAL ASSESSMENTS AND THE SPECIAL ASSESSMENT.—Office receipts derived from the annual assessments and the special assessment levied upon the enterprises pursuant to subsection (f)—

(1) shall be available to the Director for expenses necessary to carry out the responsibilities of the Director relating to the enterprises;

(2) shall be used by the Director to pay the expenses necessary to carry out the responsibilities of the Director relating to the enterprises.

(d) DEFICIENCIES DUE TO INCREASED COSTS OF REGULATION AND ENFORCEMENT.—The semiannual payments made pursuant to subsection (b) by any enterprise that is not adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation and enforcement.

(e) SURPLUS.—If any amount paid by an enterprise remains unspent at the end of any semiannual period, such amount shall be deducted from the annual assessment required to be paid by that enterprise for the following semiannual period.

(f) INITIAL SPECIAL ASSESSMENT.—The Director shall levy on the enterprises an initial special assessment, allocated pursuant to subsection (b)(1), to cover the startup costs of the Office, including space modifications, capital equipment, supplies, recruitment, and activities of the Office in the first year. Each enterprise shall pay its portion of the initial special assessment no later than 10 days after the date the assessment is made.

(g) BUDGET AND FINANCIAL REPORTS FOR THE OFFICE.—

(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal year, the Director shall provide to the Secretary and the Director of the Office of Management and Budget a copy of the Office's financial operating plans and forecasts.

(2) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter, the Director shall submit to the Secretary and the Director of the Office of Management and Budget a copy of the report of the results of the Office's operations during such period.

(3) VIEWS OF THE SECRETARY.—On an annual basis the Secretary shall provide the Congress with comments on the plans, forecasts, and reports required under this subsection.

(4) INCLUSION IN THE PRESIDENT'S BUDGET.—The annual plans, forecasts, and reports required under this subsection shall be included in the Budget of the United States in the appropriate form, and in the Department's congressional justifications for each fiscal year in a form determined by the Secretary.

(5) AUDIT.—

(A) IN GENERAL.—The Comptroller General shall audit the operations of the Office in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to or used by the Office shall be made available to the Comptroller General.

(B) FREQUENCY.—Audits shall be conducted annually for the first 2 years following the effective date of this Act and as appropriate thereafter.

SEC. 106. INFORMATION, RECORDS, AND MEETINGS.

For purposes of subchapter II of chapter 5 of title 5, United States Code, the Office and the Department of Housing and Urban Development shall, with respect to activities under this Act, be considered agencies responsible for the regulation or supervision of financial institutions.

SEC. 107. REGULATIONS.

In promulgating regulations relating to the financial health and security of an enterprise, the Director shall—

(1) consult in the development of such regulations with the Secretary, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System; and

(2) provide copies of proposed regulations to the Secretary, the Secretary of the Treasury, and the Chairman of the Board of Governors of the Federal Reserve System for their review and comment, which comments shall be in writing and made a part of the record.

SEC. 108. SAVINGS PROVISION.

Any rule or regulation promulgated prior to the effective date of this Act by the Secretary pursuant to the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act shall remain valid unless they are modified, terminated, superseded, set aside, or revoked by operation of law or in accordance with law.

SEC. 109. ANNUAL REPORT OF THE DIRECTOR.

Not later than June 15 of each year, the Director shall submit to the Secretary and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a written report which shall include—

(1) a description of the actions taken, and being undertaken, by the Director to carry out this Act;

(2) a description of the financial condition of each enterprise, including the results and conclusions of the annual examinations of the enterprises;

(3) an assessment, in accordance with section 508, of the extent to which each enterprise is achieving its public purposes; and

(4) any recommendations for legislation.

SEC. 110. FINANCIAL REPORTS AND EXAMINATIONS.

(a) FINANCIAL REPORTS.—

(1) IN GENERAL.—Each enterprise shall provide to the Director annual and quarterly reports of financial condition and operations which shall be in such form, contain such information, and be made on such dates, as the Director may require.

(2) CONTENTS OF ANNUAL REPORT.—Each annual report shall include—

(A) financial statements prepared in accordance with generally accepted accounting principles;

(B) any supplemental information or alternative presentation that the Director may require; and

(C) a report signed by the enterprise's chief executive officer and chief accounting or financial officer, that assesses, as of the end of the enterprise's most recent fiscal year—

(i) the effectiveness of the enterprise's internal control structure and procedures; and

(ii) the enterprise's compliance with designated safety and soundness laws.

(3) ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.—

(A) AUDITS REQUIRED.—Each enterprise shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

(B) SCOPE OF AUDIT.—In conducting an audit under this subsection, an independent public accountant shall determine and report on whether the financial statements—

(i) are presented fairly in accordance with generally accepted accounting principles; and

(ii) to the extent determined necessary by the Director, comply with such other disclosure requirements as may be imposed under paragraph (2)(B).

(4) CERTIFICATION OF QUARTERLY REPORTS.—

(A) DECLARATION.—Quarterly reports shall contain a declaration by an officer designated by the board of directors of the enterprise to make such declaration that the report is true and correct to the best of his or her knowledge and belief.

(B) ATTESTATION.—The correctness of the quarterly report shall be attested by the signatures of at least 3 of the directors of the enterprise other than the officer making the declaration required by paragraph (4)(A). Such attestation shall include a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(5) REVIEW OF AUDITS.—The Director, or at the request of the Director or any Member of Congress, the Comptroller General of the

United States, may review any audit of a financial statement conducted under this subsection. Upon request of the Director or the Comptroller General, an enterprise and its auditor shall provide all books, accounts, financial records, reports, files, workpapers, and property that the Director or the Comptroller General considers necessary to the performance of any review under this subsection.

(6) ADDITIONAL AND SPECIAL REPORTS.—The Director may require additional reports from an enterprise, in such form and containing such information as the Director may prescribe, on dates fixed by the Director, and may require special reports from an enterprise whenever, in the Director's judgment, such reports are necessary for the Director to carry out the purposes of this Act.

(b) EXAMINATIONS.—

(1) FREQUENCY OF EXAMINATIONS.—The Director shall conduct a full-scope, on-site examination of each enterprise whenever the Director determines that an examination is necessary, but not less than once every 12 months, to determine the condition of the enterprise and for the purpose of ensuring its financial health and security.

(2) EXAMINERS.—The Director is authorized to contract with any Federal banking agency for the services of examiners and to reimburse such agency for the cost of providing the examiners.

(3) TECHNICAL EXPERTS.—The Director is authorized to contract for the services of such technical experts as the Director determines necessary and appropriate to provide temporary or periodic technical assistance in an examination.

(4) POWER AND DUTY OF EXAMINERS.—Each examiner shall make a full and detailed report to the Director of the financial condition of the enterprise examined.

(5) LAW APPLICABLE TO EXAMINERS.—The Director and each examiner shall have the same authority and each examiner shall be subject to the same obligations and penalties as are applicable to examiners employed by the Federal Reserve banks.

(6) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE; SUBPOENA POWERS.—In connection with any investigation, examination of an enterprise, or administrative proceeding, the Director shall have the authorities conferred by section 308.

(7) PRESERVATION OF RECORDS BY PHOTOGRAPHY.—

(A) IN GENERAL.—The Director may cause any record, paper, or document to be copied or photographed, in a manner that complies with the minimum standards of quality approved for permanent photographic records by the National Institute of Standards and Technology.

(B) DEEMED AS ORIGINALS.—Such copies or photographs, shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies.

(C) PRESERVATION.—Any such photograph or copy shall be preserved as the Director shall prescribe, and the original may be destroyed.

SEC. 111. EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS.

(a) IN GENERAL.—The enterprises shall establish a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services, in contracts entered into by the enterprises with such persons or business, public and private, in order to perform the functions authorized under any law applicable to the enterprises.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, each enterprise shall submit to the Congress and to the Director a report describing the actions taken by the enterprise pursuant to subsection (a).

SEC. 112. CONFORMING AMENDMENT.

Section 5313 of title 5, United States Code, is amended by inserting at the end the following:

"Director of the Office of Federal Housing Enterprise Oversight.".

SEC. 113. AMENDMENT TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.

Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of this Act, the Secretary may not merge or consolidate the Office of Federal Housing Enterprise Oversight of the Department, or any of the functions or responsibilities of such Office with any function or program administered by the Secretary.".

SEC. 114. PROTECTION OF CONFIDENTIAL INFORMATION.

Section 1905 of title 18, United States Code, is amended by inserting "a consultant to the Office of Federal Housing Enterprise Oversight," after "or agency thereof,".

SEC. 115. LIMITATION ON SUBSEQUENT EMPLOYMENT.

(a) IN GENERAL.—Neither the Director nor a former officer or employee of the Office may accept compensation from an enterprise during the 2-year period beginning on the date of separation from employment by the Office.

(b) APPLICABILITY.—The limitation contained in subsection (a) applies only to any former officer or employee who, while employed by the Office, was compensated at a rate in excess of the lowest rate for a position classified higher than GS-15 of the General Schedule under section 5107 of title 5, United States Code.

SEC. 116. PROTECTING TAXPAYERS AGAINST LIABILITY FOR THE ENTERPRISES.

Nothing in this Act shall be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, or to honor, reimburse, or otherwise guarantee any obligation or liability of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, and nothing in this Act shall be construed as implying that either enterprise or its securities are backed by the full faith and credit of the United States.

SEC. 117. ANNUAL LITIGATION REPORT.

Not later than March 15 of each year, the Attorney General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a written report which shall set forth for the preceding calendar year the number of requests by the Director to the Attorney General to conduct litigation pursuant to section 516 of title 28 of the United States Code and the status thereof, including—

(1) the total number of requests by the Director;

(2) the number of requests that resulted in the commencement of litigation by the Department of Justice;

(3) the number of requests that did not result in the commencement of litigation by the Department of Justice;

(4) with respect to those requests that resulted in the commencement of litigation—

(A) the number of days between the date of the Director's request and the commencement of the litigation; and

(B) the number of days between the date of the commencement and termination of the litigation;

(5) with respect to those requests that did not result in the commencement of litigation, a list of principal reasons thereof and the number of requests for which each reason is applicable; and

(6) a reconciliation showing the number of litigation requests pending at the beginning of the calendar year, the number of requests made during the calendar year, the number of requests for which action was completed during the calendar year, and the number of requests pending at the end of the calendar year.

SEC. 118. PROHIBITING EXCESSIVE COMPENSATION.

(a) IN GENERAL.—The Director shall prohibit an enterprise from providing excessive compensation to any executive officer.

(b) SETTING COMPENSATION PROHIBITED.—In carrying out subsection (a), the Director shall not set a specific level or range of compensation.

(c) DEFINITIONS.—For purposes of this section:

(1) COMPENSATION.—

(A) IN GENERAL.—The term "compensation" includes any payment of money or provision of any other thing of value in consideration of employment.

(B) FUTURE PAYMENT OR PROVISION.—The Director shall value any future payment or provision (including any payment or provision relating to the termination of employment) by calculating the present value of the projected cost of the payment or provision.

(2) EXCESSIVE.—An executive officer's compensation is "excessive" if it is unreasonable or disproportionate to the services actually performed by the executive officer, in view of—

(A) the enterprise's financial condition, including the extent to which the enterprise exceeds or falls below its minimum capital level;

TITLE II—REQUIRED CAPITAL LEVELS FOR THE ENTERPRISES AND SPECIAL ENFORCEMENT POWERS

SEC. 201. RISK-BASED CAPITAL LEVELS.

(a) RISK-BASED CAPITAL TEST.—The Director shall, by regulation, establish a risk-based capital test which shall require each enterprise to maintain positive capital during a 10-year period (the "stress period") in which the following circumstances are assumed to occur:

(1) CREDIT RISK.—With respect to mortgages owned or guaranteed by the enterprise and other obligations of the enterprise, losses occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing practice for the industry in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing not less than 5 percent of the total population of the United States that, for a period of not less than 2 years (the "benchmark regional experience"), experienced the highest rates of default and severity of mortgage losses, in comparison with such rates of default and severity of mortgage losses in other such areas for any period of such duration, as determined by the Director.

(2) INTEREST RATE RISK.—

(A) IN GENERAL.—Interest rates decrease as described in subparagraph (B) or increase as described in subparagraph (C), whichever would require more capital for the enterprise.

(B) DECREASES.—The 10-year constant maturity Treasury yield decreases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield decreases to the lesser of—

(i) 600 basis points below the average yield during the preceding 9 months, or

(ii) 60 percent of the average yield during the preceding 3 years,

but in no case to a yield less than 50 percent of the average yield during the preceding 9 months.

(C) INCREASES.—The 10-year constant maturity Treasury yield increases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield increases to the greater of—

(i) 600 basis points above the average yield during the preceding 9 months, or

(ii) 160 percent of the average yield during the preceding 3 years,

but in no case to a yield greater than 175 percent of the average yield during the preceding 9 months.

(D) DIFFERENT TERMS TO MATURITY.—Yields of Treasury instruments with other terms to maturity will change relative to the 10-year yield in patterns and for durations that are within the range of historical experience and are judged reasonable by the Director but must result by the 5th year of the stress period in patterns of yields with respect to maturities that are consistent with average patterns over periods of not less than 2 years as established by the Director.

(E) LARGE INCREASES IN YIELDS.—If the 10-year constant maturity Treasury yield is assumed to increase by more than 50 percent over the average yield during the preceding 9 months, the Director shall adjust the losses in paragraphs (1) and (3) to reflect a correspondingly higher rate of general price inflation.

(3) NEW BUSINESS.—

(A) IN GENERAL.—Any contractual commitments of the enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgage purchases, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period. No other purchases of mortgages shall be assumed, except as provided in subparagraph (B).

(B) ADDITIONAL NEW BUSINESS.—The Director may, after consideration of each of the studies required by subparagraph (C), assume that the enterprise conducts additional new business during the stress period consistent with the following—

(i) AMOUNT AND PRODUCT TYPES.—The amount and types of mortgages purchased and their financing will be reasonably related to recent experience and the economic characteristics of the stress period.

(ii) LOSSES.—Default and loss severity characteristics of mortgages purchased will be reasonably related to historical experience.

(iii) PRICING.—Prices charged by the enterprise in purchasing new mortgages will be reasonably related to recent experience and the economic characteristics of the stress period. The Director may assume that a reasonable period of time would lapse before the enterprise would recognize and react to the characteristics of the stress period.

(iv) INTEREST RATE RISK.—Interest rate risk on new mortgages purchased will occur to an extent reasonably related to historical experience.

(v) RESERVES.—The enterprise must maintain reserves during and at the end of the stress period on new business conducted during the first 5 years of the stress period reasonably related to the expected future losses on such business, consistent with generally accepted accounting principles and industry accounting practice.

(C) STUDIES.—Within 1 year after regulations are first issued under subsection (e), the Director, the Director of the Congressional Budget Office, and the Comptroller General of the United States shall each submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a study of the advisability and appropriate form of any new business assumptions under subparagraph (B).

(D) EFFECTIVE DATE.—The provisions of subparagraph (B) shall become effective 4 years after regulations are first issued under section 201(e).

(4) OTHER ACTIVITIES.—Losses or gains on other activities, including interest rate and foreign exchange hedging activities, shall be determined by the Director, on the basis of available information, to be consistent with the stress period.

(b) CONSIDERATIONS.—

(1) IN GENERAL.—In establishing the risk-based capital test under subsection (a), the Director shall take into account appropriate distinctions among types of mortgage products, differences in seasoning of mortgages, and any other factors the Director considers appropriate.

(2) CONSISTENCY.—Characteristics of the stress period other than those specifically set forth in subsection (a), such as prepayment experience and dividend policies, will be those determined by the Director, on the basis of available information, to be most consistent with the stress period.

(c) RISK-BASED CAPITAL LEVEL.—For purposes of this title, the risk-based capital level for an enterprise shall be 130 percent of the amount of capital required to meet the risk-based capital test.

(d) DEFINITIONS.—For purposes of this section:

(1) SEASONING.—The term "seasoning" means the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured, determined on an annual basis by region, in accordance with the Constant Quality Home Price Index published by the Secretary of Commerce (or any index of comparable or superior quality).

(2) TYPE OF MORTGAGE PRODUCT.—The term "type of mortgage product" means a classification of 1 or more mortgage products, as established by the Director, that have similar characteristics based on the set of characteristics set forth in the following subparagraphs:

(A) The property securing the mortgage is—

(i) a residential property consisting of 1 to 4 dwelling units; or

(ii) a residential property consisting of more than 4 dwelling units.

(B) The interest rate on the mortgage is—

(i) fixed; or

(ii) adjustable.

(C) The priority of the lien securing the mortgage is—

(i) first; or

(ii) second or other.

(D) The term of the mortgage is—

(i) 1 to 15 years;

(ii) 16 to 30 years; or

(iii) more than 30 years.

(E) The owner of the property is—

(i) an owner-occupant; or

(ii) an investor.

(F) The unpaid principal balance of the mortgage—

(i) will amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage;

(ii) will not amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage; or

(iii) may increase significantly at some time during the term of the mortgage.

(G) Any other characteristics of the mortgage, as the Director may determine.

(e) REGULATIONS.—

(1) IN GENERAL.—The Director shall issue final regulations establishing the risk-based capital test not later than 18 months after the effective date of this Act. Such regulations shall be effective when issued.

(2) CONTENTS.—Such regulations shall contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, and prepayment rates).

(3) APPLICATION.—The regulations and any accompanying orders or guidelines shall be sufficiently specific to enable each enterprise to apply the test to that enterprise in the same manner as the Director, and to enable the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Director of the Congressional Budget Office, the Comptroller General of the United States, the Director of the Office of Management and Budget, or a consultant to the Office to apply the test in the same manner as the Director.

(4) CONFIDENTIALITY OF INFORMATION.—Any person or agency described in paragraph (3) that receives any book, record, or information from the Director or an enterprise to enable the risk-based capital test to be applied shall—

(A) maintain the confidentiality of the book, record, or information in a manner that is generally consistent with the level of confidentiality established for the material by the Director or the enterprise; and

(B) be exempt from section 552 of title 5, United States Code, with respect to the book, record, or information.

(f) AVAILABILITY OF MODEL.—The Director shall make available to the public copies of any statistical model used to implement the risk-based capital test under this section. The Director may charge a reasonable fee for any copy of a statistical model.

SEC. 202. MINIMUM CAPITAL LEVELS.

(a) IN GENERAL.—The minimum capital level for each enterprise shall be the sum of—

(1) 2.50 percent of the aggregate on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.45 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) those percentages of off-balance-sheet obligations not included in paragraph (2) (ex-

cluding commitments with remaining terms of no more than 6 months to purchase mortgages or issue securities), that the Director determines best reflect the credit risk of such obligations or guarantees in relation to those included in paragraph (2).

(b) TRANSITION.—Notwithstanding subsection (a), until the expiration of the 18-month period beginning on the date of enactment of this Act, the minimum capital level for each enterprise shall be the sum of—

(1) 2.25 percent of the aggregate on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.40 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) those percentages of off-balance-sheet obligations not included in paragraph (2) (excluding commitments with remaining terms of no more than 1 year to purchase mortgages or issue securities), that the Director determines best reflect the credit risk of such obligations or guarantees in relation to those included in paragraph (2).

SEC. 203. CRITICAL CAPITAL LEVELS.

The critical capital level for each enterprise shall be the sum of—

(1) 1.25 percent of the aggregate on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.25 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) those percentages of off-balance-sheet obligations not included in paragraph (2) (excluding commitments with remaining terms of no more than 6 months to purchase mortgages or issue securities), that the Director determines best reflect the credit risk of such obligations or guarantees in relation to those included in paragraph (2).

SEC. 204. CAPITAL CLASSIFICATIONS.

(a) IN GENERAL.—The Director shall classify an enterprise according to the following categories:

(1) ADEQUATELY CAPITALIZED.—An enterprise shall be classified as "adequately capitalized" if the enterprise meets or exceeds both its risk-based capital level and its minimum capital level.

(2) UNDERCAPITALIZED.—An enterprise shall be classified as "undercapitalized" if it is not adequately capitalized.

(3) SIGNIFICANTLY UNDERCAPITALIZED.—An enterprise shall be classified as "significantly undercapitalized" if the enterprise does not meet or exceed its minimum capital level.

(4) CRITICALLY UNDERCAPITALIZED.—An enterprise shall be classified as "critically undercapitalized" if it does not meet its critical capital level.

(b) QUARTERLY CLASSIFICATION.—The Director shall classify an enterprise not less than quarterly. The first such classification shall be made within 3 months after the effective date of this Act.

(c) IMPLEMENTATION.—Notwithstanding subsection (a), an enterprise shall be classified as adequately capitalized until 1 year after the regulations are first issued under section 201(e), if the enterprise meets or exceeds the applicable minimum capital level.

SEC. 205. SUPERVISORY ACTIONS APPLICABLE TO ENTERPRISES.

(a) SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED ENTERPRISES.—

(1) CAPITAL RESTORATION PLAN.—An undercapitalized enterprise shall submit to the Director and implement a capital restoration plan.

(2) RESTRICTION ON CAPITAL DISTRIBUTIONS.—An undercapitalized enterprise that is not significantly undercapitalized shall make no capital distribution that would result in the enterprise being classified as significantly undercapitalized.

(b) ADDITIONAL SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED ENTERPRISES.—

(1) RESTRICTIONS ON CAPITAL DISTRIBUTIONS.—

(A) PRIOR APPROVAL.—A significantly undercapitalized enterprise shall make no capital distribution that would result in the enterprise being classified as critically undercapitalized. A significantly undercapitalized enterprise may make any other capital distribution only with the prior approval of the Director.

(B) STANDARD FOR APPROVAL.—The Director may approve a capital distribution by a significantly undercapitalized enterprise only if the Director determines that the payment—

(i) will enhance the ability of the enterprise promptly to meet the risk-based capital level and the minimum capital level for the enterprise,

(ii) will contribute to the long-term financial health and security of the enterprise, or

(iii) is otherwise in the public interest.

(2) DISCRETIONARY SUPERVISORY ACTIONS.—

(A) IN GENERAL.—The Director may by order take any of the following actions with respect to a significantly undercapitalized enterprise:

(i) Limit any increase in, or order the reduction of, any obligations of the enterprise.

(ii) Limit or prohibit the growth of the assets of the enterprise or require contraction of the assets of the enterprise.

(iii) Require the enterprise to raise new capital.

(iv) Require the enterprise to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the enterprise.

(v) Appoint a conservator for the enterprise if the Director determines that the capital of the enterprise is below its minimum level and that alternative remedies are not satisfactory to restore the enterprise's capital.

(B) APPOINTMENT OF CONSERVATOR.—

(i) AUTHORITY.—Title IV, except subsections (a), (b), and (c) of section 401, shall govern any conservatorship resulting from an appointment pursuant to subparagraph (A)(v).

(ii) NOTICE AND HEARING.—The appointment of a conservator under subparagraph (A)(v) shall be subject to the notice and hearing provisions set forth in section 209.

(c) EFFECTIVE DATE.—This section shall take effect when the first classifications are made under section 204(b).

SEC. 206. CHANGES IN THE CLASSIFICATION OF AN ENTERPRISE IN CONNECTION WITH A CAPITAL RESTORATION PLAN.

(a) IN GENERAL.—The Director may by order—

(1) classify an undercapitalized enterprise as significantly undercapitalized, or

(2) classify a significantly undercapitalized enterprise as critically undercapitalized,

upon the occurrence of an event described in subsection (b).

(b) REASONS FOR THE CHANGE IN CLASSIFICATION.—Subsection (a) shall apply if—

(1) the enterprise does not submit or resubmit a capital restoration plan that is substantially in compliance with section 208,

(2) the Director has not approved a capital restoration plan submitted by the enterprise and the enterprise's opportunities for resubmission of a capital restoration plan have expired, or

(3) the Director determines that the enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

SEC. 207. MANDATORY APPOINTMENT OF CONSERVATOR FOR CRITICALLY UNDERCAPITALIZED ENTERPRISES.

(a) APPOINTMENT.—If the Director determines that an enterprise is critically undercapitalized, the Director shall appoint a conservator for the enterprise not later than 30 days after providing notice and an opportunity for a hearing pursuant to section 209, unless the Director determines, with the concurrence of the Secretary of the Treasury, that the public interest is better served by other action. Title IV, except subsections (a), (b), and (c) of section 401, shall govern any conservatorship resulting from an appointment under this section.

(b) EFFECTIVE DATE.—This section shall take effect when the first quarterly classifications are made under section 204(b).

SEC. 208. CAPITAL RESTORATION PLANS.

(a) CONTENTS.—A capital restoration plan submitted under this title shall—

(1) be a feasible plan for the enterprise that would likely enable it to become adequately capitalized;

(2) describe the actions that the enterprise will take to become adequately capitalized;

(3) establish a schedule for completing the actions set forth in the capital restoration plan;

(4) specify the types and levels of activities in which the enterprise will engage during the term of the capital restoration plan; and

(5) describe the actions that the enterprise will take to comply with any supervisory requirements imposed under this title.

(b) DEADLINES FOR SUBMISSION.—A capital restoration plan must be submitted to the Director not more than 45 days after the Director has notified the enterprise in writing that a plan is required. The Director may extend the deadline to the extent that the Director determines necessary. Any extension of the deadline shall be in writing and shall be for a specified period of time.

(c) APPROVAL.—The Director shall approve or disapprove each capital restoration plan not later than 45 days after submission. The Director may extend such period for an additional 15 days. The Director shall provide written notice of the decision to any enterprise submitting a plan. If the Director disapproves the plan, the Director shall provide to the enterprise the reasons for such disapproval in writing.

(d) RESUBMISSION.—If the initial capital restoration plan submitted by the enterprise is disapproved, the enterprise shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

SEC. 209. NOTICE AND HEARING.

(a) NOTICE.—Before making a capital classification or taking a discretionary supervisory action under this title, the Director shall provide written notice of the proposed classification or action to the enterprise, stating the reasons for the classification or action, and shall provide the enterprise with a timely opportunity to review and supplement the administrative record in an administrative hearing.

(b) NOTICE TO CONGRESS.—After making a capital classification or taking a discretionary supervisory action under this title, the Director shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate, and to the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

SEC. 210. JUDICIAL REVIEW OF DIRECTOR ACTION.

(a) JURISDICTION.—

(1) FILING OF PETITION.—An enterprise that is the subject of a capital classification or discretionary supervisory action pursuant to this title, other than the appointment of a conservator, may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's classification or action, a written petition requesting that the order of the Director be modified, terminated, or set aside.

(2) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to hear a petition filed pursuant to this subsection.

(b) UNAVAILABILITY OF STAY.—With respect to a classification or discretionary supervisory action by the Director with regard to a significantly undercapitalized enterprise or an action that results in the classification of an enterprise as significantly undercapitalized or critically undercapitalized, the court shall not have jurisdiction to stay, enjoin, or otherwise delay such classification or action taken by the Director pending judicial review of the action.

(c) LIMITATION ON JURISDICTION.—Notwithstanding any other provision of law, no court other than the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this title or to review, modify, suspend, terminate, or set aside such classification or action.

SEC. 211. RATINGS.

(a) RATING.—Not later than 1 year after the effective date of this Act, the Director shall, for each enterprise, contract with 2 nationally recognized statistical rating organizations—

(1) to assess the likelihood that the enterprise will not be able to meet its obligations from its own resources with an assumption that there is no recourse to any implicit Government guarantee and to express that likelihood as a traditional credit rating; and

(2) to review the rating of the enterprise as frequently as the Director determines is appropriate, but not less than annually.

(b) COMMENTS.—The Director shall submit comments to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on any difference between the evaluation of the rating organizations and that of the Office, with special attention to capital adequacy.

(c) DEFINITION.—For the purposes of this section, the term "nationally recognized statistical rating organization" means any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers.

SEC. 212. CAPITAL.

(a) DEFINITION.—The term "capital" shall be defined by the Director by regulation and—

(1) shall include, in accordance with generally accepted accounting principles—

(A) the par or stated value of outstanding common stock;

(B) the par or stated value of outstanding perpetual, noncumulative preferred stock;

(C) paid-in capital;

(D) retained earnings; and

(E) other equity instruments that the Director determines are appropriate; and

(2) for the purposes of section 201, may also include such other amounts that the Director determines are available to absorb losses subject to any limitation prescribed by the Director, and shall include loss reserves established in accordance with generally accepted accounting principles.

(b) EXCLUSION.—As defined by the Director, the term "capital" shall exclude any amounts that an enterprise could be required to pay, at the option of investors, to retire capital instruments.

TITLE III—ENFORCEMENT PROVISIONS

SEC. 301. CEASE-AND-DESIST PROCEEDINGS.

(a) GROUNDS FOR ISSUANCE.—The Director may issue and serve upon an enterprise or any director or executive officer a notice of charges if, in the opinion of the Director, the enterprise, director, or executive officer—

(1) is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, director, or executive officer will engage in conduct that, if continued, would be likely to cause or result in a material depletion of the enterprise's capital; or

(2) is violating or has violated, or the Director has reasonable cause to believe that the enterprise, director, or executive officer will violate—

(A) any provision of this Act or the enterprise's charter Act or any order, rule, or regulation thereunder;

(B) any condition imposed in writing by the Director pursuant to the Director's authority under this Act or a charter Act in connection with the approval of any application or other request by the enterprise required by this Act or a charter Act; or

(C) any written agreement entered into with the Director.

(b) EXCEPTION FOR ADEQUATELY CAPITALIZED ENTERPRISES.—The Director may serve a notice of charges or issue an order upon an enterprise, a director, or an executive officer for any conduct or violation that relates to the financial health or security of an enterprise that is adequately capitalized only if the Director determines that—

(1) the conduct or violation threatens to cause a significant depletion of the enterprise's capital; or

(2) the conduct or violation may result in the issuance of an order described in subsection (d)(1).

(c) PROCEDURE.—

(1) NOTICE OF CHARGES.—Any notice of charges shall contain a statement of the facts constituting the alleged conduct or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue.

(2) DATE OF HEARING.—Such hearing shall be held not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the hearing officer at the request of any party served.

(3) FAILURE TO APPEAR CONSTITUTES CONSENT.—Unless the party served appears at the hearing personally or by a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist order.

(4) ISSUANCE OF ORDER.—In the event of consent by the party, or if, upon the record made at any such hearing, the Director finds that any conduct or violation specified in the notice of charges has been established, the Director may issue and serve upon such party an order requiring the party to cease and desist from such conduct or violation and to take affirmative action to correct the conditions resulting from any such conduct or violation.

(5) EFFECTIVE DATE OF ORDER.—A cease-and-desist order shall become effective 30 days after service (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to the extent that it is stayed, modified, terminated, or set aside by action of the Director or a court of competent jurisdiction.

(d) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority under this section or section 302 to issue any order that requires a party to take affirmative action includes the authority—

(1) to require a director or executive officer to make restitution to, or provide reimbursement, indemnification, or guarantee against loss to the enterprise to the extent that such person—

(A) was unjustly enriched in connection with such conduct or violation; or

(B) engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 305(b)(3);

(2) to require an enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the enterprise;

(4) to require the disposition of any asset;

(5) to require the rescission of agreements or contracts;

(6) to require the employment of qualified officers or employees (who may be subject to approval by the Director); and

(7) to require the taking of such other action as the Director determines appropriate.

(e) AUTHORITY TO LIMIT ACTIVITIES.—The authority under this section or section 302 to issue an order includes the authority to place limitations on the activities or functions of the enterprise, or any director or executive officer.

(f) CERTAIN ORDERS MAY CONTAIN CAPITAL CLASSIFICATION.—The authority under this section or section 302 to issue an order includes the authority to—

(1) classify the enterprise as undercapitalized, if the enterprise is otherwise classified as adequately capitalized;

(2) classify the enterprise as significantly undercapitalized, if the enterprise is otherwise classified as undercapitalized; or

(3) classify the enterprise as critically undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized;

if the Director determines that the enterprise is engaging or has engaged in conduct not approved by the Director or a violation, that may result in a rapid depletion of the capital of the enterprise.

SEC. 302. TEMPORARY CEASE-AND-DESIST ORDERS.

(a) GROUNDS FOR ISSUANCE; SCOPE.—Whenever the Director determines that any conduct or violation, or threatened conduct or violation, specified in the notice of charges served upon the enterprise, director, or executive officer pursuant to section 301, or the continuation thereof, is likely—

(1) to cause insolvency;

(2) to cause a significant depletion of the capital of the enterprise; or

(3) otherwise to cause irreparable harm to the enterprise,

prior to the completion of the proceedings conducted pursuant to section 301(c), the Director may issue a temporary order requiring the enterprise, or any director or executive officer, to cease and desist from any such conduct or violation and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under section 301(d).

(b) INCOMPLETE OR INACCURATE RECORDS.—If a notice of charges served under section 301(a) specifies on the basis of particular facts and circumstances that the enterprise's books and records are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of that enterprise or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that enterprise, the Director may issue a temporary order requiring—

(1) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(2) affirmative action to restore such books or records to a complete and accurate state,

until the completion of the proceedings under section 301.

(c) EFFECTIVE DATE OF ORDER.—An order issued pursuant to this section shall—

(1) become effective upon service upon the party and shall remain effective unless set aside, limited, or suspended by a court in proceedings authorized by subsection (d),

(2) shall be enforceable pending the completion of the proceedings pursuant to such notice, and

(3) shall remain effective until the Director dismisses the charges specified in such notice or until superseded by a cease-and-desist order issued pursuant to section 301.

(d) JUDICIAL REVIEW.—Not later than 10 days after a party has been served with a temporary cease-and-desist order pursuant to this section, the party may petition the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings.

(e) ENFORCEMENT.—In the case of a violation or a threatened violation of a temporary order issued pursuant to this section, the Director may apply to the United States District Court for the District of Columbia for an injunction to enforce such order.

SEC. 303. HEARINGS AND JUDICIAL REVIEW.

(a) HEARING.—Any hearing provided for in this title shall be on the record and held in the District of Columbia.

(b) DECISION BY THE DIRECTOR.—Not later than 90 days after the Director has notified the parties that the case has been submitted for final decision, the Director shall render the decision and shall issue and serve upon each party a copy of the order. The Director may modify an order prior to the filing of the record for judicial review.

(c) JUDICIAL REVIEW.—A party may obtain a review of an order issued under this title, except section 302, by filing in the United States Court of Appeals for the District of Columbia Circuit, not later than 30 days after the date of service, a written petition seeking to modify, terminate, or set aside such order.

SEC. 304. JURISDICTION AND ENFORCEMENT.

(a) APPLICATION FOR ENFORCEMENT.—The Director may apply to the United States District Court for the District of Columbia for the enforcement of any order issued under title II or this title, and such court shall have jurisdiction and power to order and require compliance with such order.

(b) LIMITATION ON JURISDICTION.—Except as otherwise permitted by section 210 or in this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice, order, or penalty under title II or this title, or to review, modify, suspend, terminate, or set aside any such notice, order, or penalty.

SEC. 305. CIVIL MONEY PENALTIES.

(a) IN GENERAL.—The Director may impose a civil money penalty on an enterprise, director, or executive officer that—

(1) violates any provision of this Act or the enterprise's charter Act or regulation thereunder,

(2) violates any final order or temporary order issued pursuant to section 205, 206, 301, or 302,

(3) violates any condition imposed in writing by the Director pursuant to the authority under this Act or a charter Act, in connection with the approval of an application or other request by an enterprise required by law,

(4) violates any written agreement between an enterprise and the Director, or

(5) engages in any conduct that causes or is likely to cause a loss to the enterprise.

(b) AMOUNT OF PENALTY.—

(1) FIRST TIER.—

(A) IN GENERAL.—The Director may impose a penalty on an enterprise for any violation described in paragraphs (1) through (4) of subsection (a). The amount of a civil penalty under this subparagraph shall be determined in light of the facts and circumstances, but shall not exceed $5,000 for each day that a violation continues.

(B) EXCEPTION.—The amount of a civil penalty for a failure to make a good faith effort to comply with an approved housing plan under section 509 shall not exceed $10,000.

(2) SECOND TIER.—The Director may impose a penalty on an enterprise, executive officer, or director in an amount not to exceed $10,000 for an officer or director, or $25,000 for an enterprise, for each day that such violation or conduct continues, if the Director finds that the violation or conduct described in subsection (a)—

(A) is part of a pattern of misconduct, or

(B) involved recklessness and caused or would be likely to cause a material loss to the enterprise.

(3) THIRD TIER.—The Director may impose a penalty on an enterprise, executive officer, or director in an amount not to exceed $100,000 for an officer or director, or $1,000,000 for an enterprise, for each day that such violation or conduct continues, if the Director finds that the violation or conduct described in subsection (a) was knowing and caused or would be likely to cause a substantial loss to the enterprise.

(c) ASSESSMENT.—

(1) WRITTEN NOTICE.—Any penalty imposed under this section may be assessed and collected by the Director by written notice.

(2) PROHIBITION AGAINST REIMBURSEMENT OR INDEMNIFICATION.—An enterprise may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3).

(3) FINALITY OF ASSESSMENT.—If a hearing is not requested pursuant to subsection (f), the penalty assessment contained in a written notice shall constitute a final and unappealable order.

(d) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Director may compromise, modify, or remit any penalty assessed under this section.

(e) MITIGATING FACTORS.—In determining the amount of any penalty under this section, the Director shall take into account the appropriateness of the penalty with respect to—

(1) the financial resources and good faith of the enterprise, director, or executive officer charged;

(2) the gravity of the violation;

(3) the history of previous violations; and

(4) such other matters as justice may require.

(f) HEARING.—A party against whom a penalty is assessed under this section shall be afforded a hearing if the party submits a request for such hearing not later than 20 days after the issuance of the notice of assessment.

(g) COLLECTION.—

(1) REFERRAL.—If the enterprise, director, or executive officer fails to pay a penalty that has become final, the Director may recover the amount assessed by filing an action in the United States District Court for the District of Columbia.

(2) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In an action to collect the amount assessed, the validity and appropriateness of the penalty shall not be subject to review.

(h) DEPOSIT.—All penalties collected under authority of this section shall be deposited into the General Fund of the Treasury.

(i) APPLICABILITY.—This section shall apply only to conduct, a failure, a breach, or a violation that occurs on or after the effective date of this Act.

SEC. 306. NOTICE UNDER THIS TITLE AFTER SEPARATION FROM SERVICE.

The resignation, termination of employment or participation, or separation of a director or executive officer of an enterprise shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this title against any such director or executive officer, if such notice is served before the end of the 2-year period beginning on the date such director or executive officer ceased to be associated with the enterprise.

SEC. 307. PRIVATE RIGHTS OF ACTION.

Nothing in this Act creates a private right of action on behalf of any person against an enterprise, or any director or executive officer of an enterprise, or impairs any existing private right of action under other applicable law.

SEC. 308. SUBPOENA POWER.

(a) POWERS.—In the course of, or in connection with, any examination, administrative proceeding, claim, or investigation under this Act, the Director may—

(1) administer oaths and affirmations,

(2) take testimony under oath, and

(3) issue, revoke, quash, or modify subpoenas issued by the Director.

(b) JURISDICTION.—The attendance of witnesses and the production of documents provided for in this section may be required from any place subject to the jurisdiction of the United States at any designated place where such examination or proceeding is being conducted.

(c) ENFORCEMENT.—The Director, in examining an enterprise, or any party to proceedings under this title may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district (or the United States court in any territory) where the witness re-

sides or carries on business, for enforcement of any subpoena issued pursuant to this section.

(d) FEES AND EXPENSES.—A witness subpoenaed under this section shall be paid the same fees that are paid witnesses in the district courts of the United States. A court having jurisdiction of a proceeding under this section may allow to any such witness such reasonable expenses and attorneys' fees as it determines just and proper. Such expenses and fees shall be paid by the enterprise or from its assets.

SEC. 309. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) IN GENERAL.—The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this title and that has become final in accordance with section 303; and

(3) any modification to or termination of any final order made public pursuant to this paragraph.

(b) HEARINGS.—All hearings on the record with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Director may file any document or part thereof under seal in any administrative enforcement hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by the Director under this title or any other law.

(f) DISCLOSURES TO CONGRESS.—No provision of this section shall be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

TITLE IV—CONSERVATORSHIP

SEC. 401. APPOINTMENT OF CONSERVATOR.

(a) APPOINTMENT.—The Director may, after determining that alternative remedial actions are not satisfactory, appoint a conservator to take possession and control of an enterprise, whenever the Director determines that—

(1) the enterprise is in an unsafe or unsound condition to transact business, and the unsafe or unsound condition threatens the ability of the enterprise to continue as a viable concern or threatens to cause the depletion of substantially all of the capital of the enterprise;

(2) the enterprise has concealed or is concealing its books, papers, records, or assets, or has refused or is refusing to submit its books, papers, records, or affairs for inspection to any examiner or any lawful agent of the Director; or

(3) the enterprise has willfully violated or is willfully violating a cease-and-desist order which has become final.

(b) APPOINTMENT BY CONSENT.—The Director may appoint a conservator to take possession and control of an enterprise if the enterprise, by resolution of a majority of its board of directors or shareholders, consents to the appointment.

(c) NOTICE AND HEARING.—

(1) IN GENERAL.—Before appointing a conservator pursuant to subsection (a), the Director shall provide written notice to the enterprise of the basis for the Director's proposed action and shall provide the enterprise with an opportunity for a hearing on the record.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may appoint a conservator without providing notice or a hearing to the enterprise, if the Director determines, pending completion of the proceedings under paragraph (1), that the conduct or violation by the enterprise is likely to—

(A) cause insolvency of the enterprise;

(B) cause a significant depletion of the capital of the enterprise; or

(C) otherwise cause irreparable harm to the enterprise;

prior to the completion of such proceedings.

(d) QUALIFICATIONS OF CONSERVATOR.—The conservator may be—

(1) the Director, or

(2) any person, that—

(A) has no claim against, or financial interest in, the enterprise or other basis for a conflict of interest, and

(B) has the financial and management expertise necessary to direct the operations and affairs of the enterprise.

(e) JUDICIAL REVIEW.—

(1) IN GENERAL.—Not later than 20 days after the initial appointment of a conservator pursuant to this section, the enterprise may bring an action in the United States District Court for the District of Columbia for an order requiring the Director to terminate the appointment of the conservator. The court, upon consideration of the record, shall dismiss the action to terminate the appointment of the conservator or shall direct the Director to terminate the appointment of the conservator. If the conservator was appointed pursuant to subsection (c)(2), the court shall make such determination on the merits.

(2) CONSENSUAL APPOINTMENTS.—A consensual appointment of a conservator under subsection (b) is not subject to judicial review.

(3) LIMITATION ON REMEDIES.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of, a conservator.

(f) REPLACEMENT OF CONSERVATOR.—The Director may, without notice or hearing, replace a conservator with another conservator. Such replacement is not subject to judicial review and shall not affect the enterprise's right under subsection (d) to obtain judicial review of the Director's original decision to appoint a conservator.

SEC. 402. POWERS OF A CONSERVATOR.

(a) POWERS.—

(1) IN GENERAL.—A conservator has all the powers of the directors and officers of the enterprise unless the Director, in the order of appointment, limits the conservator's authority. In addition, a conservator has all the powers of shareholders that relate to the management of the enterprise, including the power to elect directors.

(2) ADDITIONAL POWER.—A conservator has the power to avoid any security interest taken by a creditor with the intent to hinder, delay, or defraud the enterprise or the creditors of the enterprise.

(3) STAY.—Not later than 45 days after appointment or 45 days after receipt of actual notice of an action or proceeding that is pending at the time of appointment, a conservator may request that any action or proceeding to which the conservator or the enterprise is or may become a party, be stayed for a period not to exceed 45 days after the request.

(b) EXPENSES.—All expenses of a conservatorship shall be paid by the enterprise and shall be a lien upon the enterprise which shall have priority over any other lien.

SEC. 403. TERMINATION OF CONSERVATORSHIP.

(a) IN GENERAL.—At any time the Director determines that it may safely be done and that it would be in the public interest, the Director may terminate a conservatorship subject to such terms, conditions, and limitations as the Director may prescribe by written order.

(b) ENFORCEMENT AS FINAL CEASE-AND-DESIST ORDER.—Any terms, conditions, and limitations that the Director may prescribe under subsection (a) shall be enforceable under the provisions of section 304, to the same extent as an order issued pursuant to section 301 which has become final.

(c) JUDICIAL REVIEW.—Not later than 20 days after the date of the termination of the conservatorship or the imposition of an order under subsection (a), whichever is later, an enterprise may bring an action in the United States District Court for the District of Columbia for an order requiring the Director to terminate the order.

SEC. 404. LIABILITY PROTECTION.

(a) FEDERAL AGENCY AND EMPLOYEES.—In a case in which the conservator is the Director, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the conservator's liability for acts or omissions performed in the course of the duties and responsibilities of the conservatorship.

(b) OTHER CONSERVATORS.—In a case in which the conservator is not the Director, the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence or intentional tortious conduct.

(c) INDEMNIFICATION.—The Director shall have authority to indemnify the conservator on such terms as the Director determines proper.

SEC. 405. ENFORCEMENT OF CONTRACTS.

(a) IN GENERAL.—A conservator may enforce any contract described in subsection (b), notwithstanding any provision of the contract providing for the termination, default, acceleration, or other exercise of rights upon, or solely by reason of, the insolvency of the enterprise or the appointment of a conservator.

(b) CONTRACTS ENFORCEABLE.—If the Director—

(1) determines that the continued enforceability of a class of contracts is necessary to the achievement of the conservator's purpose; and

(2) specifically describes that class of contracts in a regulation or order issued for the purpose of this section;

any contract that is within that class of contracts is enforceable under subsection (a).

(c) APPLICABILITY.—This section and the regulation or order issued under this section shall apply to contracts entered into, modified, extended, or renewed after the effective date of the regulation or order.

TITLE V—HOUSING

SEC. 501. GENERAL AUTHORITY.

(a) IN GENERAL.—The Director shall establish, by regulation, housing goals for each enterprise. The housing goals shall include a low- and moderate-income housing goal, a special affordable housing goal, and a central city, rural area, and other underserved areas housing goal. The Director shall implement this title in a manner consistent with section 301(3) of the Federal National Mortgage Association Charter Act and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act.

(b) ADJUSTMENT OF HOUSING GOALS.—Except as otherwise set forth in this Act, the Director may, from year to year, adjust any housing goal established under this title.

(c) COMPLIANCE WITH HOUSING GOALS.—Any mortgage purchased by an enterprise shall simultaneously contribute to the achievement of each housing goal established under this title for which the mortgage purchase qualifies.

SEC. 502. LOW- AND MODERATE-INCOME HOUSING GOAL.

(a) IN GENERAL.—The Director shall establish an annual goal for the purchase of mortgages secured by housing for low- and moderate-income families.

(b) TRANSITION RULE.—

(1) IN GENERAL.—During the transition period, an interim target for low- and moderate-income mortgage purchases for each enterprise is established at 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

(2) ACHIEVEMENT OF THE INTERIM TARGET FOR LOW- AND MODERATE-INCOME MORTGAGE PURCHASES.—During the transition period, the Director shall establish separate annual goals for each enterprise, the achievement of which would require, to the extent feasible, that—

(A) each enterprise improve its performance relative to the interim target, annually; and

(B) in the case of an enterprise that does not meet the interim target, the enterprise be prepared to meet the interim target in subsequent years.

(3) DEFINITION.—As used in this subsection, the term "transition period" means the 2-year period beginning on the date of enactment of this Act.

(c) FACTORS TO BE APPLIED BY THE DIRECTOR.—In establishing the housing goal for an enterprise under this section, the Director shall take into account—

(1) appropriate economic, housing, and demographic data,

(2) the performance and effort of the enterprise toward achieving the goals in prior calendar years,

(3) the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market,

(4) national housing needs,

(5) the ability of the enterprise to lead the industry in making mortgage credit available for low- and moderate-income families, and

(6) the need to maintain the sound financial condition of the enterprise.

(d) USE OF BORROWER AND TENANT INCOME.—

(1) IN GENERAL.—The Director shall monitor each enterprise's performance in carrying out this section and shall evaluate that performance based on—

(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

(B) in the case of a rental dwelling—

(i) the income of the prospective or actual tenants of the property, where such data are available; or

(ii) the rent levels affordable to low- and moderate-income families, where the data referred to in clause (i) are not available.

(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level is affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

SEC. 503. SPECIAL AFFORDABLE HOUSING GOAL.

(a) ESTABLISHMENT OF SPECIAL AFFORDABLE HOUSING GOAL.—

(1) IN GENERAL.—The Director shall establish an annual special affordable housing goal under this section that is not less than 1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year.

(2) STANDARDS.—In establishing an enterprise's special affordable housing goal, the Director shall take into account—

(A) data submitted to the Director in connection with the special affordable housing goal for previous years,

(B) the performance and effort of the enterprise toward achieving the special affordable housing goal in prior calendar years,

(C) national housing needs within the income categories set forth in this section,

(D) the ability of the enterprise to lead the industry in making mortgage credit available for low-income families, and

(E) the need to maintain the sound financial condition of the enterprise.

(b) TRANSITION RULES.—

(1) FEDERAL NATIONAL MORTGAGE ASSOCIATION MORTGAGE PURCHASES FOR THE TRANSITION PERIOD.—During the transition period, the special affordable housing goal for the Federal National Mortgage Association shall include mortgage purchases of not less than $2,000,000,000, with one-half of such purchases directed to 1-to-4 family housing and one-half to multifamily housing.

(2) FEDERAL HOME LOAN MORTGAGE CORPORATION MORTGAGE PURCHASES FOR THE TRANSITION PERIOD.—During the transition period, the special affordable housing goal for the Federal Home Loan Mortgage Corporation shall include mortgage purchases of not less than $1,500,000,000, with one-half of such purchases directed to 1-to-4 family housing and one-half to multifamily housing.

(3) INCOME CHARACTERISTICS FOR TRANSITION PERIOD MORTGAGE PURCHASES.—

(A) MULTIFAMILY MORTGAGES.—Purchases of multifamily housing mortgages under paragraphs (1) and (2) shall be directed in the following proportions:

(i) 45 percent for multifamily housing affordable to families whose incomes do not exceed 80 percent of the median income for the area; and

(ii) 55 percent for multifamily housing in which—

(I) at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the median income for the area; or

(II) at least 40 percent of the units are affordable to families whose incomes do not exceed 60 percent of the median income for the area.

(B) SINGLE FAMILY MORTGAGES.—Purchases of 1-to-4 family housing mortgages under paragraphs (1) and (2) shall be directed in the following proportions:

(i) 45 percent for mortgages for families whose incomes do not exceed 80 percent of the median income for the area and who live in census tracts in which the median income does not exceed 80 percent of the area median; and

(ii) 55 percent for mortgages for families whose incomes do not exceed 60 percent of the median income for the area.

(C) COMPLIANCE WITH SPECIAL AFFORDABLE HOUSING GOALS.—Only the portion of multifamily housing mortgage purchases by an enterprise that are attributable to units affordable to families whose incomes do not exceed 80 percent of the median income for the area shall be credited toward compliance with the special affordable housing goals set forth in subparagraph (A)(ii).

(4) DEFINITION.—As used in this subsection, the term "transition period" means the 2-year period beginning on the date of enactment of this Act.

(c) USE OF BORROWER AND TENANT INCOME.—

(1) IN GENERAL.—The Director shall monitor each enterprise's performance in carrying out this section and shall evaluate that performance based on—

(A) in the case of an owner-occupied dwelling the mortgagor's income at the time of origination of the mortgage; or

(B) in the case of a rental dwelling—

(i) the income of the prospective or actual tenants of the property, where such data are available; or

(ii) the rent levels affordable to low-income families, where the data referred to in clause (i) are not available.

(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level is affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

SEC. 504. CENTRAL CITY, RURAL AREA, AND OTHER UNDERSERVED AREAS HOUSING GOAL.

(a) IN GENERAL.—The Director shall establish an annual goal for the purchase of mortgages secured by housing located in central cities, rural areas, and other underserved areas.

(b) TRANSITION RULE.—

(1) IN GENERAL.—During the transition period, an interim target for purchases of mortgages by each enterprise secured by housing located in central cities is established at 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

(2) ACHIEVEMENT OF THE INTERIM TARGET FOR CENTRAL CITY MORTGAGE PURCHASES.—During the transition period, the Director shall establish separate annual goals for each enterprise, the achievement of which would require, to the extent feasible, that—

(A) each enterprise improve its performance relative to the interim target, annually; and

(B) in the case of an enterprise that does not meet the interim target, such enterprise be prepared to meet the interim target in subsequent years.

(3) DEFINITIONS.—

(A) TRANSITION PERIOD.—As used in this subsection, the term "transition period"

means the 2-year period beginning on the date of enactment of this Act.

(B) CENTRAL CITY.—As used in this subsection, the term "central city" means any political subdivision designated as a central city by the Office of Management and Budget.

(c) FACTORS TO BE APPLIED BY THE DIRECTOR.—In establishing the housing goal for an enterprise under this section, the Director shall take into account—

(1) appropriate economic, housing, and demographic data,

(2) the performance and effort of the enterprise toward achieving the goals established under this section in prior calendar years,

(3) the size of the central city, rural area, and other underserved areas conventional mortgage market relative to the size of the overall conventional mortgage market,

(4) national urban needs,

(5) the ability of the enterprise to lead the industry in making mortgage credit available throughout the Nation, including central cities, rural areas, and other underserved areas, and

(6) the need to maintain the sound financial condition of the enterprise.

(d) LOCATION OF PROPERTIES.—The Director shall monitor each enterprise's performance in carrying out this section and shall evaluate that performance based on the location of the properties securing mortgages purchased by each enterprise.

SEC. 505. OTHER REQUIREMENTS.

To meet the low- and moderate-income housing goal under section 502, the special affordable housing goal under section 503, and the central city, rural area, and other underserved areas housing goal under section 504, each enterprise shall—

(1) design programs and products that facilitate the use of assistance provided by the Federal Government and State and local governments;

(2) develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

(3) take affirmative steps to—

(A) help primary lenders make housing credit available in areas with concentrations of low-income and minority families, and

(B) assist insured depository institutions in meeting their obligations under the Community Reinvestment Act of 1977,

that include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures; and

(4) develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

SEC. 506. MONITORING COMPLIANCE WITH HOUSING GOALS.

(a) IN GENERAL.—The Director shall establish guidelines to measure the extent of compliance with the housing goals established under this title. The guidelines may assign full credit, partial credit, or no credit toward compliance with the housing goals to different categories of mortgage purchase activities depending upon such criteria as the Director deems appropriate.

(b) SPECIAL AFFORDABLE HOUSING GOALS.—

(1) ACTIVITIES THAT SHALL RECEIVE FULL CREDIT TOWARD COMPLIANCE WITH GOALS.—The Director shall give full credit toward compliance with the special affordable housing goals to the following activities:

(A) The purchase or securitization of federally insured or guaranteed mortgages, if—

(i) such mortgages cannot be readily securitized through the Government National Mortgage Association or other Federal agency; and

(ii) participation of an enterprise substantially enhances the affordability of the housing securing such mortgages.

(B) The purchase or refinancing of existing, seasoned portfolios of loans, if—

(i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goals; and

(ii) such purchases or refinancings support additional lending for housing serving low-income families.

(C) The purchase of direct loans made by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation, if such loans are—

(i) not guaranteed by the agencies themselves or other Federal agencies; and

(ii) made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers.

(2) EXCLUSION.—No credit toward compliance with the special affordable housing goal may be given to the purchase or securitization of mortgages associated with the refinancing of existing enterprise portfolios.

SEC. 507. DATA COLLECTION AND REPORTING REQUIREMENTS FOR THE ENTERPRISES.

(a) SINGLE FAMILY DATA.—

(1) IN GENERAL.—Each enterprise shall collect, maintain, and provide to the Director, in a useful form, data relating to its single family mortgages. Such data shall include—

(A) the income, census tract location, race, and gender of mortgagors;

(B) the loan-to-value ratios of purchased mortgages at the time of origination;

(C) whether a particular mortgage purchased is newly originated or seasoned;

(D) the number of units (1-to-4 family) and whether they are owner-occupied; and

(E) other characteristics deemed appropriate by the Director, to the extent practicable.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The data required to be collected under this subsection shall cover single family mortgages purchased after the date determined by the Director, but not later than December 31, 1992.

(B) SEASONED MORTGAGES.—For mortgages purchased after the date referred to in subsection (a) but originated before that date, only data available to the enterprise is required to be collected under this subsection.

(b) MULTIFAMILY DATA.—

(1) IN GENERAL.—Each enterprise shall collect, maintain, and provide to the Director, in a useful form, data relating to its multifamily housing mortgages. Such data shall include—

(A) census tract location,

(B) tenant income levels and characteristics (to the extent practicable),

(C) rent levels,

(D) mortgage characteristics (such as number of units financed per mortgage and size of loans),

(E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives),

(F) use of funds (such as new construction, rehabilitation, refinancing),

(G) type of originating institution, and

(H) other information deemed appropriate by the Director, to the extent practicable.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The data required to be collected under this subsection shall cover multifamily mortgages purchased after the date determined by the Director, but not later than December 31, 1992.

(B) SEASONED MORTGAGES.—For mortgages purchased after the date referred to in subparagraph (A) but originated before that date, only data available to the enterprise is required to be collected under this subsection.

(c) PUBLIC ACCESS TO DATA.—

(1) IN GENERAL.—The Director shall make the data required by subsections (a) and (b) available to the public in useful forms, including forms accessible by computers.

(2) ACCESS.—

(A) PROPRIETARY DATA.—The Director may not make available to the public data that the Director determines are proprietary pursuant to section 515.

(B) EXCEPTION.—The Director shall not restrict access to the data provided in accordance with subsection (a)(1)(A).

(3) FEES.—The Director may charge reasonable fees to cover the cost of making the data available to the public.

(d) ANNUAL REPORT.—

(1) IN GENERAL.—Each enterprise shall submit to the Congress and the Director a report on its activities under this title.

(2) CONTENTS.—The report referred to in paragraph (1) shall—

(A) include in aggregate form and by appropriate category, the dollar volume and number of mortgages purchased for owner-occupied and rental properties related to each of the annual housing goals;

(B) include in aggregate form and by appropriate category, the number of families served, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (based on availability of information), the characteristics of the census tracts, and the geographic distribution of the housing financed;

(C) include the extent to which the mortgages purchased by the enterprise have been used in conjunction with public subsidy programs under Federal law;

(D) include the proportion of single family mortgages purchased that have been made to first-time homebuyers, as soon as providing such data is practicable and identify any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

(E) include in aggregate form and by appropriate category the data reported under subsection (a)(1)(B);

(F) level of securitization versus portfolio activity;

(G) assess the underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

(H) describe trends in both the primary and secondary multifamily markets, including a description of the progress made, and any factors impeding progress, toward standardization and securitization of mortgage products for multifamily housing;

(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by each enterprise, including a comparison of such trends with delinquency and default information for mortgage products serving households with incomes above the median level that have been purchased by each enterprise, and evaluate the impact of such trends on the

standards and levels of risk of mortgage products serving low- and moderate-income families;

(J) describe in the aggregate its seller servicer network, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

(K) describe the activities undertaken with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how its activities support the objectives of local comprehensive housing affordability strategies; and

(L) contain any other information deemed relevant by the Director.

(3) AVAILABILITY OF REPORTS.—

(A) IN GENERAL.—Each enterprise shall make the reports under this subsection available to the public at the principal and regional offices of the enterprise.

(B) EXCLUSION OF PROPRIETARY DATA.—Information that is contained in any report that the Director has determined is proprietary shall be subject to the provisions of section 515.

SEC. 508. ANNUAL REPORT OF THE DIRECTOR.

(a) IN GENERAL.—After reviewing and analyzing the reports submitted under section 507(d), the Director shall submit a report, as part of its report under section 109 of this Act, on the extent to which each enterprise is achieving the specified annual goals and general purposes established by law.

(b) CONTENTS.—The report shall—

(1) aggregate and analyze census tract data to assess each enterprise's compliance with the central city, rural area, and other underserved areas housing goal and to show levels of business in central cities, rural areas, low- and moderate-income census tracts, minority census tracts, and other geographical areas deemed appropriate by the Director;

(2) aggregate and analyze data on income to assess each enterprise's compliance with the low and moderate and special affordable housing goals;

(3) aggregate and analyze data on income, race, and gender by census tract and compare such data with larger demographic, housing, and economic trends;

(4) examine actions that each enterprise has undertaken and could undertake regarding underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures to promote and expand the annual goals specified under sections 502, 503, and 504, as well as the general purposes established by law;

(5) review trends in both the primary and secondary multifamily markets, describing—

(A) the availability of mortgage credit and liquidity; and

(B) the progress made, and any factors impeding progress, toward standardization and securitization of mortgage products for multifamily housing;

(6) examine actions each enterprise has undertaken and could undertake to promote and expand opportunities for first-time homebuyers; and

(7) describe any actions taken with respect to originators found to violate fair lending procedures.

SEC. 509. COMPLIANCE.

(a) IN GENERAL.—The Director shall monitor and enforce compliance with the goals established under sections 502, 503, and 504.

(b) NOTICE AND HEARING.—If the Director determines that an enterprise has failed to meet, or that there is a substantial probability that an enterprise will fail to meet, any goal established under section 502, 503, or 504, the Director shall provide written notice to the enterprise and an opportunity to review and supplement the administrative record at an administrative hearing.

(c) HOUSING PLANS.—

(1) PLAN REQUIRED.—If the Director finds, after any hearing pursuant to subsection (b), that the achievement of the housing goal was feasible, after consideration of market and economic conditions, the Director shall require the enterprise to submit a housing plan for approval by the Director.

(2) CONTENTS.—Each housing plan shall be a feasible plan describing the specific actions the enterprise will take—

(A) to achieve the goal for the next succeeding calendar year; or

(B) in a case when the Director determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements as are reasonable in the remainder of that year. The plan shall contain sufficient specificity to enable the Director to monitor compliance periodically.

(3) DEADLINES FOR SUBMISSION.—The Director shall establish a deadline for submission of a housing plan that is not more than 45 days after the enterprise is notified in writing that a plan is required. The Director may extend the deadline for a specified period of time.

(4) APPROVAL.—The Director shall approve or disapprove a plan within 30 days. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the relevant charter act and this Act and other applicable law and regulation. The Director may extend the period for approval or disapproval for an additional 30 days.

(5) DISAPPROVAL.—If the housing plan initially submitted by the enterprise is disapproved, the Director shall provide written notice of the reasons therefor, and shall require the enterprise to submit, with a reasonable period of time, but not more than 30 days unless the Director determines that a longer period is in the public interest, an amended housing plan acceptable to the Director.

(6) HEARING.—If the Director disapproves a housing plan, the Director shall provide the enterprise with an opportunity to review and supplement the administrative record in an administrative hearing.

(d) ENFORCEMENT.—

(1) IN GENERAL.—If the Director determines that an enterprise has failed to make a good faith effort to comply with an approved housing plan, the Director—

(A) may, under section 301, issue and serve upon the enterprise an order to comply with the housing plan; and

(B) may, under section 305, assess and collect from the enterprise a civil penalty.

(2) LIMITATION.—The Director shall not, for failure to comply with an approved housing plan—

(A) issue any order under section 301, except as described in paragraph (1)(A); or

(B) assess any civil penalty under section 305, except as described in paragraph (1)(B).

(3) ADDITIONAL TRANSITION PERIOD LIMITATION.—The Director shall take no actions described in paragraph (1) during the 2-year period following the date of enactment of this Act unless the Director determines that the enterprise has blatantly disregarded an approved housing plan.

(e) TRANSITION PERIOD REPORTS AND HEARINGS.—

(1) REPORTS.—Within 45 days of the establishment of any housing goals required by this title during the 2-year period following the date of enactment, each enterprise shall submit to the Director, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report describing the actions the enterprise plans to take in order to meet such goals.

(2) HEARINGS.—Not later than 45 days after the submission of a report under paragraph (1), the chief executive officers of the enterprises shall, if requested, appear before each committee referred to in paragraph (2) to explain the proposed actions described in their respective plans.

(f) AUDIT POWERS.—The Director or the Comptroller General of the United States, at the request of the Director or any Member of Congress, is authorized to examine records and audit reports to the extent necessary to assess compliance with—

(1) the goals established under sections 502, 503, and 504,

(2) any other goals established by the Director to achieve the charter purposes of an enterprise, and

(3) any housing plan approved under this section.

SEC. 510. ADVISORY COUNCIL.

(a) IN GENERAL.—Not later than 4 months after the date of enactment of this Act, each enterprise shall appoint an Affordable Housing Advisory Council to advise it regarding possible methods for promoting affordable housing for low- and moderate-income families.

(b) MEMBERSHIP.—Each Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing for low- and moderate-income families.

SEC. 511. GEOGRAPHIC DISTRIBUTION.

(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION.—Section 301 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by striking "and" at the end of paragraph (3); and

(3) by inserting before paragraph (5), as redesignated, the following:

"(4) promote access to mortgage credit throughout the Nation (including central cities and rural areas) by increasing the liquidity of mortgage investments, including facilitating credit secured by mortgages to secondary market participants, and improving the distribution of investment capital available for residential mortgage financing; and".

(b) FEDERAL HOME LOAN MORTGAGE CORPORATION.—Section 301(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and"; and

(3) by adding at the end the following:

"(4) to promote access to mortgage credit throughout the Nation (including central cities and rural areas) by increasing the liquidity of mortgage investments, including facilitating credit secured by mortgages to secondary market participants, and improving the distribution of investment capital available for residential mortgage financing.".

SEC. 512. MULTIFAMILY MORTGAGE ACTIVITIES.

(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION.—Section 301 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) is amended by striking "home" each place it appears in paragraphs (1) and (3) and inserting "residential".

(b) FEDERAL HOME LOAN MORTGAGE CORPORATION.—Section 301(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) is amended by striking "home" each place it appears in paragraphs (1) and (3) and inserting "residential".

SEC. 513. BOARD OF DIRECTORS QUALIFICATIONS.

(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION.—

(1) MEMBER WITH A DEMONSTRATED COMMITMENT TO LOW-INCOME HOUSING.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended by inserting in the second sentence after "lending industry," the following: "at least one person who has demonstrated a career commitment to the provision of housing for low-income households,".

(2) APPLICABILITY.—The amendment made by subsection (a)(1) shall apply to the annual appointments made by the President of members to the Board of Directors of the Federal National Mortgage Association that occur after the date of the enactment of this Act.

(b) FEDERAL HOME LOAN MORTGAGE CORPORATION.—

(1) MEMBER WITH A DEMONSTRATED COMMITMENT TO LOW-INCOME HOUSING.—Section 303(a)(2)(A) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended by inserting in the second sentence after "lending industry," the following: "at least 1 person who has demonstrated a career commitment to the provision of housing for low-income households,".

(2) APPLICABILITY.—The amendment made by subsection (b)(1) shall apply to the annual appointments made by the President of members to the Board of Directors of the Federal Home Loan Mortgage Corporation that occur after the date of the enactment of this Act.

SEC. 514. FAIR HOUSING.

The Director shall—

(1) subject to the Secretary's general authority to enforce the Fair Housing Act, by regulation prohibit each enterprise from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect;

(2) subject to the Secretary's general authority to enforce the Fair Housing Act, by regulation require each enterprise to have single family mortgage and multifamily mortgage underwriting and appraisal guidelines that prohibit the use of lending criteria or the exercise of lending policies by mortgage lenders that sell mortgages to the enterprise, that have the effect of discriminating on the basis of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect;

(3) by regulation, require an enterprise to submit certain data to assist the Secretary in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act or the Equal Credit Opportunity Act;

(4) periodically review and comment on each enterprise's underwriting and appraisal guidelines;

(5) seek information from other regulatory and enforcement agencies regarding violations by lenders of the laws referred in paragraph (3) and make that information available to enterprises; and

(6) direct an enterprise to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against those lenders that have in a final adjudication or an administrative hearing on the record in accordance with subchapter II of chapter 5 of title 5, United States Code, been found to have engaged in discriminatory lending practices in violation of this subsection, the Fair Housing Act, or the Equal Credit Opportunity Act.

SEC. 515. PROHIBITION ON PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION.

(a) IN GENERAL.—The Director may determine, by regulation or order, information that will be accorded treatment as proprietary information. The Director shall not provide public access to, or disclose to the public, information required to be submitted by an enterprise under section 507 that the Director determines is proprietary.

(b) EFFECTIVE DATE OF ORDER.—Any order issued under subsection (a) shall not become effective until 10 days after its issuance.

(c) NONDISCLOSURE PENDING CONSIDERATION.—Nothing in this section authorizes the disclosure to, or examination of data by, the public or a representative of any person or agency, pending the issuance of a final decision under this section.

TITLE VI—CHARTER ACT AMENDMENTS

SEC. 601. AMENDMENTS TO THE FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT.

(a) REMOVAL AUTHORITY OF THE PRESIDENT.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended in the third sentence after "any such" by inserting "appointed".

(b) GAO AUDITS.—The first sentence of section 309(j) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(j)) is amended to read as follows: "The programs, activities, receipts, expenditures, and financial transactions of the corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.".

(c) CONSTRUCTION.—Section 309(i) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended to read as follows:

"(i) CONSTRUCTION.—The powers conferred on the corporation by this title shall be exercised in accordance with the goals and purposes of the Federal Housing Enterprises Regulatory Reform Act of 1992. If the provisions of this title conflict with the provisions of the Federal Housing Enterprises Regulatory Reform Act of 1992, the provisions of that Act shall control.".

(d) CAPITALIZATION.—Section 303 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718) is amended—

(1) in subsection (a), by adding at the end the following new sentence: "The corporation may issue shares of common stock in return for appropriate payments into capital or capital and surplus.";

(2) by striking subsection (b) and inserting the following new subsection:

"(b) FEES AND EARNINGS.—

"(1) FEES AND CHARGES.—The corporation may impose charges or fees, which may be regarded as elements of pricing, with the objective that all costs and expenses of the operations of the corporation should be within its income derived from such operations and that such operations should be fully self-supporting.

"(2) EARNINGS; GENERAL SURPLUS.—All earnings from the operations of the corporation shall annually be transferred to the general surplus account of the corporation. At any time, funds of the general surplus account may, in the discretion of the board of directors, be transferred to reserves.";

(3) by striking subsection (c) and inserting the following new subsection:

"(c) DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the corporation may make such capital distributions as may be declared by the board of directors. All capital distributions shall be charged against the general surplus account of the corporation.

"(2) ADEQUATE CAPITALIZATION REQUIRED.—The corporation may not make any capital distributions that would decrease the capital of the corporation, as such term is defined under section 212 of the Federal Housing Enterprises Regulatory Reform Act of 1992 to an amount less than that sufficient to be classified as adequately capitalized under section 204 of such Act, without prior written approval of the Director of the Office of Federal Housing Enterprise Oversight."; and

(4) in subsection (f)—

(A) by striking "to make payments" and all that follows through "such capital contributions,"; and

(B) by striking "additional shares of such stock," and inserting "shares of common stock of the corporation".

(e) RATIO OF OBLIGATIONS.—

(1) IN GENERAL.—Section 304 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719) is amended—

(A) in subsection (b), by striking the semicolon in the first sentence and all that follows through the end of the second sentence and inserting a period; and

(B) in subsection (e), by striking the fourth sentence.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect when the first classifications are made under section 204(b).

(f) ASSESSMENTS FOR THE OFFICE OF SECONDARY MARKET OVERSIGHT.—The first sentence of section 304(f) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(f)) is amended by inserting after "section 309(g)" the following: "of this Act and section 105 of the Federal Housing Enterprises Regulatory Reform Act of 1992".

(g) COMPENSATION.—Section 309(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)) is amended—

(1) in the first sentence of paragraph (2) by striking "as it may determine" and inserting the following: "as the board of directors determines reasonable and comparable with compensation for employment in positions in comparable publicly held financial institutions involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in paragraph (3)(C)) of the corporation shall be based on the performance of the corporation"; and

(2) by adding at the end the following new paragraph:

"(3)(A) Not later than June 30, 1993, and annually thereafter, the corporation shall submit a report to the Congress on—

"(i) the comparability of the compensation policies of the corporation with the com-

pensation policies of other similar businesses,

"(ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the corporation during the preceding year that was based on the corporation's performance, and

"(iii) the comparability of the corporation's financial performance with the performance of other similar businesses.

The report shall include a copy of the corporation's proxy statement for the annual meeting of shareholders for the preceding year.

"(B) The corporation may not enter into any agreement to provide any payment of money or other thing of value in connection with the termination of employment of any executive officer of the corporation, unless such agreement is approved in advance by the Director of the Office of Federal Housing Enterprise Oversight. Any such payment made pursuant to any agreement entered into between July 24, 1991, and the date of enactment of the Federal Housing Enterprises Regulatory Reform Act of 1992 may be cancelled unless such agreement is approved by the Director. The Director may not approve any such agreement unless the Director determines that the benefits provided under the agreement are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after July 24, 1991, to any such agreement entered into on or before such date shall be considered entering into an agreement.

"(C) For purposes of this paragraph, the term 'executive officer' has the meaning given the term in section 3 of the Federal Housing Enterprises Regulatory Reform Act of 1992.".

(h) GENERAL REGULATORY POWERS.—Section 309(h) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(h)) is repealed.

(i) STOCK ISSUANCES.—The second sentence of section 311 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723c) is amended by striking all that follows "Commission" and inserting a period.

(j) APPROVAL.—Section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)) is amended—

(1) in paragraph (2), by striking "and with the approval of the Secretary of Housing and Urban Development,"; and

(2) in paragraphs (3) and (4), by striking ", with the approval of the Secretary of Housing and Urban Development,".

SEC. 602. AMENDMENTS TO THE FEDERAL HOME LOAN MORTGAGE CORPORATION ACT.

(a) REPEAL OF PROHIBITION ON MORTGAGE LIMITATIONS.—Section 305(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(c)) is repealed.

(b) REPEAL OF PROHIBITION ON PREJUDGMENT ATTACHMENT.—Section 303(f) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(f)) is amended by striking the last sentence.

(c) CONSTRUCTION.—Section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452) is amended by adding at the end the following subsection:

"(h) CONSTRUCTION.—The powers conferred by this title on the Corporation shall be exercised in accordance with the goals and purposes of the Federal Housing Enterprises Regulatory Reform Act of 1992. If the provisions of this title conflict with the provisions of the Federal Housing Enterprises Regulatory Reform Act of 1992, the provisions of that Act shall control.".

(d) GAO AUDITS.—The first sentence of section 307(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(b)) is amended to read as follows: "The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.".

(e) POWERS OF THE CORPORATION.—Section 303(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(c)) is amended by striking the second and third sentences.

(f) REMOVAL AUTHORITY OF PRESIDENT.—Section 303(a)(2)(B) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(B)) is amended by inserting before the period at the end the following: ", except that any appointed member may be removed from office by the President for good cause".

(g) GENERAL REGULATORY POWERS.—Section 303(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)) is amended—

(1) by striking paragraphs (1) and (2);

(2) by striking paragraph (3) and inserting the following new paragraph:

"(3)(A) Except as provided in subparagraph (B), the Corporation may make such capital distributions as may be declared by the Board of Directors.

"(B) The Corporation may not make any capital distributions that would decrease the capital of the Corporation (as such term is defined in section 212 of the Federal Housing Enterprises Regulatory Reform Act of 1992) to an amount less than that sufficient to be classified as adequately capitalized under section 204 of such Act, without prior written approval of the Director of the Office of Federal Housing Enterprise Oversight."; and

(3) by striking paragraphs (4), (6), (7), and (8).

(h) RATIO OF CAPITAL AND OBLIGATIONS.—Effective upon the first classification made under section 204(b), section 303(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)) is amended by striking paragraph (5).

(i) COMPENSATION.—Section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452) is amended—

(1) in clause (9) of the first sentence of subsection (c), by inserting after "agents" the following: "as the Board of Directors determines reasonable and comparable with compensation for employment in positions in comparable publicly held financial institutions involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in subsection (i)(3)) of the Corporation shall be based on the performance of the Corporation"; and

(2) by adding at the end the following new subsection:

"(i)(1) Not later than June 30, 1993, and annually thereafter, the Corporation shall submit a report to the Congress on—

"(A) the comparability of the compensation policies of the Corporation with the compensation policies of other similar businesses,

"(B) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the Corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the Corporation during the preceding year that was based on the Corporation's performance, and

"(C) the comparability of the Corporation's financial performance with the performance of other similar businesses.

The report shall include a copy of the Corporation's proxy statement for the annual meeting of shareholders for the preceding year.

"(2) Notwithstanding the first sentence of subsection (c), the Corporation may not enter into any agreement to provide any payment of money or other thing of value in connection with the termination of employment of any executive officer of the Corporation, unless such agreement is approved in advance by the Director of the Office of Federal Housing Enterprise Oversight. Any such payment made pursuant to any agreement entered into between July 24, 1991, and the date of enactment of the Federal Housing Enterprises Regulatory Reform Act of 1992 may be cancelled unless such agreement is approved by the Director. The Director may not approve any such agreement unless the Director determines that the benefits provided under the agreement are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this paragraph, any renegotiation, amendment, or change after July 24, 1991, to any such agreement entered into on or before such date shall be considered entering into an agreement.

"(3) For purposes of this subsection, the term 'executive officer' has the meaning given the term in section 3 of the Federal Housing Enterprises Regulatory Reform Act of 1992.".

(j) CAPITAL STOCK.—Section 304 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1453) is amended—

(1) in subsection (a)(1), by striking "The common stock" and all that follows and inserting the following: "The common stock of the Corporation shall consist of voting common stock, which shall be issued to such holders in the manner and amount, and subject to any limitations on concentration of ownership, as may be established by the Corporation.";

(2) in subsection (a)(2)—

(A) in the first sentence, by striking "nonvoting common stock and the"; and

(B) by striking the last sentence; and

(3) by striking subsections (b), (c), and (d).

(k) MORTGAGE SELLERS.—Section 305(a)(1) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(1)) is amended—

(1) in the first sentence, by striking "from any Federal home loan bank" and all that follows through the end of the sentence.

(2) in the second sentence, by striking ", and the servicing" and all that follows through the end of the sentence and inserting a period.

(l) DEFINITION OF "RESIDENTIAL MORTGAGE".—Section 302(h) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451(h)) is amended in the third sentence by striking "made" and all that follows through "305(a)(1)" and inserting "or purchased from any public utility carrying out activities in accordance with the requirements of title II of the National Energy Conservation Policy

Act if the residential mortgage to be purchased is a loan or advance of credit the original proceeds of which are applied for in order to finance the purchase and installation of residential energy conservation measures (as defined in section 210(11) of the National Energy Conservation Policy Act) in residential real estate".

TITLE VII—REGULATION OF FEDERAL HOME LOAN BANK SYSTEM

SEC. 701. PRIMACY OF FINANCIAL SAFETY AND SOUNDNESS FOR FEDERAL HOUSING FINANCE BOARD.

Section 2A(a)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1422a(a)(3)) is amended to read as follows:

"(3) DUTIES.—

"(A) SAFETY AND SOUNDNESS.—The primary duty of the Board shall be to ensure that the Federal Home Loan Banks operate in a financially safe and sound manner.

"(B) OTHER DUTIES.—To the extent consistent with subparagraph (A), the duties of the Board shall also be—

"(i) to supervise the Federal Home Loan Banks;

"(ii) to ensure that the Federal Home Loan Banks carry out their housing finance mission; and

"(iii) to ensure that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets.".

SEC. 702. STUDY REGARDING FEDERAL HOME LOAN BANK SYSTEM.

(a) IN GENERAL.—The Federal Housing Finance Board, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of Housing and Urban Development shall each conduct a study regarding the following topics:

(1) The appropriate capital standards for the Federal Home Loan Bank System.

(2) The appropriate relationship between the capital standards for the Federal Home Loan Banks and the capital standards under this Act for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(3) The appropriate relationship between the capital standards for federally insured depository institutions and the capital standards under this Act for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, especially with regard to similar kinds of on-balance sheet and off-balance sheet assets and obligations.

(4) The advantages and disadvantages of expanding the credit products and services of the Federal Home Loan Banks, including a determination of the desirability of—

(A) the purchase by Federal Home Loan Banks of housing-related assets from member institutions, and

(B) the provision by Federal Home Loan Banks of credit enhancements and other products to members in addition to advances.

(5) The advantages and disadvantages of expanding eligible collateral for advances by removing the limits on the amount of housing-related assets that member institutions can use to collateralize advances.

(6) The advantages and disadvantages of further measures to expand the role of the Federal Home Loan Bank System as a support mechanism for community-based lenders and to reinforce the overall role of the Federal Home Loan Bank System in housing finance.

(7) The advantages and disadvantages of further measures to increase membership in, and increase the profitability of, the Federal Home Loan Bank System by modifying—

(A) restrictions on membership and stock purchases of nonqualified thrift lenders;

(B) the advance limit imposed on Federal Home Loan Banks to nonqualified thrift lenders; and

(C) the membership requirement for qualified thrift lenders.

(8) The competitive effect of the mortgage activities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation on the home mortgage activities of federally insured depository institutions and the cost of such activities to such institutions, the Savings Association Insurance Fund, the Bank Insurance Fund, and the Resolution Trust Corporation.

(9) The likelihood that the Federal Home Loan Banks will be able to continue to pay the amounts required under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(10) The extent to which a reduction in the number of Federal Home Loan Banks would reduce noninterest costs.

(11) The impact that a reduction in the number of Federal Home Loan Banks would have on the effectiveness of affordable housing programs.

(12) The impact that a reduction in the number of Federal Home Loan Banks would have on the availability of affordable housing in rural areas and the ability of small rural financial institutions to provide housing financing.

(13) The current and prospective impact of the Federal Home Loan Bank System on—

(A) the availability and affordability of housing for low- and moderate-income households; and

(B) the relative availability of housing credit across geographic areas, with particular regard to differences depending on whether properties are inside or outside of central cities.

(14) The appropriateness of extending to the Federal Home Loan Bank System the public purposes and housing goals established for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under this Act and the enterprises' charters.

(b) REPORTS.—Not later than 9 months after the date of the enactment of this Act, the Federal Housing Finance Board, the Comptroller General, the Director of the Congressional Budget Office, and the Secretary of Housing and Urban Development shall each submit to the Congress a report on the studies required under subsection (a) containing any recommendations for legislative action based on the results of the studies.

(c) COMMENTS.—The Secretary of the Treasury, the Director of the Office of Federal Housing Enterprise Oversight, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association shall submit to the Congress any recommendations and opinions regarding the studies under subsection (a), to the extent that the recommendations and views of such officers differ from the recommendations and opinions of the Federal Housing Finance Board, the Comptroller General, the Director of Congressional Budget Office, and the Secretary of Housing and Urban Development.

(d) DEFINITION.—For purposes of this section the term "housing-related assets" means residential mortgages, residential mortgage-related securities, loans or loan participations secured by residential real estate, housing production loans, and warehouse lines of credit for residential mortgage banking activities.

SEC. 703. REPORTS OF FEDERAL HOME LOAN BANKS.

Not later than 9 months after the date of enactment of this Act, the Board of Directors of each Federal Home Loan Bank shall submit to the Congress a report of the directors' evaluation of the costs and benefits of consolidation of the Federal Home Loan Bank System.

SEC. 704. REPORTS OF FEDERAL HOME LOAN BANK MEMBERS.

(a) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Board of Directors of each Federal Home Loan Bank shall elect 2 persons who are officers or directors of stockholder institutions of the Federal Home Loan Bank to serve on a panel to be called the "Study Committee".

(b) STUDY AND REPORT.—The Study Committee referred to in subsection (a) shall conduct a study on the topics listed in section 702(a) and on the costs and benefits of consolidation of the Federal Home Loan Bank System. Not later than 9 months after the date of enactment of this Act, the Study Committee shall submit a report to the Congress, the Federal Housing Finance Board, and the presidents of the Federal Home Loan Banks on its findings, including any recommendations for legislative or administrative action, together with any minority views or recommendations.

SEC. 705. FULL-TIME STATUS OF FHFB MEMBERS.

Section 2A(b)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1422(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) BOARD STATUS.—All directors appointed pursuant to paragraph (1)(B) shall serve on a full-time basis beginning on January 1, 1994.".

SEC. 706. EXCEPTION TO REQUIREMENTS FOR ADVANCES UNDER THE FEDERAL HOME LOAN BANK ACT.

Section 10b of the Federal Home Loan Bank Act (12 U.S.C. 1430b) is amended—

(1) in the first sentence, by inserting before "Each" the following:

"(a) IN GENERAL.—"; and

(2) by adding at the end the following new subsection:

"(b) EXCEPTION.—An advance made to a State housing finance agency for the purpose of facilitating mortgage lending that benefits individuals and families that meet the income requirements set forth in section 142(d) or 143(f) of the Internal Revenue Code of 1986, need not be collateralized by a mortgage insured under title II of the National Housing Act or otherwise, if—

"(1) such advance otherwise meets the requirements of this subsection; and

"(2) such advance meets the requirements of section 10(a) of this Act, and any real estate collateral for such loan comprises single family or multifamily residential mortgages.".

TITLE VIII—STUDY OF NATIONAL CONSUMER COOPERATIVE BANK

SEC. 801. STUDY OF NATIONAL CONSUMER COOPERATIVE BANK.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of—

(1) the extent to which the National Consumer Cooperative Bank has achieved its statutory purposes as set forth in the National Consumer Cooperative Bank Act (12 U.S.C. 3001 et seq.) (hereafter in this title referred to as the "Bank Act"); and

(2) the financial safety and soundness of the activities of the Bank and its affiliates.

(b) SPECIFIC REQUIREMENTS.—In conducting the study, the Comptroller General shall examine and evaluate—

(1) the degrees and types of risks that are undertaken by the Bank in the course of its and its affiliates' operations, including credit risk, interest rate risk, management and operational risk, and business risk;

(2) the actual level of risk that exists with respect to the Bank and its affiliates, which shall take account of the volume of debt securities issued by the Bank to the Secretary of the Treasury;

(3) the appropriateness of establishing a more comprehensive structure of safety and soundness regulation of the Bank and its affiliates, including the application of capital standards to the Bank;

(4) the costs and benefits to the public from establishment of a more comprehensive structure of safety and soundness regulation of the Bank and its affiliates, and the impact of such a structure on the capability of the Bank to carry out its purposes under law and the Bank's viability, including the ability of the Bank to obtain funding in the private capital markets;

(5) the quality and timeliness of information currently available to the public and the Federal Government concerning the extent and nature of the activities of the Bank and its affiliates and the financial risks associated with such activities;

(6) the extent to which the Bank has served all types of its eligible borrowers, including consumer cooperatives, self-help cooperatives, and cooperatives serving low-income families;

(7) the extent to which the Bank directly or indirectly has provided technical assistance to all types of its eligible borrowers;

(8) whether the benefit to the Bank of below-market rates of interest on the debt issued by the Bank to the Secretary of the Treasury was utilized and allocated in a manner consistent with the Bank Act;

(9) whether the Bank's compensation of its executive officers has been excessive;

(10) whether the manner in which the Bank has allocated voting rights to its eligible borrowers has conformed with the Bank Act;

(11) whether the Bank otherwise has acted in a manner consistent with the achievement of its purposes and mission under the Bank Act; and

(12) whether the purposes and mission of the Bank under the Bank Act should be modified in light of any changes in the availability to the Bank's eligible borrowers of credit from sources other than the Bank, changes in the economy, and other factors.

(c) PREPARATION OF REPORT.—In conducting the study required by this section, among other matters, the Comptroller General shall take account of—

(1) the examination reports on the Bank prepared by the Farm Credit Administration;

(2) any audits of the Bank by the Comptroller General;

(3) the annual reports of the Bank to the Congress and the annual and quarterly reports and registration statements filed by the Bank with the Securities and Exchange Commission;

(4) any written communications of any kind of the Farm Credit Administration or the Comptroller General to the Congress with respect to the Bank or its affiliates;

(5) the examination reports on the Bank or its affiliates prepared by the Office of Thrift Supervision or the appropriate official of the State of Ohio; and

(6) the views of interested members of the public, including eligible borrowers from the Bank.

(d) REPORT TO CONGRESS.—Within 6 months after enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report that shall set forth—

(1) the results of the study under this section;

(2) any recommendations of the Comptroller General with respect to—

(A) the establishment of a more comprehensive structure of safety and soundness regulation of the Bank and its affiliates;

(B) the appropriate capital standards for the Bank; and

(C) the appropriate regulatory agency for the Bank;

(3) any recommendations of the Comptroller General with respect to—

(A) the manner in which the Bank is carrying out its purposes and mission under the Bank Act;

(B) whether the Bank's purposes and mission under the Bank Act should be changed; and

(C) whether the Bank Act should be otherwise amended; and

(4) any recommendations and opinions of the Secretary of the Treasury regarding the report and, to the extent that the recommendations and views of such officers or agencies differ from the recommendations and opinions of the Comptroller General, any recommendations and opinions of the Farm Credit Administration and the Office of Thrift Supervision regarding the report.

(e) CONSULTATION AND COOPERATION WITH OTHER AGENCIES.—The Comptroller General shall determine the structure and methodology of the study under this section in consultation with the Secretary of the Treasury, the Farm Credit Administration, the Director of the Office of Thrift Supervision, and the Bank.

(f) ACCESS TO RELEVANT INFORMATION.—The Bank shall provide or cause to be provided full and prompt access to the Comptroller General to the books and records of the Bank and any affiliate of the Bank and shall promptly provide or cause to be provided any other information requested by the Comptroller General. Any information provided by the Bank or any affiliate of the Bank to the Comptroller General that concerns customer relationships and that is confidential in nature shall be retained in confidence by the Comptroller General and shall not be disclosed to the public. In conducting the study under this section, the Comptroller General may request information from, or the assistance of, any department or agency of the Federal Government or of the State of Ohio that is or was authorized by law to examine or supervise any activities of the Bank or any affiliate of the Bank.

TITLE IX—MISCELLANEOUS

Subtitle A—Miscellaneous

SEC. 901. PRIVATIZATION STUDY.

(a) IN GENERAL.—The Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of the Treasury shall conduct a study of the desirability and feasibility of eliminating the Federal sponsorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(b) SPECIFIC REQUIREMENTS.—In conducting the study, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of the Treasury shall consider and evaluate—

(1) the legal requirements of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the costs to the enterprises if such Federal sponsorship were removed;

(2) the cost of capital to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation with the removal of Federal sponsorship;

(3) the costs to home ownership and the impact on housing affordability and availability of the removal of Federal sponsorship;

(4) the level of competition which might be available in the private sector with the removal of Federal sponsorship;

(5) the potential effect on the cost and availability of residential housing finance of the enactment of bank reforms that would enable banks to enter the securities business;

(6) whether increased amounts of core capital would be necessary with the removal of Federal sponsorship;

(7) the impact of removal of Federal sponsorship upon the secondary market for residential loans and the liquidity of such loans;

(8) the impact of removal of Federal sponsorship upon the risk weighting of assets of insured depository institutions; and

(9) any other factor which the Comptroller General of the United States, the Director of the Congressional Budget Office, or the Secretary of the Treasury deems appropriate to enable the Congress to evaluate the desirability and feasibility of privatization of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(c) REPORT TO CONGRESS.—Within 2 years after the date of enactment of this Act, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of the Treasury shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report that shall set forth—

(1) a summary of the findings under this section;

(2) recommendations to the Congress on the removal of Federal sponsorship, if deemed to be feasible and desirable, which shall include suggestions for an appropriate time frame in which to withdraw Federal sponsorship.

(d) VIEWS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION.—

(1) CONSIDERATION OF VIEWS.—In conducting the study under this section, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of the Treasury shall consider the views of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation may report directly to the Congress on the enterprises' own analysis of the desirability and feasibility of the removal of Federal sponsorship.

SEC. 902. HOUSING ASSISTANCE IN JEFFERSON COUNTY, TEXAS.

Section 213(e) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(e)) is amended by striking "the Park Central New Community Project or in adjacent areas that are recognized by the unit of general local government in which such project is located as being included within the Park Central New Town in Town Project." and inserting "Jefferson County, Texas.".

SEC. 903. APPLICABILITY OF SHELTER PLUS CARE.

Section 811 of the Cranston-Gonzalez Affordable Housing Act (42 U.S.C. 8013) is amended—

(1) in subsection (b), by striking "private,"; and

(2) in paragraphs (5) and (6) of subsection (k), by striking "private" each place it appears.

SEC. 904. ADJUSTABLE RATE MORTGAGE CAPS.

Section 1204(d)(2) of the Competitive Equality Banking Act of 1987 (12 U.S.C. 3806(d)(2)) is amended by striking "any loan" and inserting "any home purchase or other consumer loan".

SEC. 905. COMMUNITY DEVELOPMENT AUTHORITY OF BANKS.

(a) NATIONAL BANKS.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end the following new paragraph:

"ELEVENTH.—To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). A national banking association may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. An association shall not make any such investment if the investment would expose the association to unlimited liability.

The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the association's capital stock actually paid in and unimpaired and 10 percent of the association's unimpaired surplus fund.".

(b) STATE MEMBER BANKS.—Section 9 of the Federal Reserve Act (12 U.S.C. 321-338) is amended by adding at the end the following new paragraph:

"State member banks may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law, and subject to such restrictions and requirements as the Board of Governors of the Federal Reserve System may prescribe by regulation or order. A bank shall not make any such investment if the investment would expose the bank to unlimited liability. The Board of Governors shall limit a bank's investments in any 1 project and a bank's aggregate investments under this paragraph. A bank's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the bank's capital stock actually paid in and unimpaired and 5 percent of the bank's unimpaired surplus fund, unless the Board determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the bank is adequately capitalized. In no case shall a bank's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the bank's capital stock actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.".

SEC. 906. SENSE OF THE SENATE.

(a) FINDINGS.—The Congress finds that—

(1) the two housing Government-sponsored enterprises, the Federal National Mortgage Association (hereafter in this section referred to as "Fannie Mae") and the Federal Home Loan Mortgage Corporation (hereafter in this section referred to as "Freddie Mac") have issued or guaranteed nearly $900,000,000,000 of securities which are currently outstanding;

(2) Fannie Mae and Freddie Mac are privately owned, profitmaking enterprises whose securities are viewed by investors as having an implicit Federal guarantee;

(3) investor perception of a Federal guarantee, as the savings and loan crisis demonstrates, removes market discipline, reduces incentives to maintain strong capital positions, and distorts financial decisions;

(4) the outstanding obligations of Fannie Mae and Freddie Mac exceed those in the entire savings and loan industry;

(5) the existing regulatory structure and oversight of the Fannie Mae and Freddie Mac has been inadequate;

(6) history has shown that a regulator charged with protecting taxpayer dollars must be independent of other policymaking entities;

(7) this Act takes concrete steps to establish safety and soundness regulation of Fannie Mae and Freddie Mac;

(8) this Act creates an independent regulatory office, the Office of Federal Housing Enterprise Oversight, in the Department of Housing and Urban Development; and

(9) the independence of the Office cannot be compromised without impairing the ability of the regulator to ensure that the Fannie Mae and Freddie Mac are adequately capitalized and operating safely.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any final Government-sponsored enterprise legislation should make it clear that the independence of the regulator overseeing the safety and soundness of Fannie Mae and Freddie Mac should not be compromised.

SEC. 907. 4-MONTH EXTENSION OF TRANSITION RULE FOR SEPARATE CAPITALIZATION OF SAVINGS ASSOCIATIONS' SUBSIDIARIES.

Section 5(t)(5)(D)(ii) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(t)(5)(D)(ii)) is amended—

(1) by striking "June 30, 1992" and inserting "October 31, 1992"; and

(2) by striking "July 1, 1992" and inserting "November 1, 1992".

SEC. 908. CREDIT CARD SALES.

(a) IN GENERAL.—Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended by adding at the end the following new paragraphs:

"(14) SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

"(A) NOTIFICATION REQUIRED.—An undercapitalized insured depository institution (as defined in section 38) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

"(B) WAIVER BY CORPORATION.—The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

"(i) determines that the waiver is in the best interests of the deposit insurance fund; and

"(ii) provides a written waiver to the selling institution.

"(C) EFFECT OF WAIVER ON SUCCESSORS.—

"(i) IN GENERAL.—If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

"(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

"(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

"(ii) EXCEPTION.—Clause (i)(II) does not—

"(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

"(II) require the acquirer to restrict any preexisting relationship between the acquirer and a customer; or

"(III) apply to any transaction in which the acquirer acquires only insured deposits.

"(D) WAIVER NOT ACTIONABLE.—The Corporation shall not, in any capacity, be liable to any person for damages resulting from waiving or failing to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

"(E) OTHER AUTHORITY NOT AFFECTED.—This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

"(15) CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

"(A) IN GENERAL.—If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 13 from using the list except as permitted under the agreement.

"(B) FRAUDULENT TRANSACTIONS EXCLUDED.—Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.".

(b) INTERIM DEFINITION OF UNDERCAPITALIZATION.—During the period beginning on the date of enactment of this Act and ending on the effective date of section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), an insured depository institution is undercapitalized for purposes of section 11(e)(14) of the Federal Deposit Insurance Act (as added by subsection (a) of this section), if it does not comply with any currently applicable minimum capital standard prescribed by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

SEC. 909. REAL ESTATE APPRAISAL AMENDMENT.

Section 1113 of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

(3) by inserting after paragraph (2) the following:

"(3) THRESHOLD LEVEL.—Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may establish a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions, if such agency determines in writing that such threshold level does not represent a threat to the safety and soundness of financial institutions.".

SEC. 910. EXTENSION OF CIVIL STATUTE OF LIMITATIONS.

(a) RESOLUTION TRUST CORPORATION.—Section 11(d)(14) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(14)) is amended—

(1) in subparagraph (A)(ii), by inserting "except as provided in subparagraph (B)," before "in the case of";

(2) by redesignating subparagraph (B) as subparagraph (C);

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) TORT ACTIONS BROUGHT BY THE RESOLUTION TRUST CORPORATION.—The applicable statute of limitations with regard to any action in tort brought by the Resolution Trust Corporation in its capacity as conservator or receiver of a failed savings association shall be the longer of—

"(i) the 5-year period beginning on the date the claim accrues; or

"(ii) the period applicable under State law."; and

(4) in subparagraph (C), as redesignated—

(A) by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)"; and

(B) by striking "such subparagraph" and inserting "such subparagraphs".

(b) EFFECTIVE DATE; TERMINATION; FDIC AS SUCCESSOR.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall be construed to have the same effective date as section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) TERMINATION.—The amendments made by subsection (a) shall remain in effect only until the termination of the Resolution Trust Corporation.

(3) FDIC AS SUCCESSOR TO THE RTC.—The Federal Deposit Insurance Corporation, as successor to the Resolution Trust Corporation, shall have the right to pursue any tort action that was properly brought by the Resolution Trust Corporation prior to the termination of the Resolution Trust Corporation.

SEC. 911. AGGREGATE LIMITS ON INSIDER LENDING.

Section 22(h)(5) of the Federal Reserve Act (12 U.S.C. 375b(5)) is amended by adding at the end the following new subparagraph:

"(D) EXTENSIONS OF CREDIT SECURED BY FEDERAL OBLIGATIONS EXCLUDED.—For purposes of this paragraph, the term 'extension of credit' does not include an extension of credit fully secured by—

"(i) an obligation of the United States; or

"(ii) an obligation with respect to which the United States fully guarantees the payment of principal and interest.".

SEC. 912. CLARIFICATION OF COMPENSATION STANDARDS.

Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831s) is amended—

(1) in subsection (d), by adding at the end the following: "An appropriate Federal banking agency may not prescribe standards or regulations under subsection (a), (b), or (c) that set a specific level or range of compensation for officers, directors, or employees of insured depository institutions."; and

(2) in subsection (e)(1)(A), by striking "(a), (b), or (c)" and inserting "(a) or (b)".

SEC. 913. TRUTH IN SAVINGS ACT AMENDMENTS.

(a) TIMING OF CERTAIN DISCLOSURES.—Section 266 of the Truth in Savings Act (12 U.S.C. 4305) is amended—

(1) by striking subsection (a)(3), and inserting the following:

"(3) provided to a depositor, in the case of a time deposit that is renewable at maturity without notice from the depositor and that has a period of maturity of 2 years or more, not later than 15 days before the date of maturity."; and

(2) by inserting after subsection (e) the following new subsection:

"(f) DISCLOSURES FOR RENEWAL OF CERTAIN ACCOUNTS.—

"(1) RENEWAL NOTICE.—A renewal notice shall be provided to the depositor with respect to a time deposit that has a maturity period greater than 1 month and less than 2 years that is renewable at maturity without notice from the depositor, as follows—

"(A) with respect to a time deposit that has a period of maturity of more than 3 months, but less than 2 years, not later than 15 days before the date of maturity; and

"(B) with respect to a time deposit that has a period of maturity of more than 1 month, but less than 3 months, not later than such time as the Board determines by regulation to be appropriate, in accordance with the purposes of this Act.

"(2) CONTENTS OF NOTICE.—A renewal notice required under this subsection shall state—

"(A) the maturity date of the expiring time deposit;

"(B) the maturity date or the term of the renewed time deposit;

"(C) any penalty for early withdrawal;

"(D) any change to the terms or conditions of the time deposit adverse to the customer, unless a notice under subsection (c) has been provided to the account holder;

"(E) the date on which the annual percentage yield and simple rate of interest will be determined; and

"(F) a telephone number to obtain the annual percentage yield and simple rate of interest that will be paid when the account is renewed.

"(3) RENEWAL OF SHORT-TERM TIME DEPOSITS.—With respect to a time deposit that has a period of maturity of 1 month or less and that is renewable at maturity without notice from the depositor, the Board may, by regulation, require that a notice be provided to an account holder at such time and containing such information as the Board determines appropriate, in accordance with the purposes of this Act.".

(b) ON-PREMISES DISPLAYS.—Section 263 of the Truth in Savings Act (12 U.S.C. 4302) is amended—

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)";

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection:

"(c) DISCLOSURE REQUIRED FOR ON-PREMISE DISPLAYS.—

"(1) IN GENERAL.—The disclosure requirements contained in this section shall not apply to any sign (including a rate board) disclosing a rate or rates of interest that is displayed on the premises of the depository institution if such sign contains—

"(A) the accompanying annual percentage yield; and

"(B) a statement that the consumer should request further information from an employee of the depository institution concerning the fees and terms applicable to the advertised account.

"(2) DEFINITION.—For purposes of paragraph (1), a sign shall only be considered to be displayed on the premises of a depository institution if the sign is designed to be viewed only from the interior of the premises of the depository institution.".

(c) EFFECTIVE DATE.—Section 269(a)(2) of the Truth in Savings Act (12 U.S.C. 4308(a)(2)) is amended by striking "6" and inserting "9".

Beginning with page 143, line 18, strike through page 155, line 14, and insert the following:

Subtitle B—Presidential Insurance Commission

SEC. 921. SHORT TITLE.

This subtitle may be cited as the "Presidential Insurance Commission Act of 1992".

SEC. 922. FINDINGS.

The Congress finds that—

(1) the property and casualty insurance, life insurance, health insurance, and reinsurance industries play a major and vital role in the capital formation and lending in the United States economy;

(2) at the end of 1989, life and health and property and casualty insurers combined controlled just under $1,800,000,000,000 in assets invested in the United States;

(3) these insurer assets represented slightly less than 18 percent of the financial assets of all non-governmental financial intermediaries in the United States;

(4) of total United States assets, insurers controlled—

(A) 50.7 percent of all United States held corporate and foreign bonds;

(B) 32.1 percent of all tax-exempt bonds;

(C) 13.8 percent of United States Treasury securities;

(D) 18.2 percent of Federal agency securities;

(E) 12.2 percent of mortgages;

(F) 14.7 percent of corporate equities;

(G) 10.3 percent of open market paper; and

(H) 12 percent of all other United States assets; and

(5) a Presidential commission should be established to carry out the duties described in section 924.

SEC. 923. ESTABLISHMENT.

There is established a Presidential Commission on Insurance (hereafter in this subtitle referred to as the "Commission").

SEC. 924. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall assess the condition of the property and casualty insurance, life insurance, and reinsurance industries, including consideration of—

(1) the present and long-term financial health of the companies in such industries and the importance of that financial health to other aspects of the national economy, including the impact on other financial institutions;

(2) the effect of the decline of real estate values and noninvestment grade bond holdings on the financial health of the companies in such industries;

(3) the effect of current and projected guaranty fund assessments, under different insolvency scenarios, on the financial health of the companies in such industries;

(4) the effect of residual markets on the competitiveness of voluntary insurance markets and on the financial health of the companies in such industries;

(5) the causes of company insolvencies in the last 5 years;

(6) the effect of State and Federal liability systems, including with respect to long-term

liability, on insurance industry solvency and the appropriateness of the present allocation of Federal and State responsibilities in the underlying liability systems;

(7) the effect of State regulation of companies in such industries with respect to—

(A) solvency (including the quality and consistency of regulation and the adequacy of insurance regulatory resources);

(B) consumer protection and competition (including pricing, product development, the adequacy of information to consumers, the transfer by companies of the policies of individual policyholders between companies, and any other relevant matters);

(C) reinsurance (including the authority of State regulators to regulate offshore reinsurers doing business in the United States); and

(D) the appropriateness of the present allocation of Federal and State responsibilities in regulating insurance;

(8) the efficiency of the present system for liquidation of insolvent insurance companies;

(9) the adequacy of State and Federal civil and criminal enforcement authority and activity; and whether any State law or regulatory action inhibits competition or efficiency or impairs insurer solvency;

(10) the condition of current State guaranty funds, including consideration of—

(A) the adequacy of assured payout to policyholders, including an assessment of the sufficiency of existing State guaranty associations to guarantee all policyholders payments, up to the limits of coverage under the funds, under a variety of industry insolvency scenarios;

(B) the effect of proposed changes in these funds by the National Association of Insurance Commissioners, including consideration of the timeliness with which such changes are likely to be adopted and implemented;

(C) the capability of a post-insolvency assessment system to meet large insolvencies in a timely manner;

(D) the effect on policyholders of differences in the amount of liability coverage offered by the funds from State to State and of differences in eligibility rules from State to State; and

(E) the appropriateness of the extent of protection provided to individual policyholders and corporate policyholders;

(11) the effect of Federal, State, and local taxes on the solvency of companies in such industries, and the effect of State tax-offsets for guaranty fund assessments on taxpayers under a variety of industry insolvency scenarios; and

(12) whether there are some forms of catastrophic risks that deserve special insurance treatment.

(b) REPORT.—On the basis of the Commission's findings under subsection (a), the Commission shall submit the report required by section 928.

SEC. 925. MEMBERSHIP AND COMPENSATION.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 25 members, including—

(1) the Secretary of the Treasury;

(2) the Secretary of Labor;

(3) the Secretary of Transportation;

(4) the Secretary of Commerce;

(5) the Chairman of the Federal Trade Commission;

(6) the Attorney General of the United States;

(7) 5 Members of the United States House of Representatives appointed by the Speaker of the House of Representatives from the committees of appropriate jurisdiction, of which 3 shall be appointed upon the recommendation of the Chairmen of such committees and 2 shall be appointed upon the recommendation of the Minority Leader;

(8) 5 Members of the United States Senate appointed by the President pro tempore of the Senate, of which 3 shall be appointed upon the recommendation of the Chairmen of the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary, and 2 shall be appointed upon the recommendation of the Minority Leader; and

(9) 9 members, who are not Federal employees, who have expertise in insurance, financial services, antitrust, liability law and consumer issues, at least 1 of whom has expertise in State regulation of insurance, at least 2 of whom have expertise in the business of insurance and at least 2 of whom have expertise in consumer issues, to be appointed by the President.

(b) DESIGNEES.—An appropriate designee of any member described in paragraphs (1) through (8) of subsection (a) may serve on the Commission in the place of such member and under the same terms and conditions as such member.

(c) CONSULTATION BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall consult with—

(1) the Chairman of the Board of Governors of the Federal Reserve System;

(2) the Chairperson of the Federal Deposit Insurance Corporation; and

(3) the Chairman of the Securities and Exchange Commission,

with respect to all financial and other matters within their respective jurisdictions that are under consideration by the Commission.

(d) ELIGIBILITY.—No member or officer of the Congress, or other member or officer of the Executive Branch of the United States Government may be appointed to be a member of the Commission pursuant to paragraph (9) of subsection (a).

(e) TERMS.—

(1) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(2) VACANCY.—A vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(f) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission appointed pursuant to subsection (a)(9) shall be compensated at a rate equal to the annual rate of basic pay for GS-18 of the General Schedule.

(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) QUORUM.—

(1) MAJORITY.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) APPROVAL OF ACTIONS.—All recommendations and reports of the Commission required by this subtitle shall be approved only by a majority vote of a quorum of the Commission.

(h) CHAIRPERSON.—The President shall select 1 member appointed pursuant to subsection (a)(9) to serve as the Chairperson of the Commission.

(i) MEETINGS.—The Commission shall meet at the call of the Chairperson or a majority of the members.

SEC. 926. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may—

(1) hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate; and

(2) administer oaths or affirmations to witnesses appearing before the Commission,

for the purpose of carrying out this subtitle.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this subtitle.

(c) SUBPOENA POWER.—

(1) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Commission.

(2) ADMINISTRATIVE ASPECTS OF SUBPOENA.—

(A) ATTENDANCE OR PRODUCTION AT DESIGNATED SITE.—The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(B) FEES AND TRAVEL EXPENSES.—Persons served with a subpoena under this subsection shall be paid the same fees and mileage for travel within the United States that are paid witnesses in Federal courts.

(C) NO LIABILITY FOR OTHER EXPENSES.—The Commission and the United States shall not be liable for any expense, other than an expense described in subparagraph (B), incurred in connection with the production of any evidence under this subsection.

(3) CONFIDENTIALITY.—Information obtained under this section which is deemed confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Commission determines that the withholding thereof is contrary to the national interest. The provisions of the preceding sentence shall not apply to the publication or disclosure of data that are aggregated in a manner that ensures protection of the identity of the person furnishing such data.

(4) FAILURE TO OBEY A SUBPOENA.—

(A) APPLICATION TO COURT.—If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to a district court of the United States for an order requiring that person to appear before the Commission to give testimony or produce evidence, as the case may be, relating to the matter under investigation.

(B) JURISDICTION OF COURT.—The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business.

(C) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as civil contempt.

(5) SERVICE OF SUBPOENAS.—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(6) SERVICE OF PROCESS.—All process of any court to which application is to be made under paragraph (3) may be served in the judicial district in which the person required to be served resides or may be found.

(d) OBTAINING OFFICIAL DATA.—

(1) AUTHORITY.—Notwithstanding any provision of section 552a of title 5, United States

Code, the Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out this subtitle.

(2) PROCEDURE.—Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish the information requested to the Commission.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this subtitle.

SEC. 927. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—Subject to such regulations as the Commission may prescribe, the Chairperson may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(c) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the annual rate of basic pay payable for GS-18 of the General Schedule.

(d) STAFF OF FEDERAL AGENCIES.—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this subtitle.

SEC. 928. REPORT.

Not later than May 31, 1993, the Commission shall submit to the President and the Congress a final report containing a detailed statement of its findings, together with any recommendations for legislation or administrative action that the Commission considers appropriate, in accordance with the requirements of section 924.

SEC. 929. TERMINATION.

The Commission shall terminate not later than 60 days following submission of the report required by section 928.

SEC. 930. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $3,000,000 to carry out the purposes of this subtitle.

Subtitle C—Secondary Market for Commercial Mortgage and Small Business Loans

SEC. 931. SHORT TITLE.

This subtitle may be cited as the "Secondary Market for Commercial Real Estate Mortgage and Small Business Loans Act of 1992".

SEC. 932. PURPOSE.

The purpose of this subtitle is to enable the Congress to gain an understanding of legal, regulatory, and market-based impediments to developing a secondary market for commercial real estate mortgage loans and loans to small businesses.

SEC. 933. FINDINGS.

The Congress finds that—

(1) the secondary market for residential real estate mortgage loans has created liquidity and diversified risk in the home mortgage lending market, has maintained an adequate flow of mortgage credit to homebuyers, and has stabilized mortgage loan prices across the country;

(2) an active and liquid secondary market for commercial real estate mortgage and small business loans has not developed despite the apparent benefits for lenders and homeowners in the residential market and the potential benefits to lenders and borrowers on the commercial market;

(3) a major impediment to the creation of a secondary market for commercial real estate mortgages and small business loans is the lack of standardization in such mortgages, including loan documents, underwriting, loan terms, credit enhancement, security product design and packaging, and ratings; and

(4) standardization of commercial real estate mortgage and small business loans and the elimination of legal and regulatory barriers would enhance the development of a broader, more liquid secondary market for commercial real estate mortgage and small business loans through private sector initiatives and resources.

SEC. 934. SECONDARY MARKET FOR COMMERCIAL MORTGAGE AND SMALL BUSINESS LOANS.

(a) STUDY AND REPORT BY THE TREASURY, THE CBO, AND THE SEC.—

(1) STUDY.—The Secretary of the Treasury, the Director of the Congressional Budget Office, and the Chairman of the Securities and Exchange Commission, in consultation with the Administrator of the Small Business Administration, shall conduct a study of the potential costs and benefits of, and legal, regulatory, and market-based barriers to, developing a secondary market for commercial real estate mortgage loans and loans to small businesses, including equipment and working capital loans. The study shall include consideration of—

(A) market perceptions and the reasons for the slow development of a secondary market for commercial real estate mortgage loans and loans to small businesses;

(B) the acquisition, development, and construction phases of the commercial real estate market;

(C) any means to standardize loan documents and underwriting for loans relating to retail, office space, and other segments of the commercial real estate market and for loans to small businesses;

(D) the probable effects of the development of a secondary market for commercial real estate mortgage loans and loans to small businesses on financial institutions and intermediaries, borrowers, lenders, real estate markets, and the credit markets generally;

(E) legal and regulatory barriers that may be impeding the development of a secondary market for commercial real estate mortgage loans and loans to small businesses;

(F) the risks posed by investments in commercial mortgage loans or related products and loans to small businesses; and

(G) the structure and effect of Federal loan guarantees and, if recommended, publicly supported credit enhancement.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary of the Treasury, the Director of the Congressional Budget Office, and the Chairman of the Securities and Exchange Commission shall transmit to the Congress a report on the results of the study under paragraph (1). The report shall include recommendations for legislation and regulatory actions to facilitate the development of a secondary market for commercial real estate mortgage loans and loans to small businesses.

(b) STUDY AND REPORT BY THE RTC.—

(1) STUDY.—The chief executive officer of the Resolution Trust Corporation (hereafter in this subtitle referred to as the "RTC") shall conduct a study that focuses on—

(A) efforts by the RTC to standardize its disposition methods;

(B) the success of the RTC in marketing its commercial mortgage loan-backed securities; and

(C) the impact of the RTC's programs on the commercial real estate mortgage loan and small business loan secondary market.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the chief executive officer of the RTC shall transmit a report to the Congress on the impact of its commercial real estate loan securitization program. Such report shall also contain the results of the study under paragraph (1).

Subtitle D—Asset Conservation and Deposit Insurance Protection

SEC. 941. SHORT TITLE.

This subtitle may be cited as the "Asset Conservation and Deposit Insurance Protection Act of 1992".

SEC. 942. ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION.

(a) CERCLA AMENDMENTS.—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by inserting after section 126 the following new section:

"SEC. 127. ASSET CONSERVATION.

"(a) LIABILITY LIMITATIONS.—

"(1) IN GENERAL.—The liability of an insured depository institution or other lender under this Act or subtitle I of the Solid Waste Disposal Act for the release or threatened release of petroleum or a hazardous substance at, from, or in connection with property—

"(A) acquired through foreclosure;

"(B) held, directly or indirectly, in a fiduciary capacity;

"(C) held by a lessor pursuant to the terms of an extension of credit; or

"(D) subject to financial control or financial oversight pursuant to the terms of an extension of credit,

shall be limited to the actual benefit conferred on such institution or lender by a removal, remedial, or other response action undertaken by another party.

"(2) SAFE HARBOR.—An insured depository institution or other lender shall not be liable under this Act or subtitle I of the Solid Waste Disposal Act and shall not be deemed to have participated in management, as described in section 101(20)(A) of this Act or section 9003(h)(9) of the Solid Waste Disposal Act, based solely on the fact that the institution or lender—

"(A) holds a security interest or abandons or releases its security interest in the property before foreclosure;

"(B) has the unexercised capacity to influence operations at or on property in which it has a security interest;

"(C) includes in the terms of an extension of credit (or in the contract relating thereto), covenants, warranties, or other terms

and conditions that relate to compliance with environmental laws;

"(D) monitors or enforces the terms and conditions of the extension of credit;

"(E) monitors or undertakes one or more inspections of the property;

"(F) requires cleanup of the property prior to, during, or upon the expiration of the term of the extension of credit;

"(G) provides financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

"(H) restructures, renegotiates, or otherwise agrees to alter the terms and conditions of the extension of credit;

"(I) exercises whatever other remedies that may be available under applicable law for the breach of any term or condition of the extension of credit; or

"(J) declines to take any of the actions described in this paragraph.

"(b) ACTUAL BENEFIT.—For the purpose of this section, the actual benefit conferred on an institution or lender by a removal, remedial, or other response action shall be equal to the net gain, if any, realized by such institution or lender due to such action. For purposes of this subsection, the 'net gain' shall not exceed the amount realized by the institution or lender on the sale of property.

"(c) EXCLUSION.—Notwithstanding subsection (a), but subject to the provisions of section 107(d), a depository institution or lender that causes or significantly and materially contributes to the release of petroleum or a hazardous substance that forms the basis for liability described in subsection (a), may be liable for removal, remedial, or other response action pertaining to that release.

"(d) ENVIRONMENTAL ASSESSMENTS.—

"(1) DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Corporation, in consultation with the Administrator of the Environmental Protection Agency, shall promulgate regulations to implement this section. Such regulations shall include requirements for insured depository institutions to develop and implement adequate procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The regulations may provide for different types of environmental assessments as may be appropriate under the circumstances, in order to account for the levels of risk that may be posed by different classes of collateral. Failure to comply with the environmental assessment regulations promulgated under this subsection shall be deemed to be a violation of a regulation promulgated under the Federal Deposit Insurance Act.

"(2) LENDERS.—The Federal Deposit Insurance Corporation, in consultation with the Administrator of the Environmental Protection Agency, shall promulgate regulations that are substantially similar to those promulgated under paragraph (1) to assure that lenders develop and implement procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The regulations may provide for exclusions or different types of environmental assessments in order to take into account the level of risk that may be posed by particular classes of collateral.

"(3) FINAL REGULATIONS.—Final regulations required to be promulgated pursuant to paragraphs (1) and (2) shall be issued not later than 180 days after the date of enactment of this section.

"(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) PROPERTY ACQUIRED THROUGH FORECLOSURE.—The term 'property acquired through foreclosure' or 'acquires property through foreclosure' means property acquired, or the act of acquiring property, from a nonaffiliated party by an insured depository institution or other lender—

"(A) through purchase at sales under judgment or decree, power of sales, nonjudicial foreclosure sales, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(B) through conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(C) through any other formal or informal manner by which the insured depository institution or other lender temporarily acquires, for subsequent disposition, possession of collateral in order to protect its interest. Property is not acquired through foreclosure if the insured depository institution or lender does not seek to sell or otherwise divest such property at the earliest practical, commercially reasonable time, taking into account market conditions and legal and regulatory requirements.

"(2) LENDER.—The term 'lender' means—

"(A) a person (other than an insured depository institution) that—

"(i) makes a bona fide extension of credit to a nonaffiliated party; and

"(ii) substantially and materially complies with the environmental assessment requirements imposed under subsection (d), after final regulations under that subsection become effective;

and the successors and assigns of such person;

"(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or other entity that in a bona fide manner is engaged in the business of buying or selling loans or interests therein, if such Association, Corporation, or entity requires institutions from which it purchases loans (or other obligations) to comply substantially and materially with the requirements of subsection (d), after final regulations under that subsection become effective; and

"(C) any person regularly engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to nonaffiliated parties.

"(3) FIDUCIARY CAPACITY.—The term 'fiduciary capacity' means acting for the benefit of a nonaffiliated person as a bona fide—

"(A) trustee;

"(B) executor;

"(C) administrator;

"(D) custodian;

"(E) guardian of estates;

"(F) receiver;

"(G) conservator;

"(H) committee of estates of lunatics; or

"(I) any similar capacity.

"(4) EXTENSION OF CREDIT.—The term 'extension of credit' includes a lease finance transaction—

"(A) in which the lessor does not initially select the leased property and does not during the lease term control the daily operations or maintenance of the property; or

"(B) which conforms with regulations issued by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) or the appropriate State banking regulatory authority.

"(5) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act, and shall also include—

"(A) a federally insured credit union;

"(B) a bank or association chartered under the Farm Credit Act of 1971; and

"(C) a leasing or trust company that is an affiliate of an insured depository institution (as such term is defined in this paragraph).

"(6) RELEASE.—The term 'release' has the same meaning as in section 101(22), and also includes the threatened release, use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(7) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' has the same meaning as in section 101(14).

"(8) SECURITY INTEREST.—The term 'security interest' includes rights under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.

"(f) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party subject to the provisions of this section. Nothing in this section shall be construed to create any liability for any party. Nothing in this section shall create a private right of action against a depository institution or lender or against a Federal banking or lending agency.

"(g) EFFECTIVE DATE.—This section shall become effective upon the date of its enactment.".

(b) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) by redesignating section 39 (as added by section 132(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991) as section 42;

(2) by redesignating section 40 (as added by section 151(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991) as section 43; and

(3) by adding at the end the following new section:

"SEC. 44. ASSET CONSERVATION.

"(a) GOVERNMENTAL ENTITIES.—

"(1) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (2), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of petroleum or a hazardous substance at or from property (including any right or interest therein) acquired—

"(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries;

"(B) in connection with the provision of loans, discounts, advances, guarantees, insurance or other financial assistance; or

"(C) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(2) APPLICATION OF STATE LAW.—Nothing in this section shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, ex-

cept that liability under State law shall not exceed the value of the agency's interest in the asset giving rise to such liability. Nothing in this section shall be construed to prevent a Federal banking or lending agency from agreeing with a State to transfer property to such State in lieu of any liability that might otherwise be imposed under State law.

"(3) LIMITATION.—Notwithstanding paragraph (1), and subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a Federal banking or lending agency that causes or significantly and materially contributes to the release of petroleum or a hazardous substance that forms the basis for liability described in paragraph (1), may be liable for removal, remedial, or other response action pertaining to that release.

"(4) SUBSEQUENT PURCHASER.—The immunity provided by paragraph (1) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(A) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(B) is or was affiliated with or related to a party described in subparagraph (A);

"(C) fails to agree to take reasonable steps necessary to remedy the release or threatened release in a manner consistent with the purposes of applicable environmental laws; or

"(D) causes or materially and significantly contributes to any additional release or threatened release on the property.

"(5) FEDERAL OR STATE ACTION.—Notwithstanding paragraph (4), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in paragraph (4)(C), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. However, any such reimbursement shall not exceed the full fair market value of the property following completion of the remedial action.

"(b) LIEN EXEMPTION.—Notwithstanding any other provision of law, any property held by a subsequent purchaser referred to in subsection (a)(4) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of petroleum or a hazardous substance known to exist at the time of the transfer.

"(c) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in subsection (a)(1).

"(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) FEDERAL BANKING OR LENDING AGENCY.—The term 'Federal banking or lending agency' means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank, a Federal Home Loan Bank, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, and the Small Business Administration, in any of their capacities, and their agents.

"(2) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(3) RELEASE.—The term 'release' has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and also includes the threatened release, use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(e) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party subject to the provisions of this section. Nothing in this section shall be construed to create any liability for any party. Nothing in this section shall create a private right of action against a depository institution or lender or against a Federal banking or lending agency.".

Subtitle E—Limitations on Liability

SEC. 951. DIRECTORS NOT LIABLE FOR ACQUIESCING IN CONSERVATORSHIP, RECEIVERSHIP, OR SUPERVISORY ACQUISITION OR COMBINATION.

(a) LIABILITY.—During the period beginning on the date of enactment of this Act and ending on December 19, 1992, the members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

(1) the appointment of the Resolution Trust Corporation or the Federal Deposit Insurance Corporation as conservator or receiver for that institution; or

(2) the acquisition of the institution by a depository institution holding company, or the combination of the institution with another insured depository institution if the appropriate Federal banking agency has—

(A) requested the institution, in writing, to be acquired or to combine; and

(B) notified the institution that 1 or more grounds exist for appointing a conservator or receiver for the institution.

(b) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency", "depository institution holding company", and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 952. LIMITING LIABILITY FOR FOREIGN DEPOSITS.

(a) AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.) is amended by adding at the end the following:

"11. Limitations on liability.

"A member bank shall not be required to repay any deposit made at a foreign branch of the bank if the branch cannot repay the deposit due to—

"(i) an act of war, insurrection, or civil strife, or

"(ii) an action by a foreign government or instrumentality (whether de jure or de facto) in the country in which the branch is located,

unless the member bank has expressly agreed in writing to repay the deposit under those circumstances. The Board is authorized to prescribe such regulations as it deems necessary to implement this paragraph.".

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) SOVEREIGN RISK.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(A) by redesignating subsection (o) (as added by section 305(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242, 105 Stat. 2354)) as subsection (p); and

(B) by adding at the end the following:

"(q) SOVEREIGN RISK.—Section 25(11) of the Federal Reserve Act shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 3(*l*)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)(5)) is amended to read as follows:

"(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State unless—

"(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and payable at, an office located in any State; and

"(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State; and".

(c) EXISTING CLAIMS NOT AFFECTED.—The amendments made by this section shall not be construed to affect any claim arising from events (described in section 25(11) of the Federal Reserve Act, as added by subsection (a)) that occurred before the date of enactment of this subtitle.

SEC. 953. AMENDMENT TO INTERNATIONAL BANKING ACT OF 1978.

Section 6(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3104(c)(1)) is amended—

(1) in paragraph (1)—

(A) by inserting "domestic retail" before "deposit accounts"; and

(B) by inserting "and requiring deposit insurance protection," after "$100,000,"; and

(2) in paragraph (2)—

(A) by striking "Deposit" and inserting "Domestic retail deposit"; and

(B) by inserting "that require deposit insurance protection" after "$100,000".

TITLE X—MONEY LAUNDERING

SEC. 1001. SHORT TITLE.

This title may be cited as the "Financial Institutions Enforcement Improvements Act".

Subtitle A—Termination of Charters, Insurance, and Offices

SEC. 1011. REVOKING CHARTER OF FEDERAL DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

(a) NATIONAL BANKS.—Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended by adding at the end the following:

"(c) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A) CONVICTION OF TITLE 18 OFFENSES.—

"(i) DUTY TO NOTIFY.—If a national bank, a Federal branch, or Federal agency has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Office of the Comptroller of the Currency a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Office of the Comptroller of the Currency shall issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

"(B) CONVICTION OF TITLE 31 OFFENSES.—If a national bank, a Federal branch, or a Federal agency is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Office of the Comptroller of the Currency may issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

"(C) JUDICIAL REVIEW.—Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

"(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller of the Currency shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the bank, Federal branch, or Federal agency has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to any Federal deposit insurance fund or the Resolution Trust Corporation; and

"(E) whether the bank, Federal branch, or Federal agency maintained at the time of the conviction, according to the review of the Comptroller of the Currency, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, a bank, a Federal branch, or a Federal agency that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(4) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within a national bank, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of the bank or its holding company. If the institution is a Federal branch or Federal agency (as those terms are defined under section 1(b) of the International Banking Act of 1978) of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States. The Comptroller of the Currency shall by regulation specify which officials of a national bank shall be treated as senior management officials for the purpose of this subsection.".

(b) FEDERAL SAVINGS ASSOCIATIONS.—Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by adding at the end the following:

"(w) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A) CONVICTION OF TITLE 18 OFFENSES.—

"(i) DUTY TO NOTIFY.—If a Federal savings association has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Director of the Office of Thrift Supervision a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Director of the Office of Thrift Supervision shall issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

"(B) CONVICTION OF TITLE 31 OFFENSES.—If a Federal savings association is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Director of the Office of Thrift Supervision may issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

"(C) JUDICIAL REVIEW.—Subsection (d)(1)(B)(vii) shall apply to any proceeding under this subsection.

"(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Office of Thrift Supervision shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the association has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to any Federal deposit insurance fund or the Resolution Trust Corporation; and

"(E) whether the association maintained at the time of the conviction, according to the review of the Director of the Office of Thrift Supervision, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(4) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within a savings association, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of the savings association or its holding company. The Office of Thrift Supervision shall by regulation specify which officials of a savings association shall be treated as senior management officials for the purpose of this subsection.".

(c) FEDERAL CREDIT UNIONS.—Title I of the Federal Credit Union Act (12 U.S.C. 1752 et seq.) is amended by adding at the end the following new section:

"SEC. 131. FORFEITURE OF ORGANIZATION CERTIFICATE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

"(a) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) CONVICTION OF TITLE 18 OFFENSES.—

"(A) DUTY TO NOTIFY.—If a credit union has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(B) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Board shall issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

"(2) CONVICTION OF TITLE 31 OFFENSES.—If a credit union is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Board may issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

"(3) JUDICIAL REVIEW.—Section 206(j) shall apply to any proceeding under this section.

"(b) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under subsection (a), the Board shall consider—

"(1) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(2) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(3) whether the credit union has fully cooperated with law enforcement authorities with respect to the conviction;

"(4) whether there will be any losses to the credit union share insurance fund; and

"(5) whether the credit union maintained at the time of the conviction, according to the review of the Board, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(c) SUCCESSOR LIABILITY.—This section does not apply to a successor to the interests of, or a person who acquires, a credit union that violated a provision of law described in subsection (a), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for pur-

poses of evading this section or regulations prescribed under this section.

"(d) DEFINITION.—For purposes of this section, the term 'senior management officials' means those individuals who exercise major supervisory control within a credit union, including members of the board of directors. The Board shall by regulation specify which officials of a credit union shall be treated as senior management officials for the purpose of this section.".

SEC. 1012. TERMINATING INSURANCE OF STATE DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

(a) STATE BANKS AND SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end the following new subsection:

"(v) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A) CONVICTION OF TITLE 18 OFFENSES.—

"(i) DUTY TO NOTIFY.—If an insured State depository institution, including a State branch of a foreign institution, has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; TERMINATION HEARING.—After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a).

"(B) CONVICTION OF TITLE 31 OFFENSES.—If an insured State depository institution, including a State branch of a foreign institution, is convicted of any offense punishable under section 5322 of title 31, United States Code, after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

"(C) NOTICE TO STATE SUPERVISOR.—The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

"(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board of Directors shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the institution has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to the Federal deposit insurance funds or the Resolution Trust Corporation; and

"(E) whether the institution maintained at the time of the conviction, according to the review of the Corporation, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

"(A) notify the State banking supervisor of any State depository institution described in paragraph (1) and the Office of Thrift Supervision, where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

"(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

"(4) DEPOSITS UNINSURED.—Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with section 8(a)(7).

"(5) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(6) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within an insured depository institution, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of such institution or its holding company. If the institution is a State branch of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States. The Board of Directors shall by regulation specify which officials of an insured State depository institution shall be treated as senior management officials for the purpose of this subsection.".

(2) TECHNICAL AMENDMENT.—Section 8(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(3)) is amended by inserting "of this subsection or subsection (v)" after "subparagraph (B)".

(b) STATE CREDIT UNIONS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following new subsection:

"(u) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A) CONVICTION OF TITLE 18 OFFENSES.—

"(i) DUTY TO NOTIFY.—If an insured State credit union has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION.—After written notification from the Attorney General to the Board of Directors of such a conviction, the Board shall issue to such insured credit union a notice of its intention to terminate the insured status of the insured credit union and schedule a hearing on the matter, which shall be conducted as a termination hearing pursuant to subsection (b) of this section, except that no period for correction shall apply to a notice issued under this subparagraph.

"(B) CONVICTION OF TITLE 31 OFFENSES.—If a credit union is convicted of any offense punishable under section 5322 of title 31, United States Code, after prior written notification from the Attorney General, the Board may initiate proceedings to terminate the insured status of such credit union in the manner described in subparagraph (A).

"(C) NOTICE TO STATE SUPERVISOR.—The Board shall simultaneously transmit a copy of any notice under this paragraph to the appropriate State financial institutions supervisor.

"(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the credit union has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to the credit union share insurance fund; and

"(E) whether the credit union maintained at the time of the conviction, according to the review of the Board, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) NOTICE TO STATE CREDIT UNION SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board shall—

"(A) notify the commission, board, or authority (if any) having supervision of the credit union described in paragraph (1) at least 10 days prior to the effective date of the order of the termination of the insured status of such credit union; and

"(B) publish notice of the termination of the insured status of the credit union.

"(4) DEPOSITS UNINSURED.—Upon termination of the insured status of any State credit union pursuant to paragraph (1), the deposits of such credit union shall be treated in accordance with section 206(d)(2).

"(5) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, an insured credit union that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(6) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within an insured credit union, including members of the board of directors. The Board shall by regulation specify which officials of an insured State credit union shall be treated as senior management officials for the purpose of this subsection.".

SEC. 1013. REMOVING PARTIES INVOLVED IN CURRENCY REPORTING VIOLATIONS.

(a) FDIC-INSURED INSTITUTIONS.—

(1) VIOLATION OF REPORTING REQUIREMENTS.—Section 8(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(2)) is amended to read as follows:

"(2) SPECIFIC VIOLATIONS.—Whenever the appropriate Federal banking agency determines that—

"(A) an institution-affiliated party committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, unless such violation was inadvertent or unintentional;

"(B) an officer or director of an insured depository institution knew that an institution-affiliated party of the insured depository institution violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii); or

"(C) an officer or director of an insured depository institution committed any violation of the Depository Institution Management Interlocks Act,

the agency may serve upon such party, officer, or director a written notice of its intention to remove such party from office. In determining whether an officer or director should be removed as a result of the application of subparagraph (B), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) FELONY CHARGES.—Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended to read as follows:

"(1)(A) Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

"(ii) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense punishable under section 5322 of title 31, United States Code,

the appropriate Federal banking agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution. A copy of such notice shall also be served upon the depository institution.

"(B) A suspension or prohibition under subparagraph (A) shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency.

"(C)(i) In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against such party in connection with a crime described in subparagraph (A)(i), and at such time as such judgment is not subject to further appellate review, the agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution except with the consent of the appropriate agency.

"(ii) In the event of such a judgment of conviction or agreement in connection with a violation described in subparagraph (A)(ii), the agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution except with the consent of the appropriate agency.

"(D) A copy of such order shall also be served upon such depository institution, whereupon such party (if a director or an officer) shall cease to be a director or officer of such depository institution. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.".

(b) CREDIT UNIONS.—

(1) VIOLATION OF REPORTING REQUIREMENTS.—Section 206(g)(2) of the Federal Credit Union Act (12 U.S.C. 1786(g)(2)) is amended to read as follows:

"(2) SPECIFIC VIOLATIONS.—Whenever the Board determines that—

"(A) an institution-affiliated party committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, unless such violation was inadvertent or unintentional;

"(B) an officer or director of an insured credit union knew that an institution-affiliated party of the insured credit union violated any such provision or any provision of law referred to in subsection (i)(1)(A)(ii); or

"(C) an officer or director of an insured credit union committed any violation of the Depository Institution Management Interlocks Act,

the Board may serve upon such party, officer, or director a written notice of its intention to remove him from office. In determining whether an officer or director should be removed as a result of the application of subparagraph (B), the Board shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) FELONY CHARGES.—Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is amended to read as follows:

"(1)(A) Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

"(ii) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense punishable under section 5322 of title 31, United States Code,

the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union.

"(B) A suspension or prohibition under subparagraph (A) shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board.

"(C)(i) In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against such party in connection with a crime described in subparagraph (A)(i), and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board.

"(ii) In the event of such a judgment of conviction or agreement in connection with a violation described in subparagraph (A)(ii), the Board shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board.

"(D) A copy of such order shall also be served upon such credit union, whereupon such party (if a director or an officer) shall cease to be a director or officer of such credit union. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such party from office or to prohibit further participation in credit union affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Board.".

SEC. 1014. UNAUTHORIZED PARTICIPATION.

Section 19(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829(a)(1)) is amended by inserting "or money laundering" after "breach of trust".

SEC. 1015. ACCESS BY STATE FINANCIAL INSTITUTION SUPERVISORS TO CURRENCY TRANSACTIONS REPORTS.

Section 5319 of title 31, United States Code, is amended—

(1) in the first sentence, by striking "to an agency" and inserting "to an agency, including any State financial institutions supervisory agency,"; and

(2) by inserting after the second sentence the following new sentence: "The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes.".

SEC. 1016. RESTRICTING STATE BRANCHES AND AGENCIES OF FOREIGN BANKS CONVICTED OF MONEY LAUNDERING OFFENSES.

Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by adding at the end the following:

"(i) PROCEEDINGS RELATED TO CONVICTION FOR MONEY LAUNDERING OFFENSES.—

"(1) NOTICE OF INTENTION TO ISSUE ORDER.—If the Board finds or receives written notice from the Attorney General that—

"(A) any foreign bank which operates a State agency, a State branch which is not an insured branch, or a State commercial lending company subsidiary,

"(B) any State agency,

"(C) any State branch which is not an insured branch,

"(D) any State commercial lending subsidiary, or

"(E) any director or senior executive officer of any such foreign bank, agency, branch, or subsidiary,

has been found guilty of any money laundering offense, the Board shall issue a notice to the agency, branch, or subsidiary of the Board's intention to commence a termination proceeding under subsection (e).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INSURED BRANCH.—The term 'insured branch' has the meaning given such term in section 3(s) of the Federal Deposit Insurance Act.

"(B) MONEY LAUNDERING OFFENSE DEFINED.—The term 'money laundering offense' means any offense under section 1956, 1957, or 1960 of title 18, United States Code, or punishable under section 5322 of title 31, United States Code.

"(C) SENIOR EXECUTIVE OFFICERS.—The term 'senior executive officers' has the meaning given to such term by the Board pursuant to section 32(f) of the Federal Deposit Insurance Act.".

Subtitle B—Nonbank Financial Institutions and General Provisions

SEC. 1021. IDENTIFICATION OF FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Chapter 53 of title 31, United States Code, is amended by inserting after section 5326 the following:

"§ 5327. Identification of financial institutions

"By January 1, 1993, the Secretary shall prescribe regulations providing that each depository institution identify its customers which are financial institutions as defined in subparagraphs (H) through (Y) of section 5312(a)(2) and the regulations thereunder and which hold accounts with the depository institution. Each depository institution shall report the names of and other information about these financial institution customers to the Secretary at such times and in such manner as the Secretary shall prescribe by regulation. No person shall cause or attempt to cause a depository institution not to file a report required by this section or to file a report containing a material omission or misstatement of fact. The Secretary shall provide these reports to appropriate State financial institution supervisory agencies for supervisory purposes.".

(b) CIVIL PENALTY.—Section 5321(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

"(7)(A) The Secretary may impose a civil penalty on any person or depository institution, within the meaning of section 5327, that willfully violates any provision of section 5327 or a regulation prescribed thereunder.

"(B) The amount of any civil money penalty imposed under subparagraph (A) shall not exceed $10,000 for each day a report is not filed or a report containing a material omission or misstatement of fact remains on file with the Secretary.".

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 53 of title 31, United States Code, is amended by adding at the end the following new item:

"5327. Identification of financial institutions.".

SEC. 1022. PROHIBITION OF ILLEGAL MONEY TRANSMITTING BUSINESSES.

(a) IN GENERAL.—Chapter 95 of title 18, United States Code, is amended by adding at the end the following section:

"§ 1960. Prohibition of illegal money transmitting businesses

"(a) Whoever conducts, controls, manages, supervises, directs, or owns all or part of a business, knowing the business is an illegal money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

"(b) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to—

"(1) the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws;

"(2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale;

"(3) the remission or mitigation of such forfeitures; and

"(4) the compromise of claims and the award of compensation to informers with respect to such forfeitures;

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"(c) As used in this section—

"(1) the term 'illegal money transmitting business' means a money transmitting business that affects interstate or foreign commerce in any manner or degree and which is knowingly operated in a State—

"(A) without the appropriate money transmitting State license; and

"(B) where such operation is punishable as a misdemeanor or a felony under State law;

"(2) the term 'money transmitting' includes but is not limited to transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

"(3) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 95 of title 18, United States Code, is amended by adding at the end the following item:

"1960. Prohibition of illegal money transmitting businesses.".

SEC. 1023. COMPLIANCE PROCEDURES.

Section 5318(a)(2) of title 31, United States Code, is amended by inserting "or to guard against money laundering" before the semicolon.

SEC. 1024. NONDISCLOSURE OF ORDERS.

Section 5326 of title 31, United States Code, is amended by adding at the end the following:

"(c) NONDISCLOSURE OF ORDERS.—No financial institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.".

SEC. 1025. IMPROVED RECORDKEEPING WITH RESPECT TO CERTAIN INTERNATIONAL FUNDS TRANSFERS.

(a) IN GENERAL.—Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(b)) is amended—

(1) by striking "(b) Where" and inserting "(b)(1) Where"; and

(2) by adding at the end the following paragraph:

"(2) TRANSFERS OF FUNDS.—

"(A) IN GENERAL.—Before October 1, 1992, the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') in consultation with State banking departments shall jointly prescribe such final regulations as may be appropriate to require insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks, or other similar instruments to maintain records of payment orders which—

"(i) involve international transactions; and

"(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks, or similar instruments;

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(B) FACTORS FOR CONSIDERATION.—In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

"(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

"(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

"(C) AVAILABILITY OF RECORDS.—Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary upon request.".

(b) CONFORMING AMENDMENTS.—Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) is amended—

(1) in the first sentence of subsection (c), by striking "the Secretary shall" and inserting "the regulations prescribed under subsection (b) shall";

(2) in subsection (d), by striking "regulations of the Secretary" and inserting "regulations issued under subsection (b)";

(3) in subsection (e), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require";

(4) in subsection (f), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require"; and

(5) in subsection (g), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require".

SEC. 1026. USE OF CERTAIN RECORDS.

Section 1112(f) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(f)) is amended—

(1) in paragraph (1), by inserting "or the Secretary of the Treasury" after "the Attorney General"; and

(2) in paragraph (2), by inserting "and only for criminal investigative purposes relating

to money laundering and other financial crimes by the Department of the Treasury" after "the Department of Justice".

SEC. 1027. SUSPICIOUS TRANSACTIONS AND FINANCIAL INSTITUTION ANTI-MONEY LAUNDERING PROGRAMS.

(a) REPORTING REQUIREMENT.—Section 5324 of title 31, United States Code, is amended by inserting "or section 5325 or the regulations thereunder" after "section 5313(a)" each place it appears.

(b) SUSPICIOUS TRANSACTIONS AND ENFORCEMENT PROGRAMS.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

"(g) REPORTING OF SUSPICIOUS TRANSACTIONS.—

"(1) IN GENERAL.—The Secretary may require financial institutions to report suspicious transactions relevant to possible violation of law or regulation.

"(2) NOTIFICATION PROHIBITED.—A financial institution that voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

"(3) LIABILITY FOR DISCLOSURES.—Any financial institution not subject to the provisions of section 1103(c) of the Right to Financial Privacy Act of 1978, or officer, employee, or agent thereof, that makes a voluntary disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

"(h) ANTI-MONEY LAUNDERING PROGRAMS.—In order to guard against money laundering through financial institutions, the Secretary may require financial institutions to carry out anti-money laundering programs, including at a minimum—

"(1) the development of internal policies, procedures, and controls,

"(2) the designation of a compliance officer,

"(3) an ongoing employee training program, and

"(4) an independent audit function to test programs.

The Secretary may promulgate minimum standards for such programs.".

SEC. 1028. REPORT ON CURRENCY CHANGES.

The Secretary of the Treasury, in consultation with the Attorney General, the Chairman of the Board of Governors of the Federal Reserve System, and the Administrator of Drug Enforcement, shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, not later than 90 days after the date of enactment of this Act, on the advantages for money laundering enforcement, and any disadvantages, of—

(1) changing the size, denominations, or color of United States currency; or

(2) providing that the color of United States currency in circulation in countries outside the United States will be of a different color than currency circulating in the United States.

SEC. 1029. REPORT ON BANK PROSECUTIONS.

(a) IN GENERAL.—The Attorney General, after obtaining the views of all interested agencies, shall determine to what extent compliance with the Money Laundering Control Act (18 U.S.C. 1956 and 1957), the Bank Secrecy Act (31 U.S.C. 5322), criminal referral reporting obligations, and cooperation with law enforcement authorities generally, would be enhanced by the issuance of guidelines for the prosecution of financial institutions for violations of such Acts. Such guidelines, if issued, shall reflect the standards for anti-money laundering programs issued under section 5318(h) of title 31, United States Code.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall transmit to the Congress a report on such determination.

SEC. 1030. ANTI-MONEY LAUNDERING TRAINING TEAM.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a team of experts to assist and provide training to foreign governments and agencies thereof in developing and expanding their capabilities for investigating and prosecuting violations of money laundering and related laws.

(b) AUTHORIZATION.—There is authorized to be appropriated not more than $1,000,000 to carry out this section.

SEC. 1031. MONEY LAUNDERING REPORTING REQUIREMENTS.

(a) OBJECTIVE.—The objective of the United States in dealing with the problem of international money laundering is to ensure that countries adopt comprehensive domestic measures against money laundering and cooperate with each other in narcotics money laundering investigations, prosecutions, and related forfeiture actions. The President shall report annually to Congress on bilateral and multilateral efforts to meet this objective. This report shall be submitted with the report required under section 481(e) of the Foreign Assistance Act of 1961.

(b) CONTENTS OF REPORT.—The report shall include—

(1) information on bilateral and multilateral initiatives pursued by the Department of State, the Department of Justice, and the Department of the Treasury, and other Government agencies, individually or collectively, to achieve the anti-money laundering objective of the United States;

(2) information on relevant bilateral agreements and on the actions of international organizations and groups;

(3) information on the countries which have ratified the United Nations Convention on Illicit Traffic in Narcotic Drugs and Other Psychotropic Substances and on measures adopted by governments and organizations to implement the money laundering provisions of the United Nations Convention, the recommendations of the Financial Action Task Force, the policy directive of the European Community, the legislative guidelines of the Organization of American States, and similar declarations;

(4) information on the extent to which each major drug producing and drug transit country, as specified in section 481 of the Foreign Assistance Act of 1961, and each additional country that has been determined by the Department of the Treasury, the Department of Justice, the Department of State, and the Office of National Drug Control Policy, in consultation, to be significant in the fight against money laundering—

(A) has adequate mechanisms to exchange financial records in narcotics money laundering and narcotics-related investigations and proceedings; and

(B) has adopted laws, regulations, and administrative measures considered necessary to prevent and detect narcotics-related money laundering, including whether a country has—

(i) criminalized narcotics money laundering;

(ii) required banks and other financial institutions to know and record the identity of customers engaging in significant transactions, including large currency transactions;

(iii) required banks and other financial institutions to maintain, for an adequate time, records necessary to reconstruct significant transactions through financial institutions in order to be able to respond quickly to information requests from appropriate government authorities in narcotics-related money laundering cases;

(iv) required or allowed financial institutions to report suspicious transactions;

(v) established systems for identifying, tracing, freezing, seizing, and forfeiting narcotics-related assets; and

(vi) addressed the problem of international transportation of illegal-source currency and monetary instruments;

(5) details of significant instances of noncooperation with the United States in narcotics-related money laundering and other narcotics-related cases; and

(6) a summary of initiatives taken by the United States or any international organization, including the imposition of sanctions, with respect to any country based on that country's actions with respect to narcotics-related money laundering matters.

(c) SPECIFICITY OF REPORT.—The report should be in sufficient detail to assure the Congress that concerned agencies—

(1) are pursuing a common strategy with respect to achieving international cooperation against money laundering which includes a summary of United States objectives on a country-by-country basis; and

(2) have agreed upon approaches and responsibilities for implementation of the strategy, not limited to the conduct of negotiations to achieve treaties and agreements.

Subtitle C—Money Laundering Improvements

SEC. 1041. JURISDICTION IN CIVIL FORFEITURE CASES.

Section 1355 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The district"; and

(2) by adding at the end the following new subsections:

"(b)(1) A forfeiture action or proceeding may be brought in—

"(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

"(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

"(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court for the District of Columbia.

"(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the prop-

erty at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.".

SEC. 1042. CIVIL FORFEITURE OF FUNGIBLE PROPERTY.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 984. Civil forfeiture of fungible property

"(a) This section shall apply to any action for forfeiture brought by the United States.

"(b)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or other fungible property, it shall not be—

"(A) necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture;

"(B) a defense that the property involved in such an offense has been removed and replaced by identical property.

"(2) Except as provided in subsection (c), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

"(c) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 2 years from the date of the offense.

"(d) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against funds deposited by a financial institution (as defined in section 20 of this title) into an account with another financial institution unless the depositing institution knowingly engaged in the offense that is the basis for the forfeiture.".

(b) RETROACTIVE APPLICATION.—The amendments made by this section shall apply retroactively.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"984. Civil forfeiture of fungible property.".

SEC. 1043. ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 985. Administrative subpoenas

"(a) For the purpose of conducting a civil investigation in contemplation of a civil forfeiture proceeding under this title or the Controlled Substances Act, the Attorney General may—

"(1) administer oaths and affirmations;

"(2) take evidence; and

"(3) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records that the Attorney General deems relevant or material to the inquiry.

A subpoena issued pursuant to subsection (a) may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

"(b) The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18, United States Code, apply with respect to a subpoena issued under this section. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

"(c) In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under subsection (b) not later than 5 days after the date of service.

"(d) A subpoena may be issued pursuant to this subsection at any time up to the commencement of a judicial proceeding under this section.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code is amended by adding at the end the following:

"985. Administrative subpoenas.".

SEC. 1044. PROCEDURE FOR SUBPOENAING BANK RECORDS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 986. Subpoenas for bank records

"(a) At any time after the commencement of any action for forfeiture brought by the United States under this title or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

"(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

"(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"986. Subpoenas for bank records.".

SEC. 1045. DELETION OF REDUNDANT AND INADVERTENTLY LIMITING PROVISION IN 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking "section 1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution, section 1344 (relating to bank fraud),"; and

(2) by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857)" and inserting "section 422 of the Controlled Substances Act".

SEC. 1046. STRUCTURING TRANSACTIONS TO EVADE CMIR REQUIREMENT.

(a) IN GENERAL.—Section 5324 of title 31, United States Code, is amended—

(1) by inserting "(a)" before "No person"; and

(2) by adding at the end the following:

"(b) No person shall, for the purpose of evading the reporting requirements of section 5316—

"(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

"(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.".

(b) CONFORMING AMENDMENT.—Section 5321(a)(4)(C) of title 31, United States Code, is amended by striking "under section 5317(d)".

(c) FORFEITURE.—

(1) TITLE 18.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "5324" and inserting "5324(a)".

(2) TITLE 31.—Section 5317(c) of title 31, United States Code, is amended by inserting after the first sentence "Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government.".

SEC. 1047. CLARIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.

(a) SECTION 1956.—Section 1956(c)(6) of title 18, United States Code, is amended by striking "and the regulations" and inserting "or the regulations".

(b) SECTION 1957.—Section 1957(f)(1) of title 18, United States Code, is amended by striking "financial institution (as defined in section 5312 of title 31)" and inserting "financial institution (as defined in section 1956 of this title)".

SEC. 1048. DEFINITION OF FINANCIAL TRANSACTION.

(a) SECTION 1956.—Section 1956(c) of title 18, United States Code, is amended—

(1) in paragraph (4)(A)—

(A) by inserting "or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft," after "monetary instruments,";

(B) by striking "which in any way or degree affects interstate or foreign commerce,"; and

(C) by inserting "which in any way or degree affects interstate or foreign commerce" after "(A) a transaction"; and

(2) in paragraph (3), by inserting "use of a safe deposit box," before "or any other payment".

(b) SECTION 1957.—Section 1957(f)(1) of title 18, United States Code, is amended by inserting ", including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title," before "but such term does not include".

SEC. 1049. OBSTRUCTING A MONEY LAUNDERING INVESTIGATION.

Section 1510(b)(3)(B)(i) of title 18, United States Code, is amended by striking "or 1344" and inserting "1344, 1956, 1957, or chapter 53 of title 31".

SEC. 1050. AWARDS IN MONEY LAUNDERING CASES.

Section 524(c)(1)(B) of title 28, United States Code, is amended by inserting "or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of title 26, United States Code" after "criminal drug laws of the United States".

SEC. 1051. PENALTY FOR MONEY LAUNDERING CONSPIRACIES.

Section 1956 of title 18, United States Code, is amended by inserting at the end the following new subsection:

"(g) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 1052. TECHNICAL AND CONFORMING AMENDMENTS TO MONEY LAUNDERING PROVISION.

(a) TRANSPORTATION.—Subsections (a)(2) and (b) of section 1956 of title 18, United States Code, are amended by striking "transportation" each time such term appears and inserting "transportation, transmission, or transfer".

(b) TECHNICAL CORRECTION.—Section 1956(a)(3) of title 18, United States Code, is amended by striking "represented by a law enforcement officer" and inserting "represented".

SEC. 1053. PRECLUSION OF NOTICE TO POSSIBLE SUSPECTS OF EXISTENCE OF A GRAND JURY SUBPOENA FOR BANK RECORDS IN MONEY LAUNDERING AND CONTROLLED SUBSTANCE INVESTIGATIONS.

Section 1120(b)(1)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420(b)(1)(A)) is amended by inserting before the semicolon "or crime involving a violation of the Controlled Substance Act, the Controlled Substances Import and Export Act, section 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26, United States Code".

SEC. 1054. DEFINITION OF PROPERTY FOR CRIMINAL FORFEITURE.

Section 982(b)(1)(A) of title 18, United States Code, is amended by striking "(c)" and inserting "(b), (c),".

SEC. 1055. EXPANSION OF MONEY LAUNDERING AND FORFEITURE LAWS TO COVER PROCEEDS OF CERTAIN FOREIGN CRIMES.

(a) IN GENERAL.—Sections 981(a)(1)(B) and 1956(c)(7)(B) of title 18, United States Code, are amended by—

(1) inserting "(i)" after "against a foreign nation involving"; and

(2) inserting "(ii) kidnaping, robbery, or extortion, or (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978" after "Controlled Substances Act)".

(b) RETROACTIVE APPLICATION.—All amendments to the civil forfeiture statute, section 981 of title 18, United States Code, made by this section and elsewhere in this Act shall apply retroactively.

SEC. 1056. ELIMINATION OF RESTRICTION ON DISPOSAL OF JUDICIALLY FORFEITED PROPERTY BY THE DEPARTMENT OF THE TREASURY AND THE POSTAL SERVICE.

Section 981(e) of title 18, United States Code, is amended by striking "The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited.".

SEC. 1057. NEW MONEY LAUNDERING PREDICATE OFFENSES.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking "or" before "section 16";

(2) by inserting "section 1708 (theft from the mail)," before "section 2113"; and

(3) by inserting before the semicolon; ", any felony violation of section 9(c) of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act".

SEC. 1058. AMENDMENTS TO THE BANK SECRECY ACT.

(a) TITLE 31.—Title 31, United States Code, is amended—

(1) in section 5324, by inserting ", section 5325, or the regulations issued thereunder" after "section 5313(a)" each place such term appears;

(2) in section 5321(a)(5)(A), by inserting "or any person willfully causing" after "willfully violates".

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 21(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(j)(1)) is amended by inserting ", or any person who willfully causes such a violation," after "gross negligence violates".

(c) RECORDKEEPING.—Public Law 91-508 (12 U.S.C. 1951 et seq.) is amended—

(1) in section 125(a), by inserting "or any person willfully causing a violation of the regulation," after "applies,"; and

(2) in section 127, by inserting ", or willfully causes a violation of" after "Whoever willfully violates".

Subtitle D—Reports and Miscellaneous

SEC. 1061. STUDY AND REPORT ON REIMBURSING FINANCIAL INSTITUTIONS AND OTHERS FOR PROVIDING FINANCIAL RECORDS.

(a) STUDY REQUIRED.—The Attorney General, in consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System and other appropriate banking regulatory agencies, shall conduct a study of the effect of amending the Right to Financial Privacy Act by allowing reimbursement to financial institutions for assembling or providing financial records on corporations and other entities not currently covered under section 1115(a) of such Act (12 U.S.C. 3415). The study shall also include analysis of the effect of allowing nondepository licensed transmitters of funds to be reimbursed to the same extent as financial institutions under that section.

(b) REPORT.—Before the end of the 180-day period beginning on the date of enactment of this Act, the Attorney General shall submit a report to the Congress on the results of the study conducted pursuant to subsection (a).

SEC. 1062. REPORTS OF INFORMATION REGARDING SAFETY AND SOUNDNESS OF DEPOSITORY INSTITUTIONS.

(a) REPORTS TO APPROPRIATE FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall report to the appropriate Federal banking agency any information regarding any matter that could have a significant effect on the safety or soundness of any depository institution doing business in the United States.

(2) EXCEPTIONS.—

(A) INTELLIGENCE INFORMATION.—

(i) IN GENERAL.—The Director of Central Intelligence shall report to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury shall report the intelligence information to the appropriate Federal banking agency.

"(ii) PROCEDURES FOR RECEIPT OF INTELLIGENCE INFORMATION.—Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for the receipt of intelligence information that are adequate to protect the intelligence in formation.

(B) CRIMINAL INVESTIGATIONS, SAFETY OF GOVERNMENT INVESTIGATOR, INFORMANTS, AND WITNESSES.—If the Attorney General or his designee determines that the reporting of a particular item of information pursuant to paragraph (1) might jeopardize a pending criminal investigation or the safety of Government investigators, informants, or witnesses, the Attorney General shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation or the safety of the investigators, informants, or witnesses; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) GRAND JURY INVESTIGATIONS; CRIMINAL PROCEDURE.—Paragraph (1) shall not—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) PROCEDURES FOR RECEIPT OF REPORTS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, each appropriate Federal banking agency shall establish procedures for receipt of a report by an agency or instrumentality made in accordance with subsection (a)(1). The procedures established in accordance with this subsection shall ensure adequate protection of information contained in a report, including access control and information accountability.

(2) PROCEDURES RELATED TO EACH REPORT.—Upon receipt of a report in accordance with subsection (a)(1), the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that furnished the report regarding the adequacy of the procedures established pursuant to paragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information contained in the report.

(c) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "depository institution" have the same meanings as in section 8 of the Federal Deposit Insurance Act.

SEC. 1063. IMMUNITY.

Section 6001(1) of title 18, United States Code, is amended by inserting "the Board of Governors of the Federal Reserve System," after "the Atomic Energy Commission,".

SEC. 1064. INTERAGENCY INFORMATION SHARING.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following new subsection:

"(t) AGENCIES MAY SHARE INFORMATION WITHOUT WAIVING PRIVILEGE.—

"(1) IN GENERAL.—A covered agency does not waive any privilege applicable to any information by transferring that information to or permitting that information to be used by—

"(A) any other covered agency, in any capacity; or

"(B) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

"(2) DEFINITIONS.—For purposes of this subsection:

"(A) COVERED AGENCY.—The term 'covered agency' means any of the following:

"(i) Any appropriate Federal banking agency.

"(ii) The Resolution Trust Corporation.

"(iii) The Farm Credit Administration.

"(iv) The Farm Credit System Insurance Corporation.

"(v) The National Credit Union Administration.

"(B) PRIVILEGE.—The term 'privilege' includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

"(3) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.".

SEC. 1065. ADDITIONAL DEFINITIONS.

(a) CERCLA AMENDMENTS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding the following new paragraphs at the end thereof:

"(39) The term 'municipal solid waste' means all waste materials generated by households, including single and multiple residences, hotels and motels, and office buildings. The term also includes trash generated by commercial, institutional, and industrial sources when the physical and chemical state, composition, and toxicity of such materials are essentially the same as waste normally generated by households, or when such waste materials, regardless of when generated, would be considered conditionally exempt generator waste under section 3001(d) of the Solid Waste Disposal Act because it was generated in a total quantity of 100 kilograms or less during a calendar month. The term 'municipal solid waste' includes all constituent components of municipal solid waste, including constituent components that may be deemed hazardous substances under this Act when they exist apart from municipal solid waste. Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, and household hazardous waste (such as painting, cleaning, gardening, and automotive supplies). The term 'municipal solid waste' does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"(40) The term 'sewage sludge' refers to any solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste waters at or by a publicly-owned treatment works, subject to the limitations of section 113(m) of this Act.

"(41) The term 'municipality' means any political subdivision of a State and may include cities, counties, towns, townships, boroughs, parishes, school districts, sanitation districts, water districts, and other local governmental entities. The term also includes any natural person acting in his or her official capacity as an official, employee, or agent of a municipality.".

(b) CONTRIBUTION ACTIONS; RIGHT-OF-WAY.—Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsections at the end thereof:

"(m) CONTRIBUTION ACTIONS FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—No municipality or other person shall be liable to any person other than the United States for claims of contribution under this section or for other response costs or damages under this Act for acts or omissions related to the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge.

"(n) PUBLIC RIGHT-OF-WAY.—In no event shall a municipality incur liability under this Act for the acts of owning or maintaining a public right-of-way over which hazardous substances are transported, or of granting a business license to a private party for the transportation, treatment, or disposal of municipal solid waste or sewage sludge. For the purposes of this subsection, 'public right-of-way' includes, but is not limited to, roads, streets, flood control channels, or other public transportation routes, and pipelines used as a conduit for sewage or other liquid or semiliquid discharges.".

(c) SETTLEMENTS; FUTURE DISPOSAL PRACTICES.—Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsections at the end thereof:

"(n) SETTLEMENTS FOR GENERATORS AND TRANSPORTERS OF MUNICIPAL SOLID WASTE OR SEWAGE SLUDGE.—

"(1) ELIGIBLE PERSONS.—This subsection applies to any person against whom an administrative or judicial action is brought, or to whom notice is given of potential liability under this Act, for acts or omissions related to the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge.

"(2) OFFER OF SETTLEMENTS; MORATORIUM.—Eligible persons under this subsection may offer to settle their potential liability with the President by stating in writing their ability and willingness to settle their potential liability in accordance with this subsection. Upon receipt of such offer to settle, neither the President nor any other party shall take further administrative or judicial action against the eligible person for relevant acts or omissions addressed in the settlement offer.

"(3) TIMING.—Eligible persons may tender offers under this subsection within 180 days after receiving a notice of potential liability or becoming subject to administrative or judicial action, or within 180 days after a record of decision is issued for the portion of the response action that is the subject of the person's settlement offer, whichever is later. If the President notifies an eligible person that he or she may be a potentially responsible party, no further administrative or judicial action may be taken by any party for 120 days against such person.

"(4) EXPEDITED FINAL SETTLEMENT.—The President shall make every effort to reach final settlements as promptly as possible under this subsection and such settlements shall—

"(A) allocate to all acts or omissions related to the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge that may create liability under this Act a total of no more than 4 percent of the total response costs: *Provided, however*, That the President shall reduce this percentage when the presence of municipal solid waste or sewage sludge is not significant at the facility;

"(B) require an eligible person under this subsection to pay only for his or her equitable share of the maximum 4 percent portion of response costs described in subparagraph (A);

"(C) limit an eligible person's payments based on such person's inability to pay;

"(D) permit an eligible person to provide services in lieu of money and to be credited at market rates for such services;

"(E) consider the degree to which a publicly owned treatment works has promoted the beneficial reuse of sewage sludge through land application when the basis of liability arises from acts or omissions related to sewage sludge taken 36 months after the date of enactment of this Act or thereafter; and

"(F) be reached even in the event that an eligible person may be liable under sections 107(a)(1) or 107(a)(2) of this Act or for acts or omissions related to substances other than municipal solid waste or sewage sludge.

"(5) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any person who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f) of this section.

"(6) EFFECT OF AGREEMENT.—A person that has resolved his or her liability to the United States under this subsection shall not be liable for claims of contribution or for other response costs or damages under this Act regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(7) DE MINIMIS SETTLEMENTS.—Nothing in this subsection shall alter or diminish a person's right or ability to reach a settlement with the President under subsection (g) of this section.

"(o) FUTURE DISPOSAL PRACTICES.—Eligible persons may assert the provisions of section 122(n) regarding acts or omissions taken 36 months after the date of enactment of this Act or thereafter only under the following circumstances:

"(1) if the acts or omissions relate to municipal solid waste and the eligible person is a municipality, a qualified household hazardous waste collection program must have been operating while the relevant acts or omissions took place; or

"(2) if the acts or omissions relate to sewage sludge and the eligible person is an operator of a publicly owned treatment works, a qualified publicly owned treatment works must have been operating while the relevant acts or omissions took place.

"(3) The term 'qualified household hazardous waste collection program' means a program that includes—

"(A) at least semiannual, well-publicized collections at conveniently located collection points with an intended goal of participation by ten percent of community households;

"(B) a public education program that identifies both hazardous household products and safer substitutes (source reduction);

"(C) efforts to collect hazardous waste from conditionally exempt generators under section 3001(d) of the Solid Waste Disposal Act (because they generated a total quantity of 100 kilograms or less during a calendar month), with an intended goal of collecting wastes from twenty percent of such generators doing business within the jurisdiction of the municipality; and

"(D) a comprehensive plan, which may include regional compacts or joint ventures, that outlines how the program will be accomplished.

"(4) A person that operates a 'qualified household hazardous waste collection program' and collects hazardous waste from conditionally exempt generators under section 3001(d) of the Solid Waste Disposal Act must dispose of such waste at a hazardous waste treatment, storage or disposal facility with a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925), but such person is otherwise deemed to be handling only household waste under the Solid Waste Disposal Act when it operates a qualified household hazardous waste collection program.

"(5) Nothing in this Act shall prohibit a municipality from charging fees to persons whose waste is accepted during household hazardous waste collections, or shall prohibit a municipality from refusing to accept waste that the municipality believes is being disposed of in violation of the Solid Waste Disposal Act.

"(6) The term 'qualified publicly owned treatment works' means a publicly owned treatment works that complies with section 405 of the Federal Water Pollution Control Act (33 U.S.C. 1345).

"(7) The President may determine that a household hazardous waste collection program or a publicly owned treatment works is not qualified under this subsection. Minor instances of noncompliance that are not environmentally significant do not render a household hazardous waste collection program or publicly owned treatment works unqualified under this subsection.

"(8) If the President determines that a household hazardous waste collection program is not qualified, the limitations imposed by this subsection on the assertion of the provisions of section 122(n) shall apply, but only with regard to the municipal solid waste disposed of during the period of disqualification.

"(9) If a municipality is notified by the President or by a State with a program approved under section 402(b) of the Federal Water Pollution Control Act (33 U.S.C. 1342(b)) that its publicly owned treatment works is not in compliance with the requirements of paragraph (6) of this subsection, and if such noncompliance is not remedied within twelve months, the limitations imposed by this subsection on the assertion of the provisions of section 122(n) shall apply, but only with regard to the sewage sludge generated or disposed of during the period of noncompliance.".

(d) AMOUNT OF HAZARDOUS WASTE.—Section 122(g)(1)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting the following sentence at the end thereof: "The amount of hazardous substances in municipal solid waste and sewage sludge shall refer to the quantity of hazardous substances which are constituents within municipal solid waste and sewage sludge, not the overall quantity of municipal solid waste and sewage sludge.".

(e) CONSTRUCTION.—Nothing in this section shall modify the meaning or interpretation of the Solid Waste Disposal Act.

(f) APPLICABILITY.—The amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 made by this section shall apply to each municipality and other person against whom administrative or judicial action has been commenced before the effective date of this Act, unless a final court judgment has been rendered against such municipality or other person or final court approval of a settlement agreement including such municipality or other person as a party has been granted. If a final court judgment has been rendered or court-approved settlement agreement has been reached that does not resolve all contested issues, such amendments shall apply to all contested issues not expressly resolved by such court judgment or settlement agreement.

Subtitle E—Counterfeit Deterrence Act of 1992

SEC. 1071. SHORT TITLE.

This subtitle may be cited as the "Counterfeit Deterrence Act of 1992".

SEC. 1072. INCREASE IN PENALTIES.

Section 474 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever" the first time it appears;

(2) by striking "United States; or" at the end of the sixth undesignated paragraph and inserting "United States—";

(3) by striking the seventh undesignated paragraph;

(4) by amending the last undesignated paragraph to read as follows:

"Shall be fined not more than $50,000 for each violation, or imprisoned not more than 20 years, or both."; and

(5) by adding at the end thereof the following:

"(b) For purposes of this section, the terms 'plate', 'stone', 'thing', or 'other thing' includes any electronic method used for the acquisition, recording, retrieval, transmission, or reproduction of any obligation or other security, unless such use is authorized by the Secretary of the Treasury. The Secretary shall establish a system (pursuant to section 504) to ensure that the legitimate use of such electronic methods and retention of such reproductions by businesses, hobbyists, press and others shall not be unduly restricted.".

SEC. 1073. DETERRENTS TO COUNTERFEITING.

(a) IN GENERAL.—Chapter 25 of title 18, United States Code, is amended by inserting after section 474 the following new section:

"§ 474A. Deterrents to counterfeiting of obligations and securities

"(a) Whoever has in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury, shall be fined not more than $50,000 or imprisoned not more than 20 years, or both.

"(b) Whoever has in his control or possession, after a distinctive counterfeit deterrent has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States by publication in the Federal Register, any essentially identical feature or device adapted to the making of any such obligation or security, except under the authority of the Secretary of the Treasury, shall be fined not more than $50,000 for each violation, or imprisoned not more than 20 years, or both.

"(c) As used in this section—

"(1) the term 'distinctive paper' includes any distinctive medium of which currency is made, whether of wood pulp, rag, plastic substrate, or other natural or artificial fibers or materials; and

"(2) the term 'distinctive counterfeit deterrent' includes any ink, watermark, seal, security thread, optically variable device, or other feature or device;

"(A) in which the United States has an exclusive property interest; or

"(B) which is not otherwise in commercial use or in the public domain and which the Secretary designates as being necessary in preventing the counterfeiting of obligations or other securities of the United States.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 25 of title 18, United States Code, is amended by adding after the item for section 474 the following:

"474A. Deterrents to counterfeiting of obligations and securities.".

SEC. 1074. REPRODUCTIONS OF CURRENCY.

Section 504 of title 18, United States Code, is amended—

(1) in paragraph (1)(D), by striking the comma at the end thereof and inserting a period;

(2) in paragraph (1), by striking "for philatelic" from the text following subparagraph (D) and all that follows through "albums).";

(3) by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following new paragraph:

"(2) The provisions of this section shall not permit the reproduction of illustrations of obligations or other securities, by or through electronic methods used for the acquisition, recording, retrieval, transmission, or reproduction of any obligation or other security, unless such use is authorized by the Secretary of the Treasury. The Secretary shall establish a system to ensure that the legitimate use of such electronic methods and retention of such reproductions by businesses, hobbyists, press or others shall not be unduly restricted."; and

(4) in paragraph (3), as redesignated by paragraph (3) of this subsection, by striking "but not for advertising purposes except philatelic advertising,".

DOLE AMENDMENT NO. 2438

Mr. DOLE proposed an amendment to the bill S. 2733, supra, as follows:

At the appropriate place, add the following:

It is the sense of the Senate that Congress needs to act immediately to forestall a possible railroad strike to occur at midnight, tonight, since the economic ramifications of such a strike are devastating to the country, and congressional action could prevent that economic damage.

CHAFEE (AND OTHERS) AMENDMENT NO. 2439

Mr. CHAFEE (for himself, Mr. DOMENICI, and Mr. DURENBERGER) proposed an amendment to amendment No. 2437 (in the nature of a substitute) proposed by Mr. RIEGLE to the bill S. 2733, supra, as follows:

Beginning on page 262, line 14, strike all through page 273, line 20.

DODD (AND BOND) AMENDMENT NO. 2440

Mr. DODD (for himself and Mr. BOND) proposed an amendment to amendment No. 2437 (in the nature of a substitute) proposed by Mr. RIEGLE to the bill S. 2733, supra, as follows:

At the appropriate place, insert the following new title:

TITLE _____—LIMITED PARTNERSHIP ROLLUP REFORM

SEC. ____01. SHORT TITLE.

This title may be cited as the "Limited Partnership Rollup Reform Act of 1992".

SEC. _____02. REVISION OF PROXY SOLICITATION RULES WITH RESPECT TO LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.

(a) AMENDMENT.—Section 14 of the Securities and Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

"(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.—

"(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under sections 14(a) and 14(d) as required by this subsection. Such rules shall—

"(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purposes of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title;

"(B) require the issuer to provide to holders of the securities that are the subject of the transaction such list of the holders of the issuer's securities as the Commission may determine in such form and subject to such terms and conditions as the Commission may specify;

"(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a transaction—

"(i) on the basis of whether the solicited proxies, consents, or authorizations either approve or disapprove the proposed transaction; or

"(ii) contingent on the transaction's approval, disapproval, or completion;

"(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership rollup transaction, including requirements for clear, concise, and comprehensible disclosure, with respect to—

"(i) any changes in the business plan, voting rights, form of ownership interest or the general partner's compensation in the proposed limited partnership rollup transaction from each of the original limited partnerships;

"(ii) the conflicts of interest, if any, of the general partner;

"(iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the limited partnership rollup transaction;

"(iv) the valuation of the limited partnerships and the method used to determine the value of limited partners' interests to be exchanged for the securities in the limited partnership rollup transaction;

"(v) the differing risks and effects of the transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the transaction with less than all limited partnerships;

"(vi) a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and the general partner's evaluation, and a description, of alternatives to the limited partnership rollup transaction, such as liquidation;

"(vii) any opinion (other than an opinion of counsel), appraisal, or report received by the general partner or sponsor that is prepared by an outside party and that is materially related to the limited partnership rollup transaction and the identity and qualifications of the party who prepared the opinion, appraisal, or report, the method of selection of such party, material past, existing, or contemplated relationships between the party, or any of its affiliates and the general partner, sponsor, successor, or any other affiliate, compensation arrangements, and the basis for rendering and methods used in developing the opinion, appraisal, or report; and

"(viii) such other matters deemed necessary or appropriate by the Commission;

"(E) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

"(F) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

The disclosure requirements under subparagraph (D) shall also require that the soliciting material include a clear and concise summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (vii) of that subparagraph) with the risks of the limited partnership rollup transaction set forth prominently in the forepart thereof.

"(2) EXEMPTIONS.—The Commission may, consistent with the public interest, the protection of investors, and the purposes of this Act, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or, from the definition contained in paragraph (4).

"(3) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) or any other provision of this title or precludes the Commission from imposing, under subsection (a) or (d) or any other provision of this title, a remedy or procedure required to be imposed under this subsection.

"(4) DEFINITION.—As used in this subsection the term 'limited partnership rollup transaction' means a transaction involving—

"(A) the combination or reorganization of limited partnerships, directly or indirectly, in which some or all investors in the limited partnerships receive new securities or securities in another entity, other than a transaction—

"(i) in which—

"(I) the investors' limited partnership securities are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A; and

"(II) the investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A;

"(ii) involving only issuers that are not required to register or report under section 12 both before and after the transaction;

"(iii) in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933;

"(iv) which will result in no significant adverse change to investors in any of the limited partnerships with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; or

"(v) where each investor is provided an option to receive or retain a security under substantially the same terms and conditions as the original issue; or

"(B) the reorganization of a single limited partnership in which some or all investors in the limited partnership receive new securities or securities in another entity, and—

"(i) transactions in the security issued are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A;

"(ii) the investors' limited partnership securities are not reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A;

"(iii) the issuer is required to register or report under section 12, both before and after the transaction, or the securities to be issued or exchanged are required to be or are registered under the Securities Act of 1933;

"(iv) there are significant adverse changes to security holders in voting rights, the term of existence of the entity, management compensation, or investment objectives; and

"(v) investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

"(5) EXCLUSION.—For purposes of this subsection, a limited partnership rollup transaction does not include a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate.".

(b) SCHEDULE FOR REGULATIONS.—The Securities and Exchange Commission shall, not later than 12 months after the date of enactment of this Act, conduct rulemaking proceedings and prescribe final regulations under the Securities Act of 1933 and the Securities Exchange Act of 1934 to implement the requirements of section 14(h) of the Securities Exchange Act of 1934, as amended by subsection (a).

SEC. _____03. RULES OF FAIR PRACTICE IN ROLLUP TRANSACTIONS.

(a) REGISTERED SECURITIES ASSOCIATION RULE.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following new paragraph:

"(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6), include rules to prevent members of the association from participating in any limited partnership rollup transaction (as such term is defined in section 14(h)(4)) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to an appraisal and compensation or other rights designed to protect dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such term means any person who files an objection in writing under the rules of the association during the period in which the offer is outstanding and complies with such other procedures established by the association.".

(b) LISTING STANDARDS OF NATIONAL SECURITIES EXCHANGES.—Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following:

"(9) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in section 14(h)(4)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to an appraisal and compensation or other rights designed to protect dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership transaction who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such term means any person who files an objection in writing under the rules of the exchange during the period in which the offer is outstanding.".

(c) STANDARDS FOR AUTOMATED QUOTATION SYSTEMS.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following new paragraph:

"(13) The rules of the association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the Commission as a national market system security resulting from a limited partnership rollup transaction (as such term is defined in section 14(h)(4)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to an appraisal and compensation or other rights designed to protect dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership transaction who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the association during the period during which the offer is outstanding.".

(d) EFFECT ON EXISTING AUTHORITY.—The amendments made by this section shall not limit the authority of the Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934, or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective 18 months after the date of enactment of this Act.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BUMPERS. Mr. President, I would like to announce for the public that a field hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests on S. 2101, to designate the Lower Salmon as wild and scenic and S. 2572, the Arkansas-Idaho Land Exchange Act.

The hearing will take place Tuesday, July 14, 1992, beginning at 9 a.m. and concluding at approximately 4:30 p.m. Testimony will be received on S. 2101 (Lower Salmon) from approximately 9 a.m. to 11:30 a.m., and on S. 2572 (Arkansas-Idaho Land Exchange) from 1:30 p.m. to 4:30 p.m. The hearing will be held at the Lewis and Clark State College Administration Building Auditorium, 8th and 6th Avenues, Lewiston, ID.

Individuals who would like to make a brief oral statement of no more than 3 minutes in support of, or in opposition to, these measures, should contact Cindi Mader in Senator CRAIG's Lewiston office at (208) 743-0792 or Sandy Patano in Senator CRAIG's Coeur d'Alene office at (208) 667-6130, no later than 5 p.m. on July 3, 1992.

Although the subcommittee will attempt to accommodate as many individuals desiring to speak as time permits, it may not be possible to hear from all those wishing to testify.

Written statements may also be submitted for the hearing record. It is only necessary to provide one copy of any material to be submitted for the record. Comments for the record may be brought to the hearing or submitted to the Subcommittee on Public Lands, National Parks and Forests, room 304 of the Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact Erica Rosenberg of the subcommittee staff at (202) 224-7933; Cindi Mader in Senator CRAIG's Lewiston office at (208) 743-0792; or Sandy Patano in Senator CRAIG's Coeur d' Alene office at (208) 667-6130.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, July 22, 1992, in SR-301, to hold a hearing on S. 2748, to authorize the Library of Congress to provide certain information products and services, and for other purposes.

Individuals and organizations wishing to submit a statement for the hearing record are requested to contact Carole Blessington of the Rules Committee staff at (202) 224-0278. For further information regarding this hearing, please contact Ms. Blessington.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2:30 p.m., June 23, 1992, to receive testimony on S. 225, to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, VA; S. 1925, to remove a restriction from a parcel of land owned by the city of North Charleston, SC, in order to permit a land exchange, and for other purposes; S. 2563, to provide for the rehabilitation of historic structures within the Sandy Hook Unit of Gateway National Recreation Area in the State of New Jersey, and for other purposes; S. 2006, to establish the Fox River National Heritage Corridor in Wisconsin, and for other purposes; H.R. 2181, to permit the Secretary of the Interior to acquire by exchange lands in the Cuyahoga National Recreation Area that are owned by the State of Ohio; H.R. 2444, to revise the boundaries of the George Washington Birthplace National Monument; and H.R. 3519, to authorize the establishment of the Steamtown National Historic Site.

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

SUBCOMMITTEE ON COMMUNICATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on June 23, 1992, at 9:30 a.m. on authorization of the National Telecommunications and Information Administration [NTIA].

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

SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Monopolies and Business Rights of the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, June 23, 1992, at 9:30 a.m. to hold a hearing on consumer disclosure.

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

SUBCOMMITTEE ON MEDICARE AND LONG-TERM CARE

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Medicare and Long-Term Care of the Committee on Finance be authorized to meet during the session of the Senate on June 23, 1992, at 2:30 p.m. to hold a hearing on standards for private long-term care insurance policies.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, June 23, 1992, at 10 a.m., for a hearing on the Legal Services Reauthorization Act of 1992.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 23, at 2:30 p.m. to hold a nomination hearing on William Clark to be Assistant Secretary of State for East Asian and Pacific Affairs.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 23, at 10 a.m. to hold a hearing on Treaty Doc. 102-20, treaty between the United States and the U.S.S.R. on the reduction and limitation of strategic offensive arms—the START Treaty—and protocol thereto dated May 23, 1992.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate, Tuesday, June 23, 1992, at 10 a.m. to conduct a hearing on problems facing urban America: the availability of capital to inner-city and minority communities.

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

ADDITIONAL STATEMENTS

TRIBUTE TO PRIYA L. NATARAJAN

• Mr. ROCKEFELLER. Mr. President, I rise today with great pride and pleasure to commend a young West Virginian, Priya L. Natarajan, who, through academic excellence, has been honored as a Presidential scholar.

Priya has proven herself to be an outstanding student who has been successful in her academics, as well as her extracurricular activities. Priya exemplified what a Presidential scholar should be. Academically, she excelled, being a member of both the French Honor Society and National Honor Society. But it is her ability to become successfully involved that sets her apart from her fellow classmates. Her participation in S.A.D.D., her involvement as a community tutor, and her volunteer library work, help make her an inspiration to those around her.

By working hard, Priya has earned an award for which only a select few have been chosen. I strongly encourage our youth to strive for academic excellence, and it is a pleasure to see this student achieve her goal.

I am sure that my colleagues and fellow West Virginians join me in congratulating Priya on a job well done. It is always encouraging to see students work so hard and be rewarded for their accomplishments and I wholeheartedly support the program. We are proud to count her as one of West Virginia's own.•

RACE FOR THE CURE

• Mr. McCONNELL. Mr. President, last Saturday morning, Constitution and Pennsylvania Avenues were crowded with runners and walkers participating in the 1992 National Race for the Cure—Washington's race to end breast cancer.

According to the American Cancer Society, breast cancer will take the lives of over 46,000 women and 300 men this year. An estimated 180,000 women will develop breast cancer in 1992, and in my State alone, 2,400 Kentuckians will be diagnosed with this disease.

While these figures are alarming, the promising news is the 5-year survival rate for localized breast cancer has risen from 78 percent in the 1940's to 92 percent today. If the cancer is not invasive, the survival rate is close to 100 percent. Mr. President, it is clear to me we must continue to work hard to increase the survival rate for those whose cancer has spread regionally—a figure that now stands at 71 percent.

While I wish to express my admiration and gratitude to all who participated in this event, let me single out the runners and walkers who are survivors of breast cancer. It is their courage and determination—combined with the memory of those who have fallen victim to this disease—that drives the race for the cure.

I also want to recognize all the sponsors and volunteers who made this event possible, and in particular, the honorary national co-chairmen of the race, Vice President and Mrs. DAN QUAYLE, and the honorary Washington, DC, community chairperson, Mayor Sharon Pratt Kelly.•

THE FINANCIAL AID PACKAGE FOR THE FORMER SOVIET UNION

• Mr. KERREY. Mr. President, last week we heard a great deal from President Bush and other administration officials about the failure of Congress to move expeditiously to approve the financial aid package for the former Soviet Union. As the President put it, he will do "whatever it takes" to persuade Congress "to stand up and make a tough vote here."

Before we take up the aid legislation this week, Mr. President, I thought it might be helpful to clarify the record on this issue.

Back on May 6 of this year, Ambassador Richard Armitage, Deputy to the Coordinator for U.S. Government Assistance to the New Independent States, appeared before a joint hearing of the Appropriations and Agriculture Committees. The purpose of the hearing was to review the aid package for the New Independent States that the President had announced a couple of weeks earlier.

In his statement before the Committees, Ambassador Armitage said the following:

> I will be very frank with you. There are many things contained in the Freedom Support Act which we could (and if necessary, will) accomplish without the formal authorization that would be conveyed by its passage. But to proceed very far into this process without your explicit, conscious and willing collaboration would rob us of the single greatest accomplishment we could attain: the creation of a national strategic consensus that will transcend the vicissitudes of partisan political fortunes.

The Ambassador's comments were not some personal observation made during an informal moment. In fact, this frank admission was included in his prepared remarks and thus, I assume, represented administration policy.

As the Committee on Foreign Relations said in its recent report accompanying the NIS aid bill:

> In submitting this legislation, the administration argued that it sought to establish a

framework for organizing United States efforts to assist the countries of the former Soviet Union. The bill does not contain new initiatives; rather, it repackages previous congressional and administration proposals into a single piece of legislation. It does, however, represent a joint executive-legislative commitment to work together in support of political and economic reform in the former Soviet Union.

Although I count myself as a supporter of the aid effort, I thought that Ambassador Armitage's admission last month revealed not so much an appeal for bipartisanship, but a simple desire to get Congress on the hook for a foreign aid effort that clearly does not enjoy deep support among the American public. The President's unnecessary finger-pointing last week only confirmed my suspicions.

What really happened last week was the President found himself with a very important guest in town and little economic aid to offer him because the President himself was paralyzed by current polls. Even though his own State Department admits that he has the authority to act on most of his sweeping pledge of aid, the President was reluctant to make the move by himself. Instead, the President was content to point to Congress and to cite us for not endorsing the effort. We do not need to approve the aid, but the President wants us to endorse it.

Mr. President, there is a difference between a leader and a pleader, and that difference has distinguished every great President that this Nation has known.●

NATIONAL GROCERS ASSOCIATION "GROCERS CARE AWARDS"

● Mr. NICKLES. Mr. President, I wish to bring to the attention of the Senate the community contribution of the American independent retail grocers and their wholesalers.

In past years, through passage of the National Grocers Week, the House and Senate recognized the important role these businesses play in our economy. The week of June 21-27, 1992, commemorates the 7th year that National Grocers Week has been observed by the industry to encourage grocers involvement in private sector initiatives and to recognize their community contributions.

This week, National Grocers Association, heads of philanthropic, and consumer groups will honor outstanding independent retail and wholesale grocers, their State association executives, and food industry manufacturers for their community service with the NGA Grocers Care Awards.

This annual celebration highlights the important role small business plays according to Thomas K. Zaucha, president and CEO of the National Grocers Association [NGA].

Active leadership with community service projects reflect the commitment the food industry members—retail and wholesale grocers and manufacturers—have to the communities they serve. Every day, in thousands of communities across the country, grocers make the difference by supporting civic endeavors, environmental projects, and charities. This year's grocers are being recognized for their involvement in health-related charities and nutritional programs; for commitments to recycling and the environment; and for the industry's civic and patriotic endeavors.

GROCERS CARE AWARD HONOREES

The "Grocers Care" theme will prevail during the NGA Washington Conference activities beginning Sunday, June 21, in Washington, DC. Representatives from companies, organizations, and associations around the United States will be honored. These honorees include:

Alabama: Peter Gregerson, Sr., Gregerson's Foods, Gadsen;

Arizona: Sam Garcia, Garcia's Inc., Avondale; Thomas R. Shope, Shope's IGA, Collidge;

Arkansas: John Phillips, The Phillips Co., Bentonville; Lynn Galyen, Hart's Family Center, Eureka Springs; Jerry Davis, Affiliated Foods Stores, Little Rock;

California: John Denney, Denney's Market, Bakersfield; Mark Kidd, Mar-Val Food Stores, Lodi; Everett Dingwell, Certified Grocers of California; Los Angeles; Jim and Gail Gerrard, Gerrard's Redlands; Alan Fine, Fine's Market, Los Angeles; Bob Inadomi, Jonsons Markets, Los Angeles;

Colorado: Eugene Andersen, Andersen's Star Market, Hudson; Harold Kelloff, Kelloff's Food Markets, Alamosa; Don Stroberg, Don's Super Foods, Eaton;

Connecticut: Ray Pena, C-Town Supermarket, Hartford;

Florida: Robert Hitchcock, Hitchcock's Foodway, Alachua; Donald Kolvenbach, Affiliated of Florida, Tampa; Lorena Jaeb, Pick Kwik Food Stores, Mango; Michael Cianciarulo, Gooding's Supermarkets, Altamonte Springs;

Georgia: Syrol McClain, Piggly Wiggly, Bowden; Gene Taylor, Rockdale Grocery Company, Conyers; Joel Williams, Savannah Foods Industries, Savannah;

Idaho: Bill Long, Waremart Inc., Boise;

Illinois: John Sullivan, Sullivan Foods, Savanna; Nick Andrew, Streator Foods, Joliet; Tom Norrenberns, Tom's Supermarkets, Mascoutah; Robert Bridwell, Bridwell's Supermarket, Paris;

Indiana: Jerry Bardeson, Key Markets, Hammond; Gil Pontius, Lakeshore Foods, Michigan City; Larry Contos, Pay Less Super Markets, Anderson; Howard Holowaty, Midland Grocery, Westville; William G. Reitz, Scott's Food Store, Fort Wayne;

Iowa: Robert Hand, Dahl's Foods, Des Moines; Duane Godfrey, Roy & Scotty's Super Valu, Council Bluffs; James Scheer, Jim & Dean's Town & Country, Council Bluffs; Doug Fallgatter, Fallgatter's Market, Northwood; James Borders, Jim's Food Mart, Tabor; Robert Cramer, Fareway Stores, Inc., Boone; Jerry Fleagle, Fleagle Foods, Waterloo; Mary Rooney, Payless Foods, Dyersville; Scott Havens, Plaza Food Center, Norwalk; Gene Foltz, Super Valu Stores, Inc., Des Moines; Steve Foster, Foster's Food Center, Mt. Pleasant;

Kansas: Fred Ball, Ball's Super Market, Kansas City; John Meggs, Price Chopper Ad Group, Kansas City; Douglas Carolan, Associated Wholesale Grocers, Kansas City; Darrell Roche, Roche's Price Chopper, Shawnee;

Kentucky: William Gore, Gore's Foodland, Paducah; Bill Remke, Remke's Market, Fort Mitchell; Bruce Chesnut, Laurel Grocery Co., East Bernstadt; Ron Swogger, Paramount Foods, Louisville; Rodney Smith, Rodney's IGA, Benton; Kenneth Techau, Techau's Inc., Cynthiana;

Louisiana: Donald Rouse, Jr., House Supermarkets, Thibodeaux; M. Paul LeBlanc, Pay-Less Supermarket, Gonzales; Hillar Moore, Associated Grocers, Baton Rouge; Barry Breaux, Breaux Mart, Metairie;

Maine: Frank Frisbee, Frisbee's Super Market, Kittery Point; Richard Goodwin, Dick's Market, Clinton;

Maryland: Thomas Smith, Tom's Super Thrift, Cardiff;

Michigan: Robert DeYoung, Sr., Fulton Heights Foods, Grand Rapids; Mary Dechow, Spartan Stores, Grand Rapids; Rich Kruithoff, Family Fare Supermarkets, Holland; Daniel Daane, Daane's Food Markets, Grand Rapids; Joe Rahilly, Rahilly's IGA, Newberry;

Minnesota: John Kuehnow, John's Foods, Duluth; William Farmer, Fairway Foods, Minneapolis; Stephen Barlow, Sr., Barlow Foods, Rochester; Dan Coborn, Coborn's, St. Cloud; Gordon Anderson, Gordy's, Plymouth; Eric Jackson, Jackson's Super Valu, Madison; Cheryl Wall, Soderquist's Newmarket, Soderville; Robin Thomas, Supervalu Stores, Minneapolis; Joe Francis, North American Foods, Rockford;

Missouri: Bob Bowes, Bowes Price Chopper, Benton; Donald Woods, Jr., Woods Super Market, Bolivar; Glen Woody, Glens Supermakret, Forsyth; Dante and Jerry Cosentino, Cosentino's Price Chopper, Kansas City; John McKeever, McKeever's Price Chopper, Indpendence; Ray and Doug Gerard, Hart's Super Market, Branson; Jim Maze, Mountain Country Food Store, Lakeview; Don and Bertha Woods, Woods' Market, Buffalo; Robert Clay, Price Chopper Foods, West Plains; Bob Hufford, Town & Country Supermarket, Fredericktown; Charles Graas, Dillon Food Stores, Springfield;

Montana: Frank Cannon, P.J.'s County Market, Helena; Scott Rickhoff, Ryans Wholesale Food Distributors, Billings;

Nebraska: Richard Juro, No Frills Supermarkets, Omaha; Terry Olsen, United A.G. Cooperative, Omaha; John Hanson, Sixth Street Food Stores, North Platte;

New Hampshire: Herve Samson, Sam's Supermarket, Whitefield; Charles Butson, Butson's Supermarkets, Woodville;

New Jersey: William Noto, Wakefern Food Corp., Elizabeth; Joel and Michael Perlmutter, Perlmart, Toms River; George Zallie, Zallie Enterprises, Clemonton; William Sumas, Village Supermarkets, Springfield;

New Mexico: Joseph DiGregorio, California Super Market, Gallup; James Downey, Kaune Foodtown, Santa Fe;

New York: Jerome Pawlak, Bell's Food Center, Albion; Jim Robinson, Olean Wholesale Grocery, Olean;

North Carolina: Dean Hartgrove, D & S Foods, Boonville; Don Andrews Sr., Food Folks, Lumberton;

North Dakota: Dave and Phyllis Jollie, Jollie's Fairway, Belcourt;

Ohio: Walter Churchill, Sr., Churchill's Super Markets, Sylvania; Ronald Graff, Columbiana Foods, Boardman; Thomas Conroy, Jr., Conroy's IGA, Youngstown; James Stoll, Bag-n-Save Foods, Dover; Harold Massie, Jr., Massie's Super Market, Portsmouth; Ben McCormick, Leetonia Golden Dawn Supermarket, Leetonia;

Oklahoma: Tom Goodner, Goodner's Supermarket, Duncan; Keith Beachler, Beachler's IGA, Del City; Brenda Graham, Bill's Discount Foods, Tulsa; John Redwine II, John's IGA, Spiro; Gary Nichols, Nichols SuperThrift, Checotah; J.B. Pratt, Pratt Foods, Shawnee;

Oregon: Alan Jones, United Grocers, Portland;

Pennsylvania: Bill Camp, Rochester Giant Eagle, Rochester; Jay Miller, Jay's Markets, York; Paul Hoover, Jr., Kennie's Markets, Gettysburg; Christy Spoa, Sr., Christy's Markets, Ellwood City;

South Dakota: James Spies, Spies Supermarkets, Watertown;

Tennessee: Tom Pinson, Creekmore's Food Stores, Nashville; H. Dean Dicky, Giant Foods, Columbia; Edward McMillan, Food City Supermarkets, Knoxville; Wallace Boyd, Oakwood Markets, Kingsport;

Texas: Kenneth Bird, Birds Supermarket, McKinney; Hobart Joe, Continental Finer Foods, Houston; Norman Pentacost, Pen Foods, San Antonio; Ron Wilfong, B&R Thriftway, Tulia; Glen Holt, Thriftway Super Market, Fritch; Don Allison, Town & Country Food Stores, San Angelo; Daniel Baenzinger, Baenzinger Super Market, Seguin; Jere Lawrence, Lawrence Brothers, Sweetwater;

Utah: G. Steven Allen, Allen's Super Save Markets, Orem; Kenneth Macey, Macey's Salt Lake City;

Vermont: Richard Tomlinson, Tomlinson's Market, Morrisville;

Virginia: Gene Bayne, Gene's Super Market, Richmond; Daniel Maenza, Wade's Super Markets, Christiansburg; James Ukrop, Ukrop's, Richmond; Donald Bennett, Richfood Inc., Richmond;

Washington: Morrie Olson, Olson's Food Stores, Lynnwood; Craig Cole, Brown & Cole, Ferndale; Steve Herbison, URM Stores, Spokane; Donald Benson, Associated Grocers, Seattle; Ken Storman, Stormans, Olympia; Larry McKinney, Larry's Markets, Seattle; Dick Rhodes, Queen Anne Thriftway, Seattle; Rob Fuller, Fuller's Markets, Chehalis;

West Virginia: David Milne, Morgan's Clover Farm Market, Kingwood; William Witschey, Witschey's Market, New Martinsville; Gerald Goodson, Goodson's Super Markets, Welch;

Wisconsin: Bob Prokash, Bob's Castle Foods, Wisconsin Rapids; Fred Lange, Lange's Sentry Foods, Madison; Layton Olsen, Olsen's Piggly Wiggly, Cedarburg; William Confer, Roundy's, Inc., Milwaukee; Richard Lambrecht, Mega Foods, Eau Claire; Gail Omernick, The Copps Corp., Stevens Point; Jeffrey Lasczewski, Sentry Markets, Lake Geneva; William Brodbeck, Brodbeck Enterprises, Platteville; Tom Fox, Schultz Sav-O-Stores, Sheboygan;

Wyoming: Richard Roy Williams, Williams Inc., Glenrock; Gary Decker, Decker's Food Center, Gilette.

The following State associations are instrumental in coordinating information relative to the community service activities of their members:

Arkansas Grocer & Retail Merchants Association; California Grocers Association; Northern California Grocers Association; Retail Grocers Association of Florida; Georgia Food Industry Association; Illinois Food Retailers; Grocers Association of Iowa; Kentucky Grocers Association; Louisiana Grocers Association; Maine Grocers Association; Associated Food Dealers of Michigan; Michigan Grocers Association; Mid-America Grocers Association; Minnesota Grocers Association; Missouri Grocers Association; Montana Food Distributors Association; New Hampshire Retail Grocers Association; New Mexico Grocers Association; North Carolina Food Dealers Association; North Dakota Grocers Association; Youngstown Area Grocers Association; Ohio Grocers Association; Oklahoma Grocers Association; Pennsylvania Food Merchants Association; Rocky Mountain Food Dealers Association; Tennessee Grocers Association; Retail Grocers Association of Houston; Texas Grocers Association; Utah Retail Grocers Association; Vermont Grocers Association; Washington State Food Dealers Association; Wisconsin Grocers Association; West Virginia Association of Retail Grocers.

Manufacturers: McCormick & Co., Inc.; Kraft General Foods; Nabisco Brands; Reynolds Metals; Campbell Soup Co.; E.J. Brach Corp.; Gerber Products Co.; the Coca-Cola Co.; Georgia-Pacific Corp.; RJ Reynolds Tobacco Co.; General Mills; ConAgra Inc.; the Dial Corp.; Unilever USA; Ralston Purina Co.; Thomas J. Lipton, Inc.; Lever Brothers Co.; Quaker Oats Co.; Procter & Gamble Co.; Borden, Inc.; Sandoz Nutrition Corp.

Grocers Care Awards recognize the involvement of the total retail food industry, grocers, wholesalers and manufacturers in community programs. A sampling of exemplary contributions included:

A Healthy America: Participation in a single day sales support of "Grocers Fight Cancer," American Heart Association, American Diabetes Alert, Red Cross, and other national charitable organizations where a percentage of sales are donated;

Programs to shelter and feed the homeless and hungry;

Fitness programs support in placing activities as well as supplying healthy food;

Senior citizen assistance;

A Proud America: Support of patriotic national holidays in parades, picnic supplies, promotion;

Voter registration campaigns;

Sports tournaments in support of charitable organizations as well as local hospitals, fire, and police departments;

Boy and Girl Scouts, Little and Lassie Leagues, and other sports program sponsorships.

A Clean America: Environmental commitments from the manufacturing and packaging process, to recycling at the store level, to instituting local recycling centers;

Reading programs to fight illiteracy, local educational commitments through scholarships, percentage of sales, contributions, and computers for students programs and contributions of time, funds, and buildings in support of the arts.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received a request for a determination under rule 35 for Cheryl J. Reidy, a member of the

staff of Senator DOMENICI, to participate in a program in Japan, sponsored by Association for Communication of Transcultural Study [ACT], from July 7–13, 1991.

The committee determined that participation by Ms. Reidy in this program, at the expense of ACT, was in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Patty Deutsche, a member of the staff of Senator BURNS, to participate in a program in Mexico, sponsored by the Mexican Business Coordinating Council, Consejo Coordinador Empresarial [CCE], from July 12–15, 1992.

The committee has determined that participation by Ms. Deutsche in this program, at the expense of the CCE, is in the interest of the Senate and the United States.•

COMMENDING RUBY HIRAISHI, 1992 HAWAII PRINCIPAL OF THE YEAR

• Mr. INOUYE. Mr. President, on May 28, 1992, I had the high honor and privilege of visiting Kapunahala Elementary School in Kaneohe on the island of Oahu. I say high honor because Kapunahala Elementary was designated a "Blue Ribbon School," as part of a U.S. Department of Education program. Its principal, Ms. Ruby Hiraishi, was recently named the 1992 Hawaii Principal of the Year.

Mr. President, this is indeed a very special and outstanding school, and I wanted to meet the students and faculty behind these great honors to learn for myself the secret of their success. I was privileged to participate in Kapunahala's Stars of the Month student assembly to recognize the exemplary students who best exhibited the four R's—respect, responsibility, resourcefulness, and relationships. In addition to reading, writing, and arithmetic, these critically important and basic values are stressed and praised in the school. As I sat in the school cafeteria and looked out at the sea of eager and inquisitive faces, I knew immediately the secret of their success. It was each and every student and each and every teacher—it was their commitment to excellence and their drive to succeed, not only as individuals, but collectively as a team.

It still brings a smile when I recall my morning spent at Kapunahala Elementary. With all the national and global problems we must address in the U.S. Senate, I believe it is imperative that we each return home, and return our focus to what is truly important and a real priority—our children. In their hands, they hold the future of our great land. Who knows—as I addressed the Kapunahala students, I could very well have been speaking to a future U.S. Senator from the great State of Hawaii.

Mr. President, I left Kapunahala Elementary School invigorated and rejuvenated. I left with a very special gift, the gift of hope and great promise for a bright future. I urge my colleagues to try it—it is good for the soul. To the students of Kapunahala, I commend you and thank you. Keep up the good work.•

TUNISIAN HUMAN RIGHTS GROUP FOLDS

• Mr. SIMON. Mr. President, last week the Tunisian League for the Defense of Human Rights regrettably disbanded. As the oldest human rights watchdog group of the Arab world, the league provided an invaluable service by supplying candid scrutiny of the Tunisian Government. Through a legislative technique, the majority party forced the Tunisian League for the Defense of Human Rights to choose between allowing hostile opponents to join its organization, or abandon its cause. The league chose the latter.

This event is particularly disturbing in light of the recent Amnesty International report citing numerous cases of torture allegedly committed by Tunisian authorities. Although Tunisia has shown a willingness to discuss these tough issues, the latest action sheds new light on Tunisia's sincerity in addressing human rights issues.

Unfortunately, political events in North Africa are not given enough attention in the United States. But as citizens of the world, we ought to support those who work to preserve basic human rights. Since the Bush administration has requested over $27 million in military, agricultural, and economic aid for Tunisia in fiscal year 1993, my colleagues need to be aware of Tunisia's human rights record.

In order to raise awareness of this issue, I ask that an article from the Washington Post concerning last week's events in Tunisia be inserted in the CONGRESSIONAL RECORD at this point.

The article follows:

TUNISIAN HUMAN RIGHTS LEAGUE FOLDS; NEW LAW PUTS FINISH TO ARAB WORLD'S OLDEST WATCHDOG GROUP

(By Caryle Murphy)

CAIRO, June 15, 1992.—Tunisia's human rights league, the oldest and one of the most influential watchdog groups in the Arab world, shut down today rather than comply with a new law that right activists say aims to bring the organization under government control.

Formed 15 years ago, the Tunisian League for the Defense of Human Rights was in the vanguard of an Arab human rights movement that has only recently begun to grow and was among the first to launch a national campaign to halt torture of suspects by security forces.

In recent years, the league's public criticism of human rights violations in Tunisia, including the detention of thousands of Muslim activists, has put it at odds with the government, which is seeking to suppress the country's robust Islamic fundamentalist movement.

"It's a big loss for Tunisia. The league was very influential," said Mohammed Fayek, secretary general of the Arab Organization for Human Rights.

The new law bans those holding office in political parties from belonging to private organizations. More significantly, it requires nongovernment organizations to accept anyone who applies for membership. Opponents of the law say this could allow members of Tunisia's ruling Constitutional Democratic Party, which has a monopoly on political power, to flood the league's rolls and influence in work.

"We are afraid that this law would be implemented against the league," Fayek said. To say "anybody has the right to be a member in the league means you can push any party [into its membership] and spoil everything."

Tunisian officials have said the law is intended to prevent political parties from taking over nongovernmental associations. They have complained that the league was refusing members of the ruling party, a source said. The government-run daily La Presse said today that the league has "deliberately outlawed itself" by not accepting the new law.•

OLYMPIC COACHES FROM NEW JERSEY

• Mr. LAUTENBERG. Mr. President, I rise today to recognize the contributions of two New Jerseyeans to the 1992 summer Olympic games. Theresa Shank Grentz of Rutgers State University and P.J. Carlesimo of Seton Hall University will be serving, respectively, as head coach for the women's basketball team and as assistant coach for the men's basketball team this summer in Barcelona.

Currently serving as the head coach of the Lady Knights, Ms. Grentz brings an outstanding background to the Olympics. During her collegiate years, she played at Immaculata College and in 1974 was named AMF "Player of the Year." A three-time All-American, Ms. Grentz participated in the World University games in Moscow and the U.S.A. national championship Immaculata team in Australia. She is the all time winningest basketball coach at Rutgers and has lead her teams to seven consecutive NCAA postseason tournament appearances. Ms. Grentz has also distinguished herself and her program by maintaining a 100-percent graduation rate for team members who play for 4 years. I extend my very best wishes to Ms. Grentz and wish her the best of luck as this year's head coach of the 1992 U.S.A. women's Olympic basketball team.

As head coach of the Seton Hall Pirates, P.J. Carlesimo brings a well-earned national reputation to his position as assistant coach for the men's Olympic basketball team. In the past 6 years, the Pirates have compiled an outstanding 128–68 record and have gone on to postseason play five times during that time. Seton Hall has be-

come a force in the Big East Conference and has made strong appearances in the NCAA tournament including a championship game appearance in 1989. Mr. Carlesimo has twice received the "Coach of the Year" award from the Big East Conference and the metropolitan basketball writers have given him the same award three times. I congratulate Mr. Carlesimo and wish him much success in Barcelona.

Mr. President, it is an honor to have two New Jerseyeans with such distinguished coaching accomplishments lead the United States to the Olympics. Ms. Grentz and Mr. Carlesimo have dedicated themselves to coaching our Nation's brightest talent and I commend them for accepting this challenge. As always, go U.S.A.•

PEORIA JOURNAL STAR SUMS UP OUR DUTY ON THE DEFICIT

• Mr. SIMON. Mr. President, many editorials have been written since the balanced budget constitutional amendment was narrowly defeated in the other body. However, none that I have seen has summed up the situation better than one that carries this headline: "Why Not Pretend [The] Amendment Passed?" That editorial was published by the Peoria Journal Star, a solid, public-spirited newspaper that maintains a strong and independent voice. I'm pleased to add that it also is one of many newspapers that, after watching the White House and the Congress and both political parties pile up enormous deficits, have endorsed the need for this amendment. I commend the editorial to the attention of my colleagues and ask that it be included at this point in the RECORD.

[From the Peoria Journal Star, June 13, 1992]

WHY NOT PRETEND AMENDMENT PASSED?

If the president of the United States, and nearly two-thirds of the House of Representatives, and probably a majority of the Senate (were a vote taken) support a balanced-budget amendment to the Constitution, then the answer to the deficit problem is at hand.

They can, all of them and cooperatively, balance the budget because they want to. Not all at once—the economy couldn't take it—but over a period of time. Five years or six. The time it would require to implement the balanced-budget amendment had Congress passed it.

If President Bush genuinely believes that balancing the federal budget is critical enough to warrant Constitutional change, then let him take back the budget he sent to Congress earlier that year and submit a new one. Let him close the gap by $40 billion, which is what a Congressional study says would be required in fiscal 1993 to finish the process by 1998.

If Democratic Congressional leaders genuinely believe that a balanced-budget amendment is sleight of hand designed to divert attention from the real task of deciding what programs to cut or what taxes to increase, then let them tackle the tough job. Let them cut $40 billion from the proposal President Bush has given Congress. Let them prove that they mean it when they say they have the will to make the budget balance—without a Constitutional mandate.

Let all of those people in Washington who have been speaking soberly about the threat to the nation and the bills to the grandkids cease the rhetoric and get down to serious work.

Let the American people, who say they want a balanced budget as long as their taxes aren't increased and their benefits aren't cut, understand that they ask the impossible.

Why not pretend the amendment is in place and act accordingly?•

TRIBUTE TO BURKESVILLE

• Mr. MCCONNELL. Mr. President, I rise today to recognize Burkesville, a small town in southern Kentucky.

Burkesville is a small hideaway located along the Cumberland River. It is an image of an earlier era. The town square is lined with small shops and benches for whittlers, just like it was 50 years ago. It still offers peace and quiet to residents and visitors alike.

The peaceful pace of a bedroom community suits most Burkesville residents. The town is equidistant from three major cities—Louisville, Lexington, and Nashville—so the residents can easily reach one of them if they feel the need to shop at a mall or take in a show.

Limited industry in Cumberland County has kept the land pretty and the skies clear. This is especially good for the area because a new State park is to be completed in 1994, and this should attract tourists who would like to get away from it all. People can come to Burkesville to escape the traffic and the fast pace of busier cities and just relax and fish in the Cumberland River or the nearby Dale Hollow Lake.

The people of Burkesville are happy in their community and proud of its simple lifestyle, but at the same time they are always striving to improve it. Recently, a rundown neighborhood was replaced with decent housing and a new city hall was built. Also, a local landmark was refurbished so that it may be enjoyed in the style of its heyday.

Mr. President, I submit the following article from the Louisville Courier-Journal for today's CONGRESSIONAL RECORD.

The article follows:

[From the Louisville Courier-Journal, June 22, 1992]

BURKESVILLE

(By Kirsten Haukebo)

More than most small towns in Kentucky, Burkesville seems a slowly fading snapshot of an earlier era.

Walk near the courthouse any afternoon and you'll see ankle-deep piles of wood shavings under benches recently vacated by whittlers. Some small shops on the square manage to hang on; others close, but none are replaced with sprawling, impersonal discount stores. No railroads or major highways have ever come near this town. And industry? There's little more than a couple of small garment factories.

That's not to say that Mayor Paul T. Smith, a no-nonsense retired Army major general, hasn't tried to lure new companies. He's been frustrated, likening his efforts to "trying to push a piece of spaghetti across a table—it just keeps getting stuck." Smith estimates that 400 people leave Cumberland County each morning to work in other counties. He says it will be his biggest disappointment as mayor if he's unable to create more jobs.

But many people in Burkesville are content with the comfortable pace of life, Smith said.

"I sense that most people here are very happy, and sometimes I say to myself, 'Why don't I just relax? Maybe we need a few little bedroom communities where people can just live, fish and go to Louisville on the weekends.'"

What worries Smith is the population trend in Burkesville and Cumberland County. When Smith graduated from high school here in 1940, there were twice as many people as there are today. In fact, more people lived in Cumberland County during the pioneer days. There are actually about 1,000 fewer people in the county today than in 1820.

Smith, who is in his 11th year as mayor, returned to Burkesville 15 years ago after a career in the Army. He has applied military-style discipline to his mayoral tasks. "One fellow said 'He tries to run this town like a general,' I take that as a compliment," Smith said.

For police officers, Smith insists on shined shoes and belts, crisply pressed uniforms and frequent haircuts. City employees are often sent to training seminars. Among prominent citizens, Smith stress "fairness and equal treatment" for all.

"There was a time people I grew up with wouldn't talk to me, but they finally got the message: no special favors," he said.

Under Smith's command, a rundown neighborhood was replaced with decent housing, a new city hall built, a municipal parking lot created and more grants obtained than ever before in the town's history.

Burkesville native and entrepreneur Mike Humphrey also has made improvement to the town, such as building a new riverfront motel and refurbishing a hilltop lodge and restaurant. The Alpine Lodge has been a landmark since it opened in 1952, but had fallen on hard times, Humphrey said. Only half of the rooms were rentable before he bought it in April.

The lodge is set to reopen in midsummer, which is good news to Burkesville attorney Lindsey Bell. "When people think of Burkesville when traveling around the state, they say, 'Oh yeah, I stayed at the Alpine,'" he said.

Burkesville has a quirkiness that can get lost in larger towns. There's a little shop that advertises "Strange Live Bait." (It's owned by a man named Chuck Strange, who says his shop was on "one of those funny home-video shows." He never saw the program.)

Newcomers quickly learn to watch what they say about a Smith or an Alexander or a Williams. Chances are the person they're talking to is related to one of the families.

Burkesville even has a town character who has drawn media attention for his antics. A.B. Cash, who often drapes his head in a replica of the American flag, was featured in a national tabloid when he received a singing Christmas card that wouldn't stop singing. "Amazing!" declared the National Examiner. "It must be supernatural," Cash was quoted as saying.

Cash later made headlines when he lost a lawsuit against a local church from which he tried to retrieve offerings he had put in the collection plate. Residents, including Cash himself, say one of his latest "hobbies" is to scatter dollar bills in parking lots.

The Cumberland River is only two blocks from Burkeville's square, a reminder of the days when steamboats churned the river. Burkesville was a well-used landing in the river's heyday from 1833 to 1929.

In those days the river was the only good method of transportation for people or goods. Randolph Smith, a cousin of the mayor and owner of the town's only pharmacy, said meat, lard, timber and cattle were commonly shipped out of Burkesville.

In the early part of the century a Coca-Cola bottling plant opened in Burkesville—and the Cokes were shipped out as well. Smith's father, also a pharmacist, sold Coke in his store but stubbornly referred to it—even to customers—as "dope" because of an early ingredient, cocaine.

Smith Pharmacy is the oldest continuously operating business in town. It was founded in 1814 as Alexander Drug and sold to the Smith family in 1906. When the business moved to a different location on the square, the Smiths were eager to take credit for the new building and erected a huge sign with the Smith name, which still stands.

Much of the county's income still comes from farming, mainly tobacco and beef cattle. Although Dale Hollow Lake lures some visitors for fishing and boating, Cumberland County doesn't have as much tourist income as many of its neighbors in Southern Kentucky.

That may change. The Kentucky Parks Department will begin construction this fall on a $7 million lodge at Dale Hollow Lake State Park. The lodge will have 36 rooms, a dining room and gift shop, said Bob Bender, deputy commissioner of the state parks department. The lodge should open in 1994. Right now, the park has only a campground and marina.

Dale Hollow is smaller, cleaner, quieter and—to many who moor boats there—prettier than Lake Cumberland just to the east.

The attraction is different, explains Lewis Williams, a former seven-term county clerk. "People come here to get away from it. It's highly possible you can get away from it here."

As tourists trickle in on the weekends, wealthier Burkesvillians stream out to cities for shopping and entertainment. The town is equidistant from Louisville, Nashville and Lexington.

Cumberland County has one of the most active 4-H groups in the state, with about 80-percent of children age 9 through 19 participating.

"In a rural community children are looking for something to do," said Becky Radford—"Miss Becky" to the kids she works with as county extension agent for 4-H/Youth Development.

The program stresses personal development over agricultural education, but the horse club is one of the most popular activities. In a horse show this year featuring children from a 10-county area near Lake Cumberland, 22 of the 35 entrants were from tiny Cumberland County, Radford said.

Radford's husband, Wesley, directs a popular Little League program. About 240 boys and girls play baseball and softball in the program, the only organized sports in the county outside of a school, said Wesley Radford.

The two activities are so popular, he said, because "we're a small town. We don't have a mall for cruising or some of the other things kids like to do in cities."

One lone episode in the county's history belies its current calm.

Coe Ridge was a remote community of freed slaves that withstood nearly a century of white efforts to destroy it. The colony began in 1866, when freed slaves took their master's family name and gave it to their new home, "a desolate spur amidst almost inaccessible ridges and sharply incised valleys," wrote University of Tennessee historian William Montell in his 1970 book, "The Saga of Coe Ridge."

Farming and logging generated income for the community, but most of its cash came from bootlegging and moonshining. Until the 1930's, authorities rarely ventured into the community because of a lack of roads and legends about how "wild" and "violent" the residents were.

In fact, between 1885 and 1920 especially, the colony often took in and cared for people in distress, notably "fallen women" who had been rejected by white society. Occasionally, romances flourished between the white women and black men of Coe Ridge, and the couples were generally left alone by white Cumberland Countians, according to Montell. Again, it was the village's remoteness and legendary fierceness that brought residents some measure of peace.

There were exceptions. When two white women hid their faces beneath veils and took a train to Indiana with their black sweethearts to get married, they were stopped and several Coe residents were later killed by whites in retaliation. The incident was the theme of a popular local ballad.

The colony suffered during the Depression and eventually was destroyed by repeated raids that drove young residents north to Indianapolis and other cities.

Like Coe Ridge, Cumberland County's population is slowly being forced out by economic forces. But for the residents who remain, the county is still a hideaway from the outside world, a peaceful place where farming, Little League and 4-H reign.

As Williams, the former county clerk, says happily, "Readily, we don't attract too much attention, I would say."•

COMMENDING BOB ZIEL

• Mr. SYMMS. Mr. President, recently, an Idaho journalist was honored with the Idaho Bar Association's Liberty Bell Award as a man who has grown to epitomize true American spirit. He is a man who stuck to his ideals throughout his career and focused on fact and fairness in an industry which often lends itself to widespread dishonesty.

Bob Ziel has blessed the State of Idaho since his appearance in radio and television in 1975 with unbiased journalism. He has remained optimistic in democracy and in the fundamental basis of what the United States stands for.

Mr. Ziel was born to European immigrants, both from German descent, in New York. He did his undergraduate work at Pace College and expanded his education at the U.S. Naval School of Photography and at the Brown Institute for Broadcasting.

He served 4 years in the U.S. Navy as a photographer for an amphibious assault carrier unit at the height of the Vietnam war. At that time, he received numerous awards including the Naval Unit Citation, the Vietnam Service Medal, the Vietnam Campaign Medal, the National Defense Medal, and Good Conduct Medal.

In 1975, Mr. Ziel moved to Idaho, after attending broadcast school in Florida. There, he worked at KIGO radio and KADQ radio before picking up as a reporter and assignment editor at KIDK-TV for 13 years. Currently, he is 1½ years into his news director job at KID-AM radio.

He has amassed several awards for his loyal service to the public and to broadcasting including the Associated Press Best Treatment of Subject Award and recognition by the 4-H Club, in addition to the Liberty Bell Award.

Mr. Ziel resides currently in Rigby, ID with his wife Virginia Jean and their three boys, Paul, Aaron, and Brian. He maintains a strong commitment to his family and religion through an active roll in the Church of Jesus Christ of Latter-Day Saints, specifically as a teacher of the Elder's Quorum.

Mr. President, I wish to enter this statement in the RECORD as a tribute to a great journalist and a fair man. I wish him continued success and a prosperous future.•

THE DISABILITY RAG

• Mr. MCCONNELL. Mr. President, I rise today to recognize the efforts of a group of individuals whose contributions to the community are immeasurable. The Louisville-based magazine, the Disability Rag, serves the disabled people of America in a way that no other publication does. The people that make up the magazine's staff are very committed to their cause, and give a great deal of themselves to the production of the magazine.

The Disability Rag reflects the writers' belief that the disabled are America's unacknowledged minority, and attacks this problem with the same fervor activists in the sixties attacked civil rights issues. The Chairman of the Equal Employment Opportunity Commission says the Rag is unique among disability publications because of the range of disabilities it covers and its willingness to address complex issues. The paper's staff is not afraid to confront issues that are often considered controversial. They address subjects that they see as pertinent to the disabled, and they address them in an up-front, candid way.

Mr. President, I would like to commend the people of the Disability Rag for their commitment, their service and their courage. Please include the following article from the Louisville Courier-Journal in today's CONGRESSIONAL RECORD.

The article follows:

[From the Courier-Journal, June 14, 1992]

FROM RAGS TO RAGES

(By David McGinty)

A Hollywood writer scripting a movie that will star William Hurt needs some quick, authoritative insight into the world of the disabled. She calls The Disability Rag.

The Easter Seal Society of Canada wants to know which terms disabled people find acceptable and objectionable. They query The Disability Rag.

The British Broadcasting Corp. is gathering material for a documentary on a movement in Berkeley, Calif., in the 1970s and '80s to make independent living possible for the disabled. The phone rings at The Disability Rag.

"It's really funny when these people contact us," says managing editor Sharon Kutz-Mellem. "They think we're this whole big staff."

By which she means that it is not really funny at all. Ironic, maybe.

Begun in Louisville on an impulse 12 years ago, the Rag has come to the attention of a selective but international audience for its coverage of disability issues. University—Harvard, Yale and Vienna among them—subscribe to it. So do social workers in Greece and Sweden. Requests for information have come from China and India.

And yet, as its reputation grows, one thing about the Rag stays the same.

It struggles to survive.

Although its readership has been estimated at 28,000, its paid following hovers at a very modest—if devoted—4,000 to 5,000 subscribers. Its present staff is at an all-time high of two full-timers and two part-timers, which seems hardly enough. Its financial condition cycles with almost annual regularity between leanness and desperation.

"It ekes by," says Cass Irvin, one of the magazine's founders. "One of my biggest regrets is that the community has not supported it the way I'd like to see." The Rag is, she sighs, "Louisville's best-kept secret."

If you sought out the Rag on a local newsstand—and you could look far before locating it—you would find it at first blush unprepossessing.

It's bimonthly and these days runs to 30- or 40-odd pages. It has clean but unremarkable layout, no color, few pictures and virtually no ads. It is printed on inexpensive newsprint. It looks like nothing so much as one of those cheeky counterculture publications common in the 1960s and early '70s.

The resemblance is not coincidence. To read the Rag is to take a bracing plunge into '60s-style advocacy.

The magazine has a clear, unwavering premise: The disabled are America's last, great, unacknowledged, oppressed minority, and it's time they banded together and asserted themselves.

In pushing this message, the Rag has been vigorous, iconoclastic and unabashed. A few years ago exercise guru Richard Simmons, in a moment of raised consciousness, wrote a book on exercise programs for the disabled and promoted it on national television. He said proceeds from the book would go to build special fitness centers for the disabled.

A wonderful idea? Not to the Rag, which believes the disabled should be able to go to the same fitness centers as everybody else. "Simmons doesn't understand what it is he's promoting," wrote Rag staffer Lauri Klobas. "He's allowing the non-disabled public to avoid making way for their friends, neighbors and relatives who have disabilities. Even worse . . . he's becoming a spokesman on this special form of 'apartheid.'"

There was more. Simmons had, in his enlightenment, begun picking up phrases like "physically challenged" and "handi-capable." Writer Mary Jane Ownen found these terms "particularly odious" for these glossing over of the real problems faced by disabled people and concluded, with table-pounding fervor, "More over, Richard! You're irrelevant—and you're in our way!"

All of which was, for the Rag, mere batting practice. "We've gone after some pretty big boys," notes Kutz-Mellem.

The Rag has taken on telethons that raise money for people with disabilities, in particular the Jerry Lewis Labor Day Telethon, for presenting the disabled in what it considers a pitiable, demeaning fashion. It reports tenaciously, and with discernible relish, on protests against Lewis and the Muscular Dystrophy Association, and on the association's "whining" and "crybaby" responses.

It has also curled a lip at Mother Teresa's Missionaries of Chairty order, because the order's New York shelter was not accessible to the disabled; at the National Organization on Disability, which has taken, in the Rag's opinion, a milquetoast approach to disability issues; and at the mass media for various sins, including portrayals of the disabled as brave conquerors of adversity—the "supercrip" syndrome.

Lately, the Rag has hammered at the Equal Employment Opportunity Commission for what it believes is a halfhearted attempt to enforce provisions of the recent Americans with Disabilities Act. This even though the EEOC chairman is Evan Kemp Jr., a crusader for the disabled and in the past a benefactor of the Rag.

And Kemp takes it. He suspects a certain partisanship. He's Republican, and the Rag, he says, is probably inclined to Democrats. But, he says, the Rag "keeps me honest."

The Rag is unique among disability publications, Kemp says, for the range of disabilities it covers, its willingness to delve into complex issues and its bite. "I think that they're on the cutting edge."

"They don't have sacred cows," says Ed Hudak, a syndicated columnist who writes about disability issues. Hudak, who had polio and uses a wheelchair and braces, is a longtime subscriber to the Rag.

He says the magazine's writers "raise the issues that are real. . . . There's a tendency by some of the disability publications to put a positive spin on it and color it 'Aren't disabled people wonderful?'

"The Rag portrays disabled people as human beings, as neither superstars nor creatures of pathos. They want disabled people to feel like people who are valid.

"There's not anybody else doing what they're doing. Not pushing the discussions in the areas where we really need to go. They are the pamphleteers of our own revolution."

Hudak cites two issues as examples of the Rag's cutting-edge approach. "How do you tell someone you have to go to the bathroom? How do you deal with sexual matters? You're not going to read about that in most newspapers."

You will in the Rag, often in personal, immediate terms. In one article last summer, disability activist Judy Heumann told how the bathroom issue had plagued her working life:

"I had to ask people all the time 'if I could get a favor' from them—if they could please help me go to the bathroom.

". . . These are the realities of your life—having to always worry about if you can have something to drink when you're out; if you're going to have a bladder infection; what's going to happen if you have to 'go' and you're not at home with an attendant."

A couple of years ago, the Rag surveyed its readers on sexual issues and may produce a book out of the responses. It also closely watches issues that could impinge on sexual expression among the disabled. When the U.S. Supreme Court ruled in the mid-1980s that states could outlaw unnatural sex acts, the Rag was bothered.

Some disabled people, an article in the Rag noted, engage for reasons of health or preference in acts state laws consider "unnatural" and are particularly vulnerable to the court's ruling.

"Many severely disabled people have attendants who are aware of their sexual practices or who assist them in their sexual functioning, such as inserting a diaphragm or positioning them for sex," the article said. "It's possible that if you were having trouble with your attendant, he could turn you over to the police for committing sodomy. . . ."

"Let's face it: A lot of non-disabled people see any sexual activity involving a disabled person as 'kinky.'"

Not all disabled people are comfortable having this kind of thing spelled out, or with the Rag's take-no-prisoners aggressiveness on issues. Kutz-Mellem says the publication sometimes riles readers.

"We've been accused of dealing entirely too much with the negative sides of life. Even within the disability community there are folks who don't quite see it the way we see it. And when they think we're being totally off-base, it ticks them off."

That is fine with the Rag. Jule Shaw Cole, a contributing editor and longtime Rag supporter, says a key function is to provide a forum in which the disabled can speak their minds. "The Rag gives them that opportunity."

And they seize it. Debate buzzes through the Rag's letters pages. Readers write in to approve, suggest, cheer, dispute.

"By golly, the March/April Rag has a right-on article," writes Kandy Penner of Gainesville, Fla.

But Geeta Dardick of North San Juan, Calif., thinks the Rag may be getting too soft on questions of terminology: "Get the point, Rag, give us a break! Keep supporting all of the language rules the leaders of the disability movement have agreed upon."

Mary Keen, of Berwyn, Ill., regrets "that the Rag continues to promote the illusion that feminism and the pro-life positions are incompatible."

Scott Smith, of Bardonia, N.Y., writes, "Thank you for publishing 'It's Time to Politicize Our Sexual Oppression,' . . . it's time for us as a movement to begin to express our human rights in the realm of sexuality."

But Damian Anthony Rheaume, of Greendale, Wis., has had enough. "I received a renewal form for your magazine. Renew? Are you kidding? . . . Good luck. May your lives be as bitter as your outlook on life."

Then there is another letter, a short one posted on a wall in the Rag's offices. The writing is an uneven scrawl that struggles across the page, but the message is clear and strong: "Please continue to fight oppression and tyranny towards the disabled. It's stuff like that feeds your sanity. . . . I need a lot of fuel to fight this uphill battle."

It is signed, "Monica."

Throughout its existence the Rag has heard quietly and often from the Monicas of the world, says Mary Johnson. "We get almost a standard letter all the time from people saying, 'We've been so isolated, I never knew other people felt this way.'"

Those letters, for Johnson, validate what she has done. She is the mother of the Rag, and to this day she sounds slightly bemused by how she came to do it.

Johnson is not disabled. But a number of years ago she became involved in disability issues through an activist friend who was disabled, and she came to see how hard it was to organize the disabled and get them to organize the disabled and get them to envision their problems as a civil-rights issue.

And then one day in 1980, Johnson says, "I was just sitting in my house, and I thought, 'Well, I'm going to put this thing out.' There was no planning. It was totally spur of the moment."

"This thing" was a four-page newsletter called The Disability Rag—the name, like the idea, just came to her, Johnson says. The first issue, she recalls, printed a long article that had been circulating among disability activists.

"It was sort of like a call to arms," Johnson remembers. "It was a florid piece of writing."

She sent the newsletter out to perhaps 30 or 40 people she knew in the local disabled community. Anonymously. "I was very keen on being anonymous at the time," she says. Why? "Paranoia, I guess."

She was not sure how some of the radical notions in the newsletter would be received. The Rag was, in a sense, a way of finding out. She kept putting it out, and things happened. She attached her name to it. She joined forces with Irvin, a quadriplegic and disability activist.

The Rag grew. Johnson credits Irvin with putting it on a business-like footing. They incorporated, began to sell subscriptions nationwide and discovered an audience for what they were saying.

Around the country, "there were pools of this kind of thinking," Irvin says. "There were people saying, 'Yeah, this is right.'"

In 1984, in an act of faith, Johnson quit other work to devote full time to the Rag. She and Irvin published it out of their homes, surviving on bare-bones budgets. In the mid-'80s it had a subscription list of about 2,000 and a growing national reputation.

It was quoted in The Atlantic magazine and The Village Voice. The Ladies Home Journal cited Irvin as one of 50 "American Heroines." Major newspapers like the The Washington Post and The Wall Street Journal wrote stories about the Rag.

The press helped. So did a grant, which enabled the Rag to mount a genuine marketing campaign for subscriptions. The magazine's circulation increased to its present level. Its scope broadened.

Under the auspices of its publisher, The Advocado Press, the Rag now prints a variety of disability-related educational materials, including a newsletter explaining the Americans with Disabilities Act and cards that can be slapped on the windshields of cars improperly parked in handicapped-only parking spaces. The cards are a popular item.

The Rag is an institution stable enough to have survived a change of command. Irvin has moved on to other disability activities. Johnson has moved to New York and become a part-time staffer.

But the magazine's finances remain hitched to a yo-yo. Until recently the Rag did not take advertising. Because many disabled people live on meager incomes, its subscription rates have always been low. One year costs $12—unless you take the $16 "generous-person rate" or the $8 "tight-budget rate."

The Rag tries to cajole much of the money it needs to survive from foundations. In the last 1½ years, Cole says, it has written to hundreds of potential donors, but "there is not a lot of non-profit money going anywhere right now."

And, she adds, "funders do not fund controversy."

So fiscal crisis has been a routine aspect of the Rag's existence. "One of the things that has been the hardest for us is that we have fought this thing annually," Irvin says. "For the past five years we have wondered if we could do this again."

Last year, the magazine was starting to lose money and Johnson was convinced it was going to fold. The Rag put out an appeal to its readers. More than $30,000 came in and the Rag survived.

"I guess that made all of us say, "We're here for some reason,'" Johnson says.

For the moment, the Rag is between crises. It has a $139,000 budget and no worries about making it through the fiscal year, which ends in December. It is perking along with customary feistiness. Articles in the May/June issue take a few more cuts at the Jerry Lewis telethon, berate a Home Box Office movie for its handling of disability issues, and advocate the inclusion of the disabled among the classes of people covered by federal hate-crimes legislation.

Kutz-Mellem says she would like to see the Rag keep going "until we don't have to anymore. And I don't think that's going to happen in the very near future."

But the future, of course, is always a question mark for brash little magazines with no fear and few funds. The Rag has no financial cushion, and no clear idea where it will find the money for next year's operations. If the Rag should go under someday, Irvin says, it can go proudly.

Irvin sometimes speaks to school classes. She discovered that the Rag is cited and she is quoted in school texts.

"We've made a mark," she says. "We're in the history books. You have to try to think like that."●

SCHOOL OPERATIONS COSTS OF BUREAU OF INDIAN AFFAIRS-FUNDED SCHOOLS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 509, to extend the period in which the Bureau of Indian Affairs may obligate certain amounts appropriated for school operations costs of Bureau-funded schools, just received from the House, that the joint resolution be deemed read three times, passed, and the motion to reconsider laid upon the table.

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

So, the joint resolution (H.J. Res. 509), was deemed read three times, and passed.

THE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of Calendar Nos. 486, 487, 488, 489, 491, and 492, that the committee amendment, where appropriate, be agreed to; that the joint resolutions be deemed read three times, and passed, en bloc; that the resolutions and concurrent resolution be agreed to, en bloc, and the motion to reconsider laid upon the table, en bloc; that the preambles, where appropriate, be agreed to; further that any statements relating to these calendar items appear at the appropriate place in the RECORD, and the consideration of these items appear individually in the RECORD.

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

APPOINTMENT OF HANNA HOLBORN GRAY AS A CITIZEN REGENT OF THE SMITHSONIAN INSTITUTION

The Senate proceeded to consider the joint resolution (S.J. Res. 221) providing for the appointment of Hanna Holborn Gray as a citizen regent of the Smithsonian Institution, which had been reported from the Committee on Rules and Administration with an amendment,

On page 2, line 2, strike "March 13, 1992" and insert in lieu thereof "the date of enactment".

The amendment was deemed agreed to.

The joint resolution was deemed read the third time, and passed; as follows:

S.J. RES. 221

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with section 5581 of the Revised Statutes of the United States (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, occurring by reason of the expiration of the term of William G. Bowen of New Jersey on March 12, 1992, be filled by the appointment of Hanna Holborn Gray of Illinois. The appointment is for a term of six years and shall take effect on the date of enactment.

APPOINTMENT OF WESLEY SAMUEL WILLIAMS, JR. AS A CITIZEN REGENT OF THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

The joint resolution (S.J. Res. 275) providing for the appointment of Wesley Samuel Williams, Jr., as a citizen regent of the Board of Regents of the Smithsonian Institution, was considered, deemed read the third time, and passed; as follows:

S.J. RES. 275

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with section 5581 of the Revised Statutes of the United States (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, occurring by reason of the expiration of the term of David C. Acheson on October 21, 1992, be filled by the appointment of Wesley S. Williams, Jr. of the District of Columbia. The appointment is for a term of six

years and shall take effect on October 22, 1992.

APPOINTMENT OF BARBER B. CONABLE, JR. AS A CITIZEN REGENT OF THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

The joint resolution (S.J. Res. 259) providing for the appointment of Barber S. Conable, Jr., as a citizen regent of the Board of Regents of the Smithsonian Institution, was considered, deemed read the third time, and passed; as follows:

S.J. RES. 259

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with section 5581 of the Revised Statutes of the United States (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, be filled by the appointment of Barber B. Conable, Jr., of New York. The appointment is for a term of six years and shall take effect upon the date of enactment.

PRINTING OF THOMAS JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE

The concurrent resolution (S. Con. Res. 112) to authorizing printing of "Thomas Jefferson's Manual of Parliamentary Practice", as prepared by the Office of the Secretary of the Senate, was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 112

Whereas parliamentary bodies require written rules of order for their proceedings to be conducted fairly and efficiently;

Whereas the Senate's first code of rules provided that "every question of order shall be decided by the presiding officer, without debate";

Whereas Thomas Jefferson, serving as the Senate's second president from 1797 to 1801, prepared for his own guidance a manual of legislative practice that included, under 53 topical headings, precedents from major authorities on parliamentary conduct;

Whereas "Jefferson's Manual" set the framework for the evolution of the Senate's rules and procedures, served to inspire respect for parliamentary law in the new Nation, and stands as one of Jefferson's most enduring intellectual ventures;

Whereas "Jefferson's Manual" was first printed for the use of the Senate in 1801 and was subsequently published by the Senate on a regular basis from 1828 to 1975;

Whereas the House of Representatives in 1837 provided by rule, which still exists, that the provisions of "Jefferson's Manual" should "govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House"; and

Whereas April 13, 1993, marks the 250th anniversary of the birth of Thomas Jefferson and it is fitting on this occasion to honor Jefferson and the continued development of parliamentary law: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That there shall be printed as a Senate document, the book entitled "A Manual of Parliamentary Practice for the Use of the Senate of the United States" by Thomas Jefferson (with the editorial assistance of the Senate Historical Office under the supervision of the Secretary of the Senate).

SEC. 2. Such document shall include illustrations, and shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Secretary of the Senate.

SEC. 3. In addition to the usual number of copies, there shall be printed with suitable binding 10,000 copies for the use of the Senate and House of Representatives, to be allocated as determined jointly by the Secretary of the Senate and the Clerk of the House of Representatives.

PURCHASE OF CALENDARS

The resolution (S. Res. 317) relating to the purchase of calendars, was considered, and agreed to, as follows:

S. RES. 317

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, upon vouchers approved by the chairman of that committee, not to exceed $74,880 for the purchase of one hundred and four thousand 1993 "We The People" historical calendars. The calendars shall be distributed as prescribed by the committee.

SENATE PARTICIPATION IN STATE AND LOCAL GOVERNMENT TRANSIT PROGRAMS

The resolution (S. Res. 318) authorizing the Senate to participate on State and local government transit programs pursuant to section 629 of the Treasury, Postal Service and General Government Appropriations Act, 1991, was considered, and agreed to; as follows:

S. RES. 318

Resolved, That (a) the Senate shall participate in State and local government transit programs to encourage employees of the Senate to use public transportation pursuant to section 629 of the Treasury, Postal Service and General Government Appropriations Act, 1991.

(b) The Committee on Rules and Administration is authorized to issue regulations pertaining to Senate participation in State and local government transit programs through, and at the discretion of, its Members, committees, officers, and officials.

MEASURE PLACED ON CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that S. 2877, the Interstate Transportation Municipal Waste Act of 1992, be placed on the calendar.

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

L. DOUGLAS ABRAM FEDERAL BUILDING; SILVIO O. CONTE FEDERAL BUILDING

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged, en bloc, from further consideration of H.R. 3041 designating the "L. Douglas Abram Federal Building" in St. Louis and H.R. 2818 designating the "Silvio O. Conte Federal Building" in Pittsfield, MA, and that the Senate proceed, en bloc, to their immediate consideration, that the bills be deemed read three times, passed and the motion to reconsider laid upon the table, en bloc; that the consideration of these items appear individually in the RECORD; and any statements regarding the passage of these items be placed in the RECORD at an appropriate place.

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

So, the bill (H.R. 3041) was deemed read three times and passed.

So, the bill (H.R. 2818) was deemed read three times and passed.

WIC FARMERS' MARKET NUTRITION ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3711, the WIC Farmers' Market Nutrition Act of 1992, just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table.

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

So the bill (H.R. 3711) was deemed read three times and passed.

INTERNATIONAL PEACEKEEPING ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 485, H.R. 4548, the International Peacekeeping Act of 1992; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 4548) was deemed read three times and passed.

AUDIO HOME RECORDING ACT

The text of the bill (S. 1623) to amend title 17, United States Code, to implement royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes, as passed by the Senate on June 17, 1992, is as follows:

S. 1623

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 "Audio Home Recording Act of 1992".

SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Title 17, United States Code, is amended by adding at the end the following:

"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"Sec.
"1001. Definitions.
"1002. Prohibition on certain infringement actions.
"1003. Effect on other rights and remedies with respect to private home copying or otherwise.

"SUBCHAPTER B—ROYALTY PAYMENTS

"1011. Obligation to make royalty payments.
"1012. Royalty payments.
"1013. Deposit of royalty payments and deduction of expenses.
"1014. Entitlement to royalty payments.
"1015. Procedures for distributing royalty payments.
"1016. Negotiated collection and distribution arrangements.

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"1021. Incorporation of the serial copy management system.
"1022. Implementing the serial copy management system.

"SUBCHAPTER D—REMEDIES

"1031. Civil remedies.
"1032. Binding arbitration.

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"§ 1001. Definitions.

"As used in this chapter, the following terms and their variant forms mean the following:

"(1)(A) An 'audiogram' is a material object (i) in which are fixed, by any method now known or later developed, only sounds (and not, for example, a motion picture or other audiovisual work even though it may be accompanied by sounds), and material, statements or instructions incidental to those fixed sounds, if any, and (ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

"(B) An 'audiogram' does not include a material object—

"(i) in which the fixed sounds consist entirely of spoken word recordings, or

"(ii) in which one or more computer programs are fixed, except that an audiogram may contain statements or instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.

"(C) For purposes of this section, (i) a 'spoken word recording' is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by ancillary musical or other sounds, and (ii) the term 'incidental' means related to and relatively minor by comparison.

"(2) A 'digital audio copied recording' is a reproduction in a digital recording format of an audiogram, whether that reproduction is made directly from another audiogram or indirectly from a transmission.

"(3) A 'digital audio interface device' is any machine or device, now known or later developed, whether or not included with or as part of some other machine or device, that is specifically designed to communicate a 'digital audio interface signal' to a digital audio recording device, and that supplies a digital audio signal through a 'nonprofessional interface', as those terms are used in the Digital Audio Interface Standard in part I of the technical reference document or as otherwise defined by the Secretary of Commerce under section 1022(b).

"(4) A 'digital audio recording device' is any machine or device, now known or later developed, of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

"(A) professional model products and

"(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

"(5)(A) A 'digital audio recording medium' is any material object, now known or later developed, in which sounds may be fixed where the media product is (i) in a form commonly distributed for ultimate sale to individuals for use by individuals (such as magnetic digital audio tape cassettes, optical discs, and magneto-optical discs), and (ii) primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

"(B) Such term does not include—

"(i) any material object that embodies a sound recording at the time it is first distributed by the importer or manufacturer, unless the sound recording has been so embodied in order to evade the obligations of section 1011 of this title; or

"(ii) any media product that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical literary works, including, without limitation, computer programs or data bases.

"(6) 'Distribute' means to sell, resell, lease, or assign a product to consumers in the United States, or to sell, resell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

"(7) An 'interested copyright party' is—

"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public;

"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in an audiogram a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public; or

"(C) any association or other organization—

"(i) representing persons specified in subparagraph (A) or (B), or

"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

"(8) An 'interested manufacturing party' is any person that imports or manufactures any digital audio recording device or digital audio recording medium in the United States, or any association of such persons.

"(9) 'Manufacture' includes the production or assembly of a product in the United States.

"(10) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

"(11)(A) A 'professional model product' is an audio recording device—

"(i) that is capable of sending a digital audio interface signal in which the channel status block flag is set as a 'professional' interface, in accordance with the standards and specifications set forth in the technical reference document or established under an order issued by the Secretary of Commerce under section 1022(b);

"(ii) that is clearly, prominently, and permanently marked with the letter 'P' or the word 'professional' on the outside of its packaging, and in all advertising, promotional, and descriptive literature, with respect to the device, that is available or provided to persons other than the manufacturer or importer, its employees, or its agents; and

"(iii) that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business.

"(B) In determining whether an audio recording device meets the requirements of subparagraph (A)(iii), factors to be considered shall include—

"(i) whether it has features used by recording professionals in the course of a lawful business, including features such as—

"(I) a data collection and reporting system of error codes during recording and playback;

"(II) a record and reproduce format providing 'read after write' and 'read after read';

"(III) a time code reader and generator conforming to the standards set by the Society of Motion Picture and Television Engineers for such readers and generators; and

"(IV) a professional input/output interface, both digital and analog, conforming to standards set by audio engineering organizations for connectors, signaling formats, levels, and impedances;

"(ii) the nature of the promotional materials used to market the audio recording device;

"(iii) the media used for the dissemination of the promotional materials, including the intended audience;

"(iv) the distribution channels and retail outlets through which the device is disseminated;

"(v) the manufacturer's or importer's price for the device as compared to the manufacturer's or importer's price for digital audio recording devices implementing the Serial Copy Management System;

"(vi) the relative quantity of the device manufactured or imported as compared to the size of the manufacturer's or importer's market for professional model products;

"(vii) the occupations of the purchasers of the device; and

"(viii) the uses to which the device is put.

"(12) The 'Register' is the Register of Copyrights.

"(13) The 'Serial Copy Management System' means the system for regulating serial copying by digital audio recording devices that is set forth in the technical reference document or in an order of the Secretary of Commerce under section 1022(b), or that conforms to the requirements of section 1021(a)(1)(C).

"(14) The 'technical reference document' is the document entitled 'Technical Reference Document for Audio Home Recording Act of 1992' in section 5 of this Act.

"(15)(A) The 'transfer price' of a digital audio recording device or a digital audio recording medium is—

"(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale).

"(B) Where the transferor and transferee are related entities or within a single entity, the transfer price shall not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section 482.

"(16) A 'transmission' is any audio or audiovisual transmission, now known or later developed, whether by a broadcast station, cable system, multipoint distribution service, subscription service, direct broadcast satellite, or other form of analog or digital communication.

"(17) The 'Tribunal' is the Copyright Royalty Tribunal.

"(18) A 'writer' is the composer or lyricist of a particular musical work.

"(19) The terms 'analog format', 'copyright status', 'category code', 'generation status', and 'source material' mean those terms as they are used in the technical reference document.

§ 1002. Prohibition on certain infringement actions

"(a) CERTAIN ACTIONS PROHIBITED.—No action may be brought under this title, or under section 337 of the Tariff Act of 1930, alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device or a digital audio recording medium, or an analog audio recording device or analog audio recording medium, or the use of such a device or medium for making audiograms. However, this subsection does not apply with respect to any claim against a person for infringement by virtue of the making of one or more audiograms, or other material objects in which works are fixed, for direct or indirect commercial advantage. For purposes of this section, the copying of an audiogram by a consumer for private, noncommercial use is not for direct or indirect commercial advantage, and is therefore not actionable.

"(b) EFFECT OF THIS SECTION.—Nothing in this section shall be construed to create or expand a cause of action for copyright infringement except to the extent such a cause of action otherwise exists under other chapters of this title or under section 337 of the Tariff Act of 1930, or to limit any defenses that may be available to such causes of action.

"§ 1003. Effect on other rights and remedies with respect to private home copying or otherwise

"Except as expressly provided in this chapter with respect to audio recording devices and media, neither the enactment of this chapter nor anything contained in this chapter shall be construed to expand, limit, or otherwise affect the rights of any person with respect to private home copying of copyrighted works, or to expand, limit, create, or otherwise affect any other right or remedy that may be held by or available to any person under chapters 1 through 9 of this title.

"SUBCHAPTER B—ROYALTY PAYMENTS

"§ 1011. Obligation to make royalty payments

"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium unless such person—

"(1) records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified by this section and section 1012 of this title, or

"(2) complies with the applicable notice, statement of account, and payment obligations under a negotiated arrangement authorized pursuant to section 1016 of this title.

"(b) FILING OF NOTICE.—

"(1) GENERALLY.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file a notice with the Register, no later than forty-five days after the commencement of the first distribution in the United States of such device or medium, in such form as the Register shall prescribe by regulation: *Provided, however,* That no notice shall be required with respect to any distribution occurring prior to the effective date of this chapter.

"(2) CONTENTS.—Such notice shall—

"(A) set forth the manufacturer's or importer's identity and address,

"(B) identify such product category and technology, and

"(C) identify any trade or business names, trademarks, or like indicia of origin that the importer or manufacturer uses or intends to use in connection with the importation, manufacture, or distribution of such device or medium in the United States.

"(c) FILING OF QUARTERLY STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given quarter any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register, in such form as the Register shall prescribe by regulation, a quarterly statement of account specifying, by product category, technology, and model, the number and transfer price of all digital audio recording devices and digital audio recording media that it distributed during such quarter.

"(2) PERIOD COVERED.—The quarterly statements of account may be filed on either a calendar or fiscal year basis, at the election of the manufacturer or importer.

"(3) STATEMENTS OF ACCOUNT FOR THE FIRST THREE QUARTERS.—For the first three quarters of any calendar or fiscal year, such statement shall—

"(A) be filed no later than forty-five days after the close of the period covered by the statement: *Provided, however,* That any quarterly statement that would be due within three months and forty-five days of the effective date of this chapter shall not be filed until the next quarterly statement is due, at which time a statement shall be filed covering the entire period since the effective date of this chapter;

"(B) be certified as accurate by an authorized officer or principal of the importer or manufacturer;

"(C) be accompanied by the total royalty payment due for such period pursuant to section 1012 of this title.

"(4) STATEMENT OF ACCOUNT FOR THE FOURTH QUARTER.—The quarterly statement for the final quarter of any calendar or fiscal year shall be incorporated into the annual statement required under subsection (d) of this section, which shall be accompanied by the royalty payment due for such quarter.

"(d) FILING OF ANNUAL STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given calendar or fiscal year (as applicable) any digital audio recording device or digital audio recording medium that it manufactured or imported shall also file with the Register a cumulative annual statement of account, in such form as the Register shall prescribe by regulation.

"(2) TIMING AND CERTIFICATION.—Such statement shall be filed no later than sixty days after the close of such calendar or fiscal year, and shall be certified as accurate by an authorized officer or principal of the importer or manufacturer.

"(3) INDEPENDENT AUDIT.—The annual statement of account shall be audited in accordance with United States generally accepted auditing standards by an independent certified public accountant selected by the manufacturer or importer. The independent certified public accountant shall report whether the information contained therein is fairly presented, in all material respects, in accordance with the requirements of this chapter.

"(4) RECONCILIATION OF ROYALTY PAYMENT.—The cumulative annual statement of account shall be accompanied by any royalty payment due under section 1012 of this title that was not previously paid under subsection (c) of this section.

"(e) VERIFICATION.—

"(1) GENERALLY.—

"(A) The Register shall, after consulting with interested copyright parties, interested manufacturing parties, and appropriate representatives of the accounting profession, prescribe regulations specifying procedures for the verification of statements of account filed pursuant to this section.

"(B) Such regulations shall permit interested copyright parties to select independent certified public accountants to conduct audits in order to verify the accuracy of the information contained in the statements of account filed by manufacturers and importers.

"(C) Such regulations shall also—

"(i) specify the scope of such independent audits; and

"(ii) establish a procedure by which interested copyright parties will coordinate the engagement of such independent certified public accountants, in order to ensure that no manufacturer or importer is audited more than once per year.

"(D) All such independent audits shall be conducted at reasonable times, with reasonable advance notice, and shall be no broader in scope than is reasonably necessary to carry out the purposes of this subsection in accordance with United States generally accepted auditing standards.

"(2) VERIFICATION REPORT.—The accountant's report on the results of each such independent audit shall, in accordance with United States generally accepted auditing standards and the requirements of this chapter, set forth the procedures performed and the accountant's findings. The accountant's report shall be filed with the Register.

"(3) ACCESS TO DOCUMENTS IN EVENT OF DISPUTE.—In the event of a dispute concerning

the amount of the royalty payment due from a manufacturer or importer resulting from a verification audit conducted under this section—

"(A) any interested manufacturing party audited pursuant to this subsection, and its authorized representatives, shall be entitled to have access to all documents upon which the audit results under this subsection were based; and

"(B) any representative of an interested copyright party that has been approved by the Register under subsection (h)(2) of this section shall be entitled to have access to all documents upon which the audit results under subsection (d) of this section were based, subject to the limitations of subsection (h)(2) of this section.

"(f) COSTS OF VERIFICATION.—

"(1) The costs of all verification audits that are conducted pursuant to subsection (e) of this section shall be borne by interested copyright parties, except that, in the case of a verification audit of a manufacturer or importer that leads ultimately to recovery of an annual royalty underpayment of 5 percent or more of the annual payment made, the importer or manufacturer shall provide reimbursement for the reasonable costs of such audit.

"(2) Except as may otherwise be agreed by interested copyright parties, the costs of a verification audit conducted pursuant to subsection (e) of this section shall be borne by the party engaging the certified public accountant. Any recovery of royalty underpayments as a result of the audit shall be used first to provide reimbursement for the reasonable costs of such audit to the extent such costs have not otherwise been reimbursed by the manufacturer or importer pursuant to this subsection. Any remaining recovery shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided by a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to this section.

"(g) INDEPENDENCE OF ACCOUNTANTS.—Each certified public accountant used by interested copyright parties or interested manufacturing parties pursuant to this section shall be duly licensed to practice as a certified public accountant and shall not be financially dependent upon interested copyright parties or interested manufacturing parties, respectively. The Register may, upon petition by any interested copyright party or interested manufacturing party, prevent the use of a particular certified public accountant on the ground that such accountant does not meet the requirements of this subsection.

"(h) CONFIDENTIALITY.—

"(1) GENERALLY.—The quarterly and annual statements of account filed pursuant to subsections (c) and (d) of this section, and information disclosed or generated during verification audits conducted pursuant to subsection (e) of this section, shall be presumed to contain confidential trade secret information within the meaning of section 1905 of title 18 of the United States Code. Except as provided in paragraphs (2), (3), and (4) of this subsection, neither the Register nor any member, officer, or employee of the Copyright Office or the Tribunal, may—

"(A) publicly disclose audit information furnished under this section or information contained in quarterly or annual statements of account, except that aggregate information that does not disclose, directly or indirectly, company-specific information may be made available to the public;

"(B) use such information for any purpose other than to carry out responsibilities under this chapter; or

"(C) permit anyone (other than members, officers, and employees of the Copyright Office and the Tribunal who require such information in the performance of duties under this chapter) to examine such information.

"(2) PROCEDURES FOR ACCESS TO BE PRESCRIBED BY REGISTER.—(A) The Register, after consulting with interested manufacturing parties and interested copyright parties, shall prescribe procedures for disclosing, in confidence, to representatives of interested copyright parties and representatives of interested manufacturing parties information contained in quarterly and annual statements of account and information generated as a result of verification audits.

"(B) Such procedures shall provide that only those representatives of interested copyright parties and interested manufacturing parties who have been approved by the Register shall have access to such information, and that all such representatives shall be required to sign a certification limiting the use of the information to—

"(i) verification functions under this section, and

"(ii) any enforcement actions that may result from such verification procedures.

"(3) ACCESS BY AUDITED MANUFACTURER.—Any interested manufacturing party that is audited pursuant to subsection (e) of this section, and its authorized representatives, shall be entitled to have access to all documents filed with the Register as a result of such audit.

"(4) ACCESS BY CONGRESS.—Nothing in this section shall authorize the withholding of information from the Congress.

"§ 1012. Royalty payments

"(a) DIGITAL AUDIO RECORDING DEVICES.—

"(1) The royalty payment due under section 1011 of this title for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

"(2) With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding four quarters, the royalty payment shall be based on the average transfer price of such devices during those four quarters.

"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding four quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

"(3) Notwithstanding paragraph (1) or (2) of this subsection, the amount of the royalty payment for each digital audio recording device or physically integrated unit containing a digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that for a physically integrated unit containing more than one digital audio recording device, the royalty maximum for such unit shall be $12. During the sixth year after the effective date of this chapter, and no more than once each year thereafter, any interested copyright party may petition the Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum: *Provided, however*, That the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1011 of this title for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

"(c) RETURNED OR EXPORTED MERCHANDISE.—

"(1) In calculating the amount of royalty payments due under subsections (a) and (b) of this section, manufacturers and importers may deduct the amount of any royalty payments already made on digital audio recording devices or media that are—

"(A) returned to the manufacturer or importer as unsold or defective merchandise; or

"(B) exported by the manufacturer or importer or a related person

within two years following the date royalties are paid on such devices or media.

"(2) Any such credit shall be taken during the period when such devices or media are returned or exported, and the basis for any such credit shall be set forth in the statement of account for such period filed under section 1011(c) of this title.

"(3) Any such credit that is not fully used during such period may be carried forward to subsequent periods. If any returned or exported merchandise for which a credit has been taken is subsequently distributed, a royalty payment shall be made as specified under subsection (a) or (b) of this section, based on the transfer price applicable to such distribution.

"§ 1013. Deposit of royalty payments and deduction of expenses

"The Register shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1014, 1015, or 1016 of this title. The Register may, in the Register's discretion, four years after the close of any calendar year, close out the royalty

payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the next succeeding calendar year. The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties available for distribution.

"§ 1014. Entitlement to royalty payments

"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1013 of this title shall, in accordance with the procedures specified in section 1015 or 1016 of this title, be distributed to any interested copyright party—

"(1) whose musical work or sound recording has been—

"(A) embodied in audiograms lawfully made under this title that have been distributed to the public, and

"(B) distributed to the public in the form of audiograms or disseminated to the public in transmissions, during the period to which such payments pertain; and

"(2) who has filed a claim under section 1015 or 1016 of this title.

"(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into two funds as follows:

"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2⅔ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties under section 1001(7)(A) of this title and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings distributed in the United States. 1⅓ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties under section 1001(7)(A) of this title and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings distributed in the United States. The remaining royalty payments in the Sound Recordings Fund shall be distributed to claimants under subsection (a) of this section who are interested copyright parties under section 1001(7)(A) of this title. Such claimants shall allocate such royalty payments, on a per sound recording basis, in the following manner: 40 percent to the recording artist or artists featured on such sound recordings (or the persons conveying rights in the artists' performances in the sound recordings), and 60 percent to the interested copyright parties.

"(2) THE MUSICAL WORKS FUND.—

"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties whose entitlement is based on legal or beneficial ownership or control of a copyright in a musical work.

"(B) The royalty payments allocated to the Musical Works Fund shall be further allocated as follows: music publisher claimants shall be entitled to 50 percent of such payments and writer claimants shall be entitled to the other 50 percent of such payments.

"(C) Except to the extent inconsistent with the international obligations of the United States, the allocation specified in subparagraph (B) shall govern despite any contractual obligation to the contrary.

"(c) DISTRIBUTION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) of this section do not agree on a voluntary proposal for the distribution of the royalty payments within such group, the Tribunal shall, pursuant to the procedures specified in section 1015(c) of this title, allocate such royalty payments based on the extent to which, during the relevant period—

"(1) for the Sound Recordings Fund, each sound recording was distributed to the public in the form of audiograms; and

"(2) for the Musical Works Fund, each musical work was distributed to the public in the form of audiograms or disseminated to the public in transmissions.

"§ 1015. Procedures for distributing royalty payments

"(a) FILING OF CLAIMS AND NEGOTIATIONS.—

"(1) During the first two months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party that is entitled to royalty payments under section 1014 of this title shall file with the Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

"(2) All interested copyright parties within each group specified in section 1014(b) of this title shall negotiate in good faith among themselves in an effort to agree to a voluntary proposal for the distribution of royalty payments. Notwithstanding any provision of the antitrust laws, for purposes of this section such interested copyright parties may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf; except that no agreement under this subsection may vary the allocation of royalties specified in section 1014(b) of this title.

"(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within thirty days after the period established for the filing of claims under subsection (a) of this section, in each year after the year in which this section takes effect, the Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1014(c) of this title. If the Tribunal determines that no such controversy exists, it shall, within thirty days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a) of this section, after deducting its reasonable administrative costs under this section.

"(c) RESOLUTION OF DISPUTES.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extend feasible, authorize the distribution of any amounts that are not in controversy.

"§ 1016. Negotiated collection and distribution arrangements

"(a) SCOPE OF PERMISSIBLE NEGOTIATED ARRANGEMENTS.—

"(1) Interested copyright parties and interested manufacturing parties may at any time negotiate among or between themselves a single alternative system for the collection, distribution, or verification of royalty payments provided for in this chapter.

"(2) Such a negotiated arrangement may vary the collection, distribution, and verification procedures and requirements that would otherwise apply under sections 1011 through 1015 of this title, including the time periods for payment and distribution of royalties, but shall not alter the requirements of section 1011 (a), (b), or (h)(4), section 1012 (a) or (b), or section 1014 (a) or (b) of this title.

"(3) Such a negotiated arrangement may also provide that specified types of disputes that cannot be resolved among the parties to the arrangement shall be resolved by binding arbitration or other agreed upon means of dispute resolution.

"(4) Notwithstanding any provision of the antitrust laws, for purposes of this section interested manufacturing parties and interested copyright parties may negotiate in good faith and voluntarily agree among themselves as to the collection, distribution, and verification of royalty payments, and may designate common agents to negotiate and carry out such activities on their behalf.

"(b) IMPLEMENTATION OF A NEGOTIATED ARRANGEMENT.—

"(1) No negotiated arrangement shall go into effect under this section until the Tribunal has approved the arrangement, after full opportunity for comment, as meeting the following requirements.

"(A) The participants in the negotiated arrangement shall include—

"(i) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Sound Recording Fund,

"(ii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as music publishers, and

"(iii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as writers.

"(B) For purposes of subparagraph (A) of this paragraph, the determination as to two-thirds participation shall be based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied. One or more organizations representing any of the types of individual interested copyright parties specified in the first sentence of this subsection shall be presumed to represent two-thirds of that type of interested copyright party if the membership of, or other participation in, such organization or organizations includes two-thirds of that type of interested copyright party based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied.

"(C) The implementation of the arrangement shall include all necessary safeguards, as determined by the Tribunal, which ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable. Such safeguards may include accounting procedures, reports and any other information determined to be necessary to ensure the proper collection and distribution of royalty payments.

"(2) Notwithstanding the existence of a negotiated arrangement that has gone into ef-

fect under this section, any interested manufacturing party that is not a party to such negotiated arrangement shall remain subject to the requirements of sections 1011 and 1012 and may fully satisfy its obligations under this subchapter by complying with the procedures set forth therein.

"(c) MAINTENANCE OF JURISDICTION BY TRIBUNAL.—Where a negotiated arrangement has gone into effect under this section, the Tribunal shall maintain jurisdiction and shall (1) hear and address any objections to the arrangement that may arise while it is in effect, (2) ensure the availability of alternative procedures for any interested manufacturing party or interested copyright party that is not a participant in the negotiated arrangement, (3) ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable, (4) ensure that it has adequate funds at its disposal, received either through the Copyright Office or through the entity administering the negotiated arrangement, to distribute to interested copyright parties not participating in the arrangement the royalty payments to which they are entitled under section 1014(c) or 1015(b), including applicable interest, and (5) ensure that the requirements of section 1016(b)(1)(C) are met.

"(d) JUDICIAL ENFORCEMENT.—The Tribunal may seek injunctive relief in an appropriate United States district court to secure compliance with the requirements of subsection (c).

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"§ 1021. Incorporation of the serial copy management system

"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—

"(1) No person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to the standards and specifications to implement the Serial Copy Management System that are—

"(A) set forth in the technical reference document;

"(B) set forth in an order by the Secretary of Commerce under section 1022(b) (1), (2), or (3) of this title; or

"(C) in the case of a digital audio recording device other than a device defined in part II of the technical reference document or in an order issued by the Secretary pursuant to section 1022(b) of this title, established by the manufacturer (or, in the case of a proprietary technology, the proprietor of such technology) so as to achieve the same functional characteristics with respect to regulation of serial copying as, and to be compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document or in any order of the Secretary issued under section 1022 of this title.

"(2) If the Secretary of Commerce approves standards and specifications under section 1022(b)(4) of this title, then no person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to such standards and specifications.

"(b) PROHIBITION ON CIRCUMVENTION OF THE SERIAL COPY MANAGEMENT SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, the Serial Copy Management System in a digital audio recording device or a digital audio interface device.

"(c) ENCODING OF INFORMATION ON AUDIOGRAMS.—

"(1) No person shall encode an audiogram of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material so as improperly to affect the operation of the Serial Copy Management System.

"(2) Nothing in this subchapter requires any person engaged in the importation, manufacture, or assembly of audiograms to encode any such audiogram with respect to its copyright status.

"(d) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this subchapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. However, any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

"§ 1022. Implementing the serial copy management system

"(a) PUBLICATION OF TECHNICAL REFERENCE DOCUMENT AND CERTIFICATION.—Within ten days after the date of enactment of this chapter, the Secretary of Commerce shall cause to be published in the Federal Register the technical reference document along with the certification from the National Institute of Standards and Technology, as such certification appears in the report of the Committee on the Judiciary to the Senate on the Audio Home Recording Act of 1991, that the technical reference document sets forth standards and specifications that adequately incorporate the intended functional characteristics to regulate serial copying and are not incompatible with existing international digital audio interface standards and existing digital audio technology.

"(b) ORDERS OF SECRETARY OF COMMERCE.—The Secretary of Commerce, upon petition by an interested manufacturing party or an interested copyright party, and after consultation with the Register, may, if the Secretary determines that to do so is in accordance with the purposes of this chapter, issue an order to implement the Serial Copy Management System set forth in the technical reference document as follows:

"(1) FUNCTIONALLY EQUIVALENT ALTERNATIVES.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that such devices possess the same functional characteristics with respect to regulation of serial copying as, and are compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document.

"(2) REVISED GENERAL STANDARDS.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that—

"(A) the standards and specifications relating generally to digital audio recording devices and digital audio interface devices have been or are being revised or otherwise amended or modified such that the standards and specifications set forth in the technical reference document are not or would no longer be applicable or appropriate; and

"(B) such devices conform to such new standards and specifications and possess the same functional characteristics with respect to regulation of serial copying as the Serial Copy Management System set forth in the technical reference document.

"(3) STANDARDS FOR NEW DEVICES.—The Secretary may issue an order for the purpose of—

"(A) establishing whether the standards and specifications established by a manufacturer or proprietor for digital audio recording devices other than devices defined in part II of the technical reference document or a prior order of the Secretary under paragraph (1) or (2) of this subsection comply with the requirements of subparagraph (C) of section 1021(a)(1) of this title; or

"(B) establishing alternative standards or specifications in order to ensure compliance with such requirements.

"(4) MATERIAL INPUT TO DIGITAL DEVICE THROUGH ANALOG CONVERTER.—

"(A) GENERALLY.—Except as provided in subparagraphs (B) through (D), the Secretary, after publication of notice in the Federal Register and reasonable opportunity for public comment, may issue an order for the purpose of approving standards and specifications for a technical method implementing in a digital audio recording device the same functional characteristics as the Serial Copy Management System so as to regulate the serial copying of source material input through an analog converter in a manner equivalent to source material input in the digital format.

"(B) COST LIMITATION.—The order may not impose a total cost burden on manufacturers of digital audio recording devices, for implementing the Serial Copy Management System and the technical method prescribed in such order, in excess of 125 percent of the cost of implementing the Serial Copy Management System before the issuance of such order.

"(C) CONSIDERATION OF OTHER OBJECTIONS.—The Secretary shall consider other reasoned objections from any interested manufacturing party or interested copyright party.

"(D) LIMITATIONS TO DIGITAL AUDIO DEVICES.—The order shall not affect the recording of any source material on analog recording equipment and the order shall not impose any restrictions or requirements that must be implemented in any device other than a digital audio recording device or digital audio interface device.

"SUBCHAPTER D—REMEDIES

"§ 1031. Civil remedies

"(a) CIVIL ACTIONS.—Any interested copyright party or interested manufacturing party that is or would be injured by a violation of section 1011 or 1021 of this title, or the Attorney General of the United States, may bring a civil action in an appropriate United States district court against any person for such violation.

"(b) POWERS OF THE COURT.—In an action brought under subsection (a) of this section, the court—

"(1) except as provided in subsection (h) of this section, may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

"(2) in the case of a violation of section 1011 (a) through (d) or 1021 of this title, shall

award damages under subsection (d) of this section;

"(3) in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof;

"(4) in its discretion may award a reasonable attorney's fee to the prevailing party as part of the costs awarded under paragraph (3) if the court finds that the nonprevailing party has not proceeded in good faith; and

"(5) may grant such other equitable relief as it deems reasonable.

"(c) RECOVERY OF OVERDUE ROYALTY PAYMENTS.—In any case in which the court finds that a violation of section 1011 of this title involving nonpayment or underpayment of royalty payments has occurred, the violator shall be directed to pay, in addition to damages awarded under subsection (d) of this section, any such royalties due, plus interest calculated as provided under section 1961 of title 28, United States Code.

"(d) AWARD OF DAMAGES.—

"(1) SECTION 1011.—

"(A) DEVICE.—In the case of a violation of section 1011 (a) through (d) of this title involving a digital audio recording device, the court shall award statutory damages in an amount between a nominal level and $100 per device, as the court considers just.

"(B) MEDIUM.—In the case of a violation of section 1011 (a) through (d) of this title involving a digital audio recording medium, the court shall award statutory damages in an amount between a nominal level and $4 per medium, as the court considers just.

"(2) SECTION 1021.—In any case in which the court finds that a violation of section 1021 of this title has occurred, the court shall award damages calculated, at the election of the complaining party at any time before final judgment is rendered, pursuant to subparagraph (A) or (B) of this paragraph, but in no event shall the judgment (excluding any award of actual damages to an interested manufacturing party) exceed a total of $1,000,000—

"(A) ACTUAL DAMAGES.—A complaining party may recover its actual damages suffered as a result of the violation and any profits of the violator that are attributable to the violation that are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party is required to prove only the violator's gross revenue, and the violator is required to prove its deductible expenses and the elements of profit attributable to factors other than the violation.

"(B) STATUTORY DAMAGES.—

"(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1021 (a) or (b) of this title in the sum of not less than $1,000 nor more than $10,000 per device involved in such violation or per device on which a service prohibited by section 1021(b) of this title has been performed, as the court considers just.

"(ii) AUDIOGRAM.—A complaining party may recover an award of statutory damages for each violation of section 1021(c) of this title in the sum of not less than $10 nor more than $100 per audiogram involved in such violation, as the court considers just.

"(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1021(d) of this title in the sum of not less than $10,000 nor more than $100,000, as the court considers just.

"(3) WILLFUL VIOLATIONS.—

"(A) In any case in which the court finds that a violation of section 1011 (a) through (d) of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court shall increase statutory damages—

"(i) for a violation involving a digital audio recording device, to a sum of not less than $100 nor more than $500 per device; and

"(ii) for a violation involving a digital audio recording medium, to a sum of not less than $4 nor more than $15 per medium, as the court considers just.

"(B) In any case in which the court finds that a violation of section 1021 of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court in its discretion may increase the award of damages by an additional amount of not more than $5,000,000, as the court considers just.

"(4) INNOCENT VIOLATIONS OF SECTION 1021.—The court in its discretion may reduce the total award of damages against a person violating section 1021 of this title to a sum of not less than $250 in any case in which the court finds that—

"(A) the violator was not aware and had no reason to believe that its acts constituted a violation of section 1021 of this title, or

"(B) in the case of a violation of section 1021(a) of this title involving a digital audio recording device, the violator believed in good faith that the device complied with section 1021(a)(1)(C) of this title, except that this subparagraph shall not apply to any damages awarded under subsection (d)(2)(A) of this section.

"(e) MULTIPLE ACTIONS.—

"(1) GENERALLY.—No more than one action shall be brought against any party and no more than one award of statutory damages under subsection (d) of this section shall be permitted—

"(A) for any violations of section 1011 of this title involving the same digital audio recording device or digital audio recording medium; or

"(B) for any violations of section 1021 of this title involving digital audio recording devices or digital audio interface devices of the same model, except that this subparagraph shall not bar an action or an award of damages with respect to digital audio recording devices or digital audio interface devices that are imported, manufactured, or distributed subsequent to a final judgment in a prior action.

"(2) NOTICE AND INTERVENTION.—Any complaining party who brings an action under this section shall serve a copy of the complaint upon the Register within ten days after the complaining party's service of a summons upon a defendant. The Register shall cause a notice of such action to be published in the Federal Register within ten days after receipt of such complaint. The court shall permit any other interested copyright party or interested manufacturing party entitled to bring the action under section 1031(a) of this title who moves to intervene within thirty days after the publication of such notice to intervene in the action.

"(3) AWARD.—

"(A) GENERALLY.—Except as provided in subparagraph (B), the court may award recovery of actual damages for a violation of section 1021 of this title pursuant to subsection (d)(2)(A) of this section to each complaining party in an action who elects to recover actual damages.

"(B) LIMITATIONS.—

"(i) If more than one complaining party elects to recover actual damages pursuant to subsection (d)(2)(A) of this section, only a single award of the violator's profits shall be made, which shall be allocated as the court considers just.

"(ii) If any complaining interested copyright party or parties elect to recover statutory damages pursuant to subsection (d)(2) of this section in an action in which one or more other complaining interested copyright parties have elected to recover actual damages, the single award of statutory damages permitted pursuant to paragraph (1) of this subsection shall be reduced by the total amount of actual damages awarded to interested copyright parties pursuant to subsection (d)(2)(A) of this section.

"(f) PAYMENT OF OVERDUE ROYALTIES AND DAMAGES.—The court may allocate any award of damages under subsection (d) of this section between or among complaining parties as it considers just. Any award of damages that is allocated to an interested copyright party and any award of overdue royalties and interest under subsection (c) of this section shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided pursuant to a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1011 of this title.

"(g) IMPOUNDING OF ARTICLES.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1021 of this title.

"(h) LIMITATIONS REGARDING PROFESSIONAL MODELS AND OTHER EXEMPT DEVICES.—Unless a court finds that the determination by a manufacturer or importer that a device fits within the exemption of subparagraph (A) or (B) of section 1001(4) of this title was without a reasonable basis or not in good faith, the court shall not grant a temporary or preliminary injunction against the distribution of such device by the manufacturer or importer.

"(i) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—As part of a final judgment or decree finding a violation of section 1021 of this title, the court shall order the remedial modification, if possible, or the destruction of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that—

"(1) does not comply with, or was involved in a violation of, section 1021 of this title, and

"(2) is in the custody or control of the violator or has been impounded under subsection (g) of this section.

"(j) DEFINITIONS.—For purpose of this section—

"(1) the term 'complaining party' means an interested copyright party, interested manufacturing party, or the Attorney General of the United States when one of these parties has initiated or intervened as a plaintiff in an action brought under this section; and

"(2) the term 'device' does not include an audiogram.

"§ 1032. Binding arbitration

"(a) DISPUTES TO BE ARBITRATED.—Any dispute between an interested manufacturing party and an interested copyright party shall be resolved through binding arbitration, in accordance with the provisions of this section, if—

"(1) the parties mutually agree; or

"(2) before the date of first distribution in the United States of the product which is the subject of the dispute, an interested manufacturing party or an interested copyright party requests arbitration concerning whether such product is or is not a digital audio recording device, a digital audio recording medium, or a digital audio interface device, or concerning the basis on which royalty payments are to be made with respect to such product.

"(b) ARBITRAL PROCEDURES.—

"(1) REGULATIONS FOR COORDINATION OF ARBITRATION.—The Register shall, after consulting with interested copyright parties, prescribe regulations establishing a procedure by which interested copyright parties will coordinate decisions and representation concerning the arbitration of disputes. No interested copyright party shall have the authority to request, agree to, or (except as an intervenor pursuant to subsection (c) of this section) enter into, binding arbitration unless that party shall have been authorized to do so pursuant to the regulations prescribed by the Register.

"(2) PANEL.—Except as otherwise agreed by the parties to a dispute that is to be submitted to binding arbitration under subsection (a) of this section, the dispute shall be heard by a panel of three arbitrators, with one arbitrator selected by each of the two sides to the dispute and the third arbitrator selected by mutual agreement of the first two arbitrators chosen.

"(3) DECISION.—The arbitral panel shall render its final decision concerning the dispute, in a written opinion explaining its reasoning, within one hundred and twenty days after the date on which the selection of aribrators has been concluded. The Register shall cause to be published in the Federal Register the written opinion of the arbitral panel within ten days after receipt thereof.

"(4) TITLE 9 PROVISIONS TO GOVERN.—Except to the extent inconsistent with this section, any arbitration proceedings under this section shall be conducted in the same manner, subject to the same limitations, carried out with the same powers (including the power to summon witnesses), and enforced in the courts of the United States as an arbitration proceeding under title 9, United States Code.

"(5) PRECEDENTS.—In rendering a final decision, the arbitral panel shall take into account any final decisions rendered in prior proceedings under this section that address identical or similar issues; and failure of the arbitral panel to take account of such prior decisions may be considered imperfect execution of arbitral powers under section 10(a)(4) of title 9, United States Code.

"(c) NOTICE AND RIGHT TO INTERVENE.—Any interested copyright party or interested manufacturing party that requests an arbitral proceeding under this section shall provide the Register with notice concerning the parties to the dispute and the nature of the dispute within ten days after formally requesting arbitration under subsection (a) of this section. The Register shall cause a summary of such notice to be published in the Federal Register within thirty days after receipt of such notice. The arbitral panel shall permit any other interested copyright party or interested manufacturing party who moves to intervene within twenty days after such publication to intervene in the action.

"(d) AUTHORITY OF ARBITRAL PANEL TO ORDER RELIEF.—

"(1) TO PROTECT PROPRIETARY INFORMATION.—The arbitral panel shall issue such orders as are appropriate to protect the proprietary technology and information of parties to the proceeding, including provision for injunctive relief in the event of a violation of such order.

"(2) TO TERMINATE PROCEEDING.—The arbitral panel shall terminate any proceeding that it has good cause to believe has been commenced in bad faith by a competitor in order to gain access to proprietary information. The panel shall also terminate any proceeding that it believes has been commenced before the technology or product at issue has been sufficiently developed or defined to permit an informed decision concerning the applicability of this chapter to such technology or product.

"(3) TO ORDER RELIEF.—In any case in which the arbitral panel finds with respect to devices or media that were the subject of the dispute, that royalty payments have been or will be due under section 1011 of this title through the date of the arbitral decision, the panel shall order the deposit of such royalty payments pursuant to section 1013 of this title, plus interest calculated as provided under section 1961 of title 28, United States Code. The arbitral panel shall not award monetary or injunctive relief, as provided in section 1031 of this title or otherwise, except as is expressly provided in this subsection.

"(e) EFFECT OF ARBITRATION PROCEEDING ON CIVIL ACTIONS AND REMEDIES.—Notwithstanding any provision of section 1031 of this title, no civil action may be brought or relief granted under section 1031 of this title against any party to an ongoing or completed arbitration proceeding under this section, with respect to devices or media that are the subject of such an arbitration proceeding. However, this subsection does not bar—

"(1) an action for injunctive relief at any time based on a violation of section 1021 of this title; or

"(2) an action or any relief with respect to those devices or media distributed by their importer or manufacturer following the conclusion of such arbitration proceeding, or, if so stipulated by the parties, prior to the commencement of such proceedings.

"(f) ARBITRAL COSTS.—Except as otherwise agreed by the parties to a dispute, the costs of an arbitral proceeding under this section shall be divided among the parties in such fashion as is considered just by the arbitral panel at the conclusion of the proceeding. Each party to the dispute shall bear its own attorney fees unless the arbitral panel determines that a nonprevailing party has not proceeded in good faith and that, as a matter of discretion, it is appropriate to award reasonable attorney's fees to the prevailing party.".

SEC. 3. TECHNICAL AMENDMENTS.

(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1014, to determine, in cases where controversy exists, the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

(2) in section 804(d)—

(A) by inserting "or (4)" after "801(b)(3)"; and

(B) by striking "or 119" and inserting "119, 1015, or 1016".

(b) DEFINITIONS.—Section 101 of title 17, United States Code is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".

(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—

(1) in subsection (a) by inserting "or 10" after "8"; and

(2) in subsection (b) by inserting "or 10" after "8".

SEC. 4. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act or January 1, 1992, whichever date is later.

SEC. 5. TECHNICAL REFERENCE DOCUMENT FOR AUDIO HOME RECORDING ACT OF 1992.

TECHNICAL REFERENCE DOCUMENT FOR THE AUDIO HOME RECORDING ACT OF 1992

Introduction

This Technical Reference Document is provided to facilitate the implementation of legislation relating to digital audio recording ("DAR") devices, known as the "Audio Home Recording Act of 1992" ("the Act").

This Technical Reference Document establishes the standards and specifications that are necessary to implement the Serial Copy Management System ("SCMS") under the Act. It draws in part from specifications proposed to the International Electrotechnical Commission ("IEC") in "IEC 958: Digital Audio Interface" (First edition 1989-03) and "Amendment No. 1 to IEC 958 (1989): Digital Audio Interface, Serial Copy Management System" (Reference 84(CO)126 submitted on June 21, 1991) (collectively, "IEC 958"), and "IEC 60A(CO)136 Part 6: Serial copy management system for consumer audio use DAT recorders". The standards and specifications set forth herein relate only to the implementation of SCMS via digital audio interface signals, DAR devices and digital audio interface devices. The standards and specifications set forth herein, as they may be amended pursuant to an order of the Secretary of Commerce under section 1022(b) of subchapter C of the Act, shall be considered determinative under the Act, regardless of any future action by the IEC or by a manufacturer or by an owner of a proprietary technology.

SCMS is intended to prohibit DAR devices from recording "second-generation" digital copies from "first-generation" digital copies containing audio material over which copyright has been asserted via SCMS. It does not generally restrict the ability of such devices to make "first-generation" digital copies from "original" digital sources such as prerecorded commercially available compact discs, digital transmissions or digital tapes.

Currently, the predominant type of DAR device offered for sale in the United States is the DAT recorder, which records and sends digital signals in accordance with the IEC 958 nonprofessional digital audio interface format. Additional types of DAR devices and interface formats are being or may be developed. The standards and specifications in this Technical Reference Document are not intended to hinder the development of such new technologies but require, in accordance with section 1021(a)(1) (A)-(C) of subchapter C of the Act, that they incorporate the functional characteristics of SCMS protection. In order for a DAR device to be "compatible with the prevailing method of implementing SCMS", to the extent DAR devices are capable of recording signals sent in a particular digital audio interface signal format, the SCMS information must be accurately re-

ceived and acted upon by the DAR device so as to correctly implement the same level of SCMS protection provided by that format. "Compatibility" does not require direct bit-for-bit correspondence across every interface signal format; indeed, particular interface signal formats may be recordable by some, but not all, DAR devices. To the extent that any digital audio interface device translates and sends signals in a form that can be recorded by a particular DAR device, however, "compatibility" requires that the SCMS information also be accurately translated and sent by the interface device, and accurately read and acted upon by the DAR device.

This document is in three parts. Part I section A sets forth standards and specifications constituting the functional characteristics for implementing SCMS in digital audio interface signals. Sections B and C then apply these standards and specifications in a specific reference for implementing SCMS in the IEC 958 nonprofessional digital audio interface format. Part II section A similarly first sets forth standards and specifications constituting the functional characteristics for implementing SCMS in DAR devices. Sections B and C then apply these standards and specifications in a specific reference for implementing SCMS with respect to the recording and play-back functions of nonprofessional model DAT recorders. Part III contains a series of charts that apply and correlate those codes that are mandated for implementation in DAT recorders by parts I–C and II–C of this document.

The terms "digital audio interface device," "digital audio recording device," "digital audio recording medium," "distribute," "professional model," and "transmission" as used in this document have the same meanings as in the Act. "Generation status" means whether the signal emanates from a source that has been produced or published by or with the authority of the owner of the material, such as commercially released prerecorded compact discs or digital tapes or a digital transmission (referred to herein as "original"); or whether the signal emanates from a recording made from such "original" material.

PART I. IMPLEMENTATION OF SCMS IN DIGITAL AUDIO INTERFACE FORMATS

Various consumer devices are capable of producing digital audio signals. Currently, for example, compact disc players, DAT recorders and analog-to-digital converters can send digital audio signals; future devices may include digital microphones or recordable compact disk devices. To enable communication between these different types of devices and a DAR device, it is necessary and desirable to establish common protocols or "interfaces" that mandate specific information in the digital audio output signal of each device. Digital signal interfaces may enable communication of different types of data. A "digital audio interface signal" communicates audio and related interface data as distinguished from, for example, computer or video data. Digital audio interface signal formats may be established for particular types of devices or uses. For example, interface protocols may exist for broadcast use, or for users of professional model products ("professional interface") or for nonprofessional model products ("nonprofessional interface"). One such set of protocols already has been established in the document IEC 958. Sections B and C of part I summarize and mandate the implementation of SCMS in the IEC 958 nonprofessional interface.

Section A sets forth the standards and specifications for implementing SCMS in digital audio interface signals and devices.

A. Digital Audio Interface Standard.

To implement the functional characteristics of SCMS in nonprofessional digital audio interface signal formats, whether presently known or developed in the future, the following conditions must be observed:

1. The digital audio interface format shall provide a means to indicate:

(a) Whether or not copyright protection is being asserted via SCMS over the material being sent via the interface; and

(b) Whether or not the generation status of the material being sent via the interface is original.

2. If the digital audio interface format has discrete professional and nonprofessional modes, the interface format and digital audio interface devices shall indicate accurately the professional or nonprofessional status of the interface signal. Such indication is referred to generically as a "channel status block flag".

3. If the interface format has a discrete mode for sending data other than audio material, the interface format shall indicate accurately whether or not the interface signal contains audio material.

4. If a digital audio interface device is capable of combining more than one digital audio input signal into a single digital audio output signal, and if copyright is asserted via SCMS over the material being sent in at least one of the input signals, then the device shall indicate in the output signal that copyright is asserted over the entire output signal. If copyright protection is asserted via SCMS over any of the input signals, and the generation status of that copyright-asserted signal is not original, then the entire output signal shall indicate that copyright is asserted and that the generation status is not original.

5. Devices that are capable of reading original recordings and/or DAR media, and that are capable of sending digital audio signals that can be recorded by a DAR device, shall accurately read the copyright and generation status information from the media and accurately send that information.

6. Devices having a nonprofessional digital audio interface shall receive and accurately send the copyright and generation status information.

7. Professional devices that are capable of sending audio information in a nonprofessional digital audio interface format shall send SCMS information as implemented for that format. However, nothing shall prevent professional devices and/or recording professionals engaged in a lawful business from setting SCMS information according to the needs of recording professionals.

8. If the audio signal is capable of being recorded by a DAR device and the interface format requires an indication of the type of device sending the signal via the interface, then the device shall send the most accurate and specific designation applicable to that device; for example, "Category Codes" as set forth in part I with reference to the IEC 958 nonprofessional interface.

9. Devices that receive digital audio transmissions sent without copyright and generation status information shall indicate that copyright is asserted over the transmitted audio material and that the generation status is original. If the transmitting entity wishes to transmit copyright status information it shall do so accurately, and the information shall accurately be received and sent unaltered by the receiving device. In the case of Electronic Audio Software Delivery signal transmissions, the receiver shall accurately receive generation status information as sent by the transmitting entity so as to permit or restrict recording of the transmitted signals. "Electronic Audio Software Delivery" refers to a type of transmission whereby the consumer interactively determines what specific work(s) and/or event(s) are received. This includes, for example, "audio on demand" (electronic selection and delivery of sound recordings for copying) or "pay-per-listen" reception, as distinguished from regular broadcast or comparable cable radio programming services.

10. (a) If the digital audio portion of an interface signal format is recordable by a "pre-existing" type of DAR device, i.e., one that was distributed prior to the distribution of the interface signal format, then the signal format shall implement the rules of SCMS so that the pre-existing DAR device will act upon the rules of SCMS applicable to that DAR device.

(b) If a type of DAR device is capable of recording the digital audio portion of signals sent by a pre-existing digital audio interface device, then the DAR device shall implement the rules of SCMS so that the DAR device will act upon the rules of SCMS applicable to that pre-existing digital audio interface device's format.

(c) If a digital audio interface device is capable of translating a signal from one interface format to another, then the device also shall accurately translate and send the SCMS information.

B. Summary of SCMS Implementation in the IEC 958 Digital Audio Interface.

Under IEC 958, SCMS is implemented via inaudible information, known as "channel status data", that accompanies a digital audio signal being sent to or by a DAR device via a nonprofessional digital audio interface. Like all digital data, channel status data consists of numerical information encoded as a series of zeros and ones. Each zero or one constitutes a "bit" of data in which both zero and one may impart information concerning the composition of the audio signal being sent to or by a DAR device. Bits represented in this Technical Reference Document as "X", rather than as zero or one, indicate that those bits may be either zero or one without affecting the specifications set forth herein.

Channel status data bits are organized into units of information, known as "blocks," relating to both the left and right stereo audio channels. Each block contains 192 bits of information, numbered consecutively from 0 to 191. Those channel status bits that are significant to the implementation of SCMS via the IEC 958 interface are included within channel status bits 0 through 15. Certain of these 16 bits identify professional or nonprofessional interfaces; some specify copyright assertion; and some identify the generation number of a recording. The remaining bits are "Category Codes" that describe the type of device sending the digital audio signal. More complete descriptions of these channel status bits are set forth in the remaining sections of this Part I.

IEC 958 defines professional and nonprofessional interface formats for digital audio signals. An IEC 958 professional interface contains particular types of channel status data for such digital audio recording devices as would be used in professional model products. An IEC 958 nonprofessional interface contains different types of channel status data. The channel status data sent in a nonprofessional interface are incompatible with the channel status data in a professional interface; a DAR device cannot correctly read the channel status data sent in a professional interface.

The specifications summarized herein and mandated in Section C apply only to devices that send or read an IEC 958 nonprofessional interface signal. To the extent that a professional device also may have a IEC 958 nonprofessional interface, such a professional device must be capable of sending channel status data via its nonprofessional interface in accordance with the standards set forth herein. However, nothing in this Technical Reference Document shall be interpreted to prevent a professional device having an IEC 958 nonprofessional interface and/or recording professionals engaged in a lawful business from permitting such channel status data bits to be set in accordance with the needs of recording professionals.

All devices having a digital audio output capable of supplying a digital audio signal to a DAR device through an IEC 958 nonprofessional interface must implement five types of codes located between Channel Status Bits 0 and 15. For the IEC 958 interface format, Channel Status Bits 0 through 15 are supplied in a digital audio output signal to a DAR device as follows:

1. Bit 0. Bit 0 (the "Channel Status Block Flag"), one of the "Control" bits, shall identify whether the channel status bits are for a professional or nonprofessional interface. Where Bit 0 is set as "1", the signal contains the channel status data required for a professional interface. Where Bit 0 is set as "0", the channel status data is suitable for a nonprofessional interface. The remaining bit assignments are mandated only with respect to a nonprofessional interface, i.e., where Bit 0 is set as "0".

2. Bit 1. Bit 1, another of the "Control" bits, shall identify whether the signal being sent to or by the DAR device is a digital audio or a digital data signal. Where Bit 1 is set as "0", the signal is a digital audio signal. Where Bit 1 is set as "1", the signal is a digital data signal.

3. Bit 2. Bit 2 (the "C" Bit), another of the "Control" bits, shall identify whether copyright protection is asserted for the audio material being sent via the digital audio signal. Where the C Bit is set as "0", copyright protection has been asserted over the material being sent to the digital audio input of the DAR device. Where the C Bit is set as "1", either that material is not protected by copyright or no copyright protection has been asserted by the owner of that material.

There are specific applications of the C Bit for three types of devices, as follows:

—Compact disc players compatible with the standards set forth in IEC 908 (compact disc standard, Category Code 10000000) in effect as of the date of enactment of the Act indicate in the C Bit both the copyright and generation status of the signal. (See description of "Bit 15", infra.) Where the signal is original and copyright protection has been asserted, the C Bit = "0". Where no copyright protection has been asserted, the C Bit = "1". Where the signal is first-generation and copyright protection has been asserted, the C Bit will fluctuate between "0" and "1" at a rate of between 4–10 Hz.

—Digital Receivers (Category Codes 001XXXXL and 0111XXXL) shall set the C Bit as "0", except that these devices shall send the C Bit as "1" only where the cable operator, broadcaster or other entity specifically transmits information indicating that no copyright protection has been asserted over the material.

—Devices that combine digital audio input signals into one digital audio output signal (*e.g.*, digital signal mixing devices) shall reflect whether copyright protection has been asserted in the C Bit for at least one of the input signals by setting the C Bit as "0" in the resulting digital audio output signal.

Devices in the Category Code for General ("00000000") and Present A/D Converters ("01100XXX") are not capable of sending copyright status information in the C Bit. The C Bit in the channel status data sent by these devices has no meaning.

There is no existing legal requirement that a copyright owner must assert protection over its material (and, therefore, set the C Bit as "0"). However, except as provided herein with respect to implementation in Digital Receivers (category codes 001XXXXL and 0111XXXL, a copyright owner may not set the C Bit as "0" for material that is not copyrighted or is in the public domain.

4. Bits 3–7. These bits are sent to and read by a DAR device, but specific bit settings for Bits 3–7 are not necessary for the implementation of SCMS. (Bits 6–7 are Music Production Program Block ("MPPB") flag bits.)

5. Bits 8–14. Bites 8–14 shall specify a "Category Code" that identifies the type of device that produces the digital audio signal sent to or by a DAR device. Using various combinations of zeros and ones, Bits 8–14 can define Category Codes for as many as 128 different devices that can provide digital audio signals to a DAR device. According to IEC 958, the first three to five Category Code bits (numbered Bits 8–10 through 8–12) describe general product groups, and the remaining Category Code bits specify particular devices within each product group. IEC 958 has assigned particular Category Codes to existing and anticipated product groups and devices, and has reserved additional Category Codes for future devices.

The Category Code issued by each particular device must reflect the most specific code applicable to that device, with the following exceptions:

—Digital signal processing and mixing products receive digital audio signals from one or more sources and either process or combine them with other incoming digital audio signals. If all input signals come from analog-to-digital converters having a Category Code "01100XXX", these devices should issue the Category Code of an analog-to-digital converter rather than of the digital signal processing or mixing device.

—Sampling rate converters and digital sound samplers come under the Category Codes for digital-to-digital converters. If an input signal to a sampling rate converter or digital sound sampler comes from an analog-to-digital converter having a Category Code "01100XXX", the sampling rate converter or digital sound sampler should issue the Category Code off the analog-to-digital converter.

These exception cases will permit two generations of digital copies from analog recordings, which currently is permitted under SCMS.

The relevance of these Category Codes to SCMS as implemented for devices having the IEC 958 nonprofessional interface is described in Section C and, specifically as to DAT recorders, in Part II Sections B and C.

6. Bit 15. Bit 15 (the "L" Bit) shall indicate the "generation status" of the digital audio signals being sent to or by a DAR device. "Generation status" means whether the signal emanates from a source that has been produced or published by or with the authority of the owner of the material, such as commercially released pre-recorded compact discs or digital tapes or a digital transmission (referred to herein as "original"); or whether the signal emanates from a recording made from such "original" material. In the latter case, a recording made directly from an "original" source is known as a "first-generation" copy; a recording made from a first-generation copy is a "second-generation" copy; and so forth. Because there is no restriction on the number of copies that can be made from material over which no copyright protection has been asserted, generation status is relevant only where copyright protection has been asserted over the signal.

For most products, if the L Bit is set as "0", the source is a recording that is first-generation or higher. If the L Bit is set as "1", the source is "original." There are four specific categories of products which indicate generation status differently, as follows:

—Compact disc players compatible with the specifications in IEC 908 (Category Code 10000000) are incapable of controlling the L Bit. These products signal generation status solely by means of the C Bit (Bit 2).

—Digital audio output signals from all other laser-optical products (Category Code 100XXXXL) shall send the L Bit as "0" for "original" material and the L Bit as "1" for first-generation or higher recordings.

—Digital Receivers (Category Codes 001XXXXL and 0111XXXL) shall set the L Bit as "0"; except in the case of receivers for Electronic Audio Software Delivery, which receivers shall send the L Bit as "1" only where the entity specifically transmits information indicating that the material should be treated as if it were first-generation or higher.

—Devices that combine more than one digital audio input signal into one digital audio output signal, such as digital signal processors or mixers, shall reflect in the L Bit of the output signal the higher generation status of any input containing material over which copyright protection has been asserted. Thus, where one or more of the constituent input signals contains material that is not original (i.e., a first-generation copy) and over which copyright protection is asserted, then the device must reflect in the L Bit of the digital audio output signal a non-original generation status. In all other cases, the device shall reflect in the L Bit that the output signal is original.

C. Mandatory Specifications for Implementing SCMS in the IEC 958 Digital Audio Interface.

The following bit assignments for channel status data, as referenced in the provisions of IEC 958 ¶ 4.2.2 "Channel status data format for digital equipment for consumer use", shall be mandatory for devices implementing the IEC 958 interface:

1. Bits 0–2 of the "CONTROL" Bits:

a. Bit 0 (the "Channel Status Block Flag")

Bit 0 = "0"	Nonprofessional interface
Bit 0 = "1"	Professional interface

b. Bit 1

Bit 1 = "0"	Digital audio signals
Bit 1 = "1"	Non-audio (data) signals

c. Bit 2 (the "C" Bit)

i. Case 1

Bit 2 = "0"	Copyright protection asserted
Bit 2 = "1"	No copyright protection asserted or not under copyright

ii. Case 2—Compact Disc Players

For compact disc players compatible with IEC 908 (Category Code 10000000), the C Bit shall indicate:

Bit 2 = "0"	Copyright protection asserted and generation status is "original"

Bit 2 = "1" ..... No Copyright protection asserted.

Where the Bit 2 fluctuates between "0" and "1" at a rate between 4–10 Hz, copyright protection has been asserted and the signal is first-generation or higher.

iii. Case 3—Digital Receivers

For Digital Receivers (Category Codes 001XXXXL and 0111XXXL), the C Bit shall indicate, where copyright information is transmitted to the digital receiver:

Bit 2 = "0" ..... Copyright protection asserted

Bit 2 = "1" ..... No copyright protection asserted

Where no copyright information is transmitted to the receiver, the digital receiver shall set the C Bit as "0".

iv. Case 4—Digital Signal Mixers

Where a single digital audio output signal results from the combination of more than one digital audio input signal:

Bit 2 = "0" ..... Copyright protection asserted over at least one of the constituent digital audio input signals

Bit 2 = "1" ..... For all of the constituent digital audio input signals, no copyright protection asserted or not under copyright

v. Exception Case

The C Bit has no meaning for A/D converters for analog signals that do not include status information concerning the C Bit and the L Bit (i.e., A/D converters in Category Code 01100XXX).

2. Bits 3–7:

Specific bit settings for Bits 3–7 are not necessary for the implementation of SCMS.

3. CATEGORY CODE Bits 8–15:

a. Bits 8–15

The Category Codes that follow are established for particular product groups. Where Bit 15 is represented by "L" rather than a zero or one, Bit 15 (the "L" Bit) can be either a zero or one without affecting the Category Code. Where Bit 15 is represented by "X" rather than a zero or one, the device is not capable of issuing status information concerning the L Bit.

00000000 ..... General. This category applies to products that are capable of sending channel status data but are not programmed to send such data in accordance with the specifications set forth in this Technical Reference Document because the products were manfactured before the effective date of the Act. This General Category Code shall not be used for products manufactured after the effective date of the Act.

0000001L ..... Experimental products not for commercial sale

100XXXXL ..... Laser-optical products, such as compact disc players (including recordable and erasable compact disk players) and videodisc players with digital audio outputs

010XXXXL ..... Digital-to-digital ("D/D") converters and signal processing products

110XXXXL ..... Magnetic tape or disk based products, such as DAT players and recorders

001XXXXL and 0111XXXL Receivers of digitally-encoded audio transmissions with or without video signals

101XXXXL ..... Musical instruments, microphones and other sources that create original digital audio signals

01100XXX ..... Analog-to-digital ("A/D") converters for analog signals without status information concerning the C Bit and the L Bit ("Present A/D converters")

01101XXL ..... A/D converters for analog signals which include status information concerning the C Bit and the L Bit ("Future A/D converters")

0001XXXL ..... Solid state memory based media products

Particular devices within each product defined above shall be assigned specific Category Codes in accordance with IEC 958. Manufacturers of any device that is capable of supplying a digital audio input to a DAR device must use the most specific Category Code applicable to that particular device. However, digital signal processing or digital signal mixing products in Category Code product group "010XXXXL" shall issue the Category Code for Present A/D converters where all the input signals have the Category Code for a Present A/D converter. Similarly, sampling rate converters in Category Code "0101100L" and digital sound samplers in Category Code "0100010L" shall issue the Category Code for Present A/D converters where the input signal comes from a Present A/D converter.

b. Bit 15 (the "L" Bit):

The L Bit shall be used to identify the generation status of the digital audio input signal as emanating from an "original" source or from a non-original (i.e., first-generation or higher) recording.

1. Case 1—General Case

For all Category Codes (except as explicitly set forth below), the L Bit shall indicate:

Bit 15 = "0" ..... First-generation or higher recording

Bit 15 = "1" ..... "Original" source, such as a commercially released pre-recorded digital audiogram

2. Case 2—Laser Optical Products

The reverse situation is valid for laser optical products (Category Code 100XXXXL), other than compact disc players compatible with IEC 908 (Category Code 10000000). For laser optical products in Category Code 100XXXXL, the L Bit shall indicate.

Bit 15 = "1" ..... First-generation or higher recording

Bit 15 = "0" ..... "Original" recording, such as a commercially released pre-recorded compact disc

3. Case 3—Digital Receivers

For Digital Receivers (Category Codes 001XXXXL and 0111XXXL), Bit 15 always shall be set as "0"; except for receivers for Electronic Audio Software Delivery, for which the L Bit shall indicate:

Bit 15 = "0" ..... Generation status information transmitted as "original" material

Bit 15 = "1" ..... Generation status information transmitted as for non-original material, or no generation status information transmitted

4. Case 4—Digital Signal Mixers

Where a single digital audio output signal results from the combination of more than one digital audio input signal:

Bit 15 = "0" ..... One or more of those constituent digital audio input signals over which copyright protection has been asserted is first-generation or higher

Bit 15 = "1" ..... All other cases.

5. Exception Case

The L Bit has no meaning for A/D converters for analog signals that do not include status information concerning the C Bit and the L Bit (*i.e.*, A/D converters in Category Code 01100XXX) and compact disc players in Category Code 10000000.

PART II. SERIAL COPY MANAGEMENT SYSTEM FOR DAR DEVICES AND NON-PROFESSIONAL MODEL DAT RECORDERS

The intention of SCMS is generally to prevent DAR devices from making second-generation or higher "serial" digital recordings of "original" digital audio material over which copyright protection has been asserted through SCMS. SCMS does not prevent the making of a first-generation recording of such "original" digital audio material. As future technologies permit, SCMS may limit the digital recording by a DAR device of analog audio material over which copyright protection has been asserted to the making of only first-generation digital copies. However, because present technology does not identify whether analog audio material is protected by copyright, SCMS will not prevent the making of first and second-generation digital copies of such material. SCMS will not restrict digital recording of material carrying an indication through SCMS that copyright protection has not been asserted. SCMS does not apply to professional model products as defined under the Act.

A. General Principles for SCMS Implementation in DAR Devices.

To implement the functional characteristics of SCMS in DAR devices, whether presently known or developed in the future, the following conditions must be observed:

1. A digital audio recording medium shall be capable of storing an indication of:

(a) Whether or not copyright protection is being asserted over the audio material being sent via the interface and stored on the DAR medium; and,

(b) Whether or not the generation status of the audio material being sent via the interface and stored on the DAR medium is original.

2. If the digital audio interface format being sent to and read by a DAR device has discrete modes for professional as well as nonprofessional purposes, the DAR device shall distinguish accurately the professional or nonprofessional status of the interface signal.

3. If the interface format has a discrete mode for sending data other than audio material, the DAR device shall distinguish accurately whether or not the interface signal contains audio material.

4. A DAR device capable of receiving and recording digital audio signals shall observe the following rules:

(a) Audio material over which copyright is asserted via SCMS and whose generation status is original is permitted to be recorded. An indication that copyright is asserted over the audio material contained in the signal and that the generation status of the recording is first generation shall be recorded on the media.

(b) Audio material over which copyright is not asserted via SCMS may be recorded,

without regard to generation status. An indication that copyright is not asserted shall be recorded on the media.

(c) Audio material over which copyright is asserted via SCMS and whose generation status is not original shall not be recorded.

5. DAR media shall store the copyright and generation status information as described herein during recording in a manner that the information can be accurately read.

6. Devices that are capable of reading original recordings and/or DAR media, and that are capable of sending digital audio signals that can be recorded by a DAR device, shall accurately read the copyright and generation status information from the media and accurately send the information.

7. DAR devices shall not be capable of recording digital audio signals transmitted in a professional digital audio interface format.

8. DAR devices having a nonprofessional digital audio interface shall receive and accurately send the copyright and generation status information.

9. Professional devices that are capable of sending audio information in a nonprofessional digital audio interface format shall send SCMS information as implemented for that format. However, nothing shall prevent professional devices and/or recording professionals engaged in a lawful business from setting SCMS information according to the needs of recording professionals.

10. Digital audio signals that are capable of being recorded by a DAR device but that have no information concerning copyright and/or generation status shall be recorded by the DAR device so that the digital copy is copyright asserted and original generation status.

11. If the signal is capable of being recorded by a DAR device and the interface format requires an indication of the type of device sending the signal via the interface, then the device shall send the most accurate and specific designation applicable to that device; for example, "Category Codes" as set forth in Part I with reference to the IEC 958 nonprofessional interface.

12. Except as may be provided pursuant to Section 1022(b)(4) of Subchapter C of the Act, a DAR device that is capable of converting analog input signals to be recorded in digital format shall indicate that the digital copy is copyright asserted and original generation status.

13. (a) If the digital audio portion of an interface signal format is recordable by a "pre-existing" type of DAR device, *i.e.*, one that was distributed prior to the distribution of the interface signal format, then the signal format shall implement the rules of SCMS so that the pre-existing DAR device will act upon the rules of SCMS applicable to that DAR device.

(b) If a type of DAR device is capable of recording the digital audio portion of signals sent by a pre-existing digital audio interface device, then the DAR device shall implement the rules of SCMS so that the DAR device will act upon the rules of SCMS applicable to the format of that pre-existing digital audio interface device.

(c) If a digital audio interface device is capable of translating a signal from one interface format to another, then the device also shall accurately translate and send the SCMS information.

B. Summary of Mandatory SCMS Specifications for DAT Recorders.

SCMS, to be implemented for DAT machines, requires that a DAT machine must play-back and/or record specific inaudible data in a particular location on a DAT tape. According to IEC documents "IEC 60A(CO)130 Part 1: Digital Audio Tape Cassette System (DAT) Dimensions and Characteristics" and "IEC 60A(CO)136 Part 6: Serial copy management system for consumer audio use DAT recorders", that particular location on the digital audio tape consists of two bits known as "subcode ID6 in the main ID in the main data area" ("ID6").

1. SCMS OPERATION WHEN PLAYING A DAT TAPE.—With respect to the play-back function, a DAT machine that is connected to a DAT recorder can provide digital audio output signals via a nonprofessional interface. In that circumstance, the DAT play-back machine functions as a digital audio interface device that must provide channel status data conforming to the general principles and specifications set forth in part I. SCMS as implemented for the IEC 958 nonprofessional interface format requires that when a DAT tape is played back, the DAT play-back machine reads the information from ID6 on the tape and then sends the corresponding channel status data (concerning Bit 2 "the C Bit" and Bit 15 "the L Bit"), along with the Category Code for a DAT machine, in its digital audio output signal. The channel status data to be sent in response to the various settings of ID6 are as follows:

1. Where ID6 is set as "00", copyright protection has not been asserted over the material under SCMS. In response to ID6, the digital audio signal output of the DAT will provide the C Bit set as "1" and the L Bit set as "0".

2. Where ID6 is set as "10", copyright protection has been asserted over the material under SCMS and the recording is not "original". In response to ID6, the digital audio output signal of the DAT will provide the C Bit set as "0" and the L Bit set as "0".

3. Where ID6 is set as "11", copyright protection has been asserted over the material under SCMS and the recording is "original". In response to ID6, the digital audio output signal of the DAT will provide the C Bit set as "0" and the L Bit set as "1".

2. SCMS OPERATION WHEN RECORDING ON DAT TAPE.—With respect to the recording function, SCMS governs the circumstances and manner in which a DAT recorder may record a digital audio input signal. A DAT recorder implementing SCMS information being sent in the IEC 958 nonprofessional interface format must be capable of acknowledging the presence or absence of specific channel status information being sent to the DAT recorder via its digital audio input. The DAT recorder then responds to that channel status information by either preventing or permitting the recording of that digital audio input signal. If recording is permitted, the DAT machine records specific codes in ID6 on the tape, so that when the tape is played back, the DAT machine will issue the correct channel status data in its digital audio output signal. The settings of ID6 to be recorded in response to particular IEC 958 channel status bit information are as follows:

1. Where the C Bit of the digital audio input signal is set as "0" (copyright protection asserted), the DAT recorder shall not record the input, except in three circumstances: (A) where the input is original material and the digital audio input signal comes from one of the products on the "Category Code White List" (section D below); (B) where the digital audio input signal contains an undefined Category Code (in which case only one generation of recording is permitted); or, (C) where the digital audio input signal comes from a product with a defined Category Code but the product currently is not capable of transmitting information regarding copyright protection (in which case, two generations of copying are possible). In circumstances (A) and (B) above, the DAT recorder will record "10" in ID6 to prevent further copying. In circumstance (C) above, the DAT recorder will record "11" in ID6 for the first-generation copy.

2. Where the C Bit of the digital audio input signal is set as "1" (no copyright protection asserted or not copyrighted), the DAT recorder will record "00" in ID6, and unlimited generations of copying will be permitted.

3. Where the C Bit of the digital audio input signal fluctuates between "0" and "1" at a rate of between 4–10 Hz, the signal is coming from a compact disc player compatible with IEC 908 (Category Code 10000000) which plays back a compact disc that is not an "original" and that contains material over which copyright protection has been asserted. The DAT recorder shall not record in this circumstance.

4. The condition "01" in ID6 has been assigned no meaning within SCMS. Therefore, to prevent circumvention of SCMS, the DAT recorder shall not record "01" in ID6 on the tape.

C. Mandatory Specifications for Implementing SCMS in DAT Recorders In the IEC 958 Format.

1. MANDATORY STANDARDS FOR DIGITAL AUDIO OUTPUT SIGNALS.—

a. Category Code Bit 15 (the "L" Bit). All non-professional model DAT recorders having a IEC 958 interface shall provide the Category Code "1100000L" in the channel status bits of the IEC 958 digital audio output signal. The status of the L Bit of the Category Code shall be provided in the digital audio output signal of the DAT recorder as follows, in accordance with the status of ID6:

—When ID6 is "00", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is either a first-generation or higher DAT tape recorded from an "original" source, or an "original" commercially released prerecorded DAT tape of material over which copyright protection is not being asserted under SCMS. In either of these cases, the L Bit shall be set as "0", and the complete Category Code would be "11000000".

—When ID6 is "10", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is a first-generation or higher DAT tape recorded from an "original" source (i.e., L Bit="0"). The complete Category Code in this case would be "11000000".

—When ID6 is "11", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is an "original" source, such as a commercially released prerecorded DAT tape (i.e., L Bit="1"). The complete Category Code in this case would be "11000001".

b. Bit 2 (the "C" Bit). All non-professional model DAT recorders having an IEC 958 nonprofessional interface shall provide an output code in the C Bit in the channel status bits of the IEC 958 digital audio output signal. The C Bit shall be applied in the digital audio output signal as follows, in accordance with the status of ID6:

When ID6 is "00", the C Bit shall be set as "1".

When ID6 is "10" or "11", the C Bit shall be set as "0".

2. MANDATORY SPECIFICATIONS FOR RECORDING FUNCTIONS.—SCMS with respect to recording functions performed by a nonprofes-

sional model DAT recorder receiving digital audio input signals in the IEC 958 nonprofessional interface format shall be implemented as follows:

1. Digital audio input signals in which the C Bit is set as "0" shall not be recorded, except for the cases specified below in paragraphs 2, 4 and 5.

2. A DAT recorder may record a digital audio input signal in which the C Bit is set as "0", where the Category Code of the signal is listed in the "Category Code White List." The DAT recorder shall record "10" in ID6 on the tape in this case.

3. For digital audio input signals in which the C Bit is set as "1", the DAT recorder shall record "00" in ID6 on the tape except for those cases specified below in paragraphs 4 and 5.

4. For digital audio input signals that contain Category Code information that is not defined in this document, the DAT recorder shall record "10" in ID6, regardless of the status of the C Bit or the L Bit.

5. For digital audio input signals originating from a source identified as an A/D converter with the Category Code "01100XXL", or from other sources such as from A/D converters with the Category Code for "General" ("00000000"), the DAT recorder shall record "11" in ID6, regardless of the status of the C Bit or the L Bit. This requirement shall be applied to digital input signals that do not contain source information of the original signal before digitization, e.g., an A/D converter that does not deliver source information.

6. For digital input signals originating from an A/D converter with the Category Code "01101XXL", which can deliver original source information concerning the C Bit and L Bit even if the source is in analog format, the requirement stated above in paragraph 5 shall not be applied. The "Category Code White List" includes this Category Code.

7. A DAT tape of "original" generation status over which copyright protection has been asserted shall contain "11" in ID6. A DAT tape of "original" generation status over which no copyright protection has been asserted shall contain "00" in ID6.

8. A DAT recorder shall not record digital audio input signals where the C Bit alternates between "0" and "1" at a frequency of between 4 and 10 Hz and the Category Code is for a Compact disc digital audio signal ("10000000"), as in the case of digital audio input signals from recordable or erasable compact discs that are not "original" and that contain material over which copyright protection has been asserted.

9. A non-professional model DAT recorder shall not record digital audio input signals sent from a professional interface, i.e., where channel status Bit 0 is set as "1".

10. The condition "01" in ID6 is not to be used.

11. Category codes and the C Bit included in the channel status information of digital audio input signals being sent to or by a DAT recorder shall not be deleted or modified and shall be monitored continuously and acted upon accordingly.

D. "Category Code White List".

100XXXX0	Laser optical product
010XXXX1	Digital-to-digital converter and signal processing devices
110XXXX1	Magnetic tape and disk based product
001XXXX0 and 0111XXX0	Receivers of digitally encoded audio transmissions with or without video signals
101XXXX1	Musical instruments
01101XX1	Future A/D converter (with status information concerning the C Bit and L Bit)
0001XXX1	Solid state memory based media products
00000011	Experimental products not for commercial sale

PART III. APPLICATION OF SCMS IN DAT RECORDERS IMPLEMENTING THE IEC 958 INTERFACE

The following charts apply and correlate those codes that are mandated under the Act to implement SCMS in non-professional model DAT recorders having an IEC 958 nonprofessional interface, in those situations contemplated by these standards. The columns in each of these charts identify the following information:

The "Signal Source" column describes the type of product sending the digital audio signal to a DAT recorder.

The three columns under the heading "Digital Audio Input Signal," i.e., the signal sent to the DAT recorder, identify the correct channel status information in the C Bit, Category Code Bits 8–14 and the L Bit, respectively, which correspond to each product. (In each case, Bit 0 will be "0" to indicate that the signal is being sent in the IEC 958 nonprofessional interface format, and Bit 1 will be "0" to indicate that the signal consists of audio data).

The next three columns under the heading "DAT Recorder Response" identify the response of the DAT recorder to the corresponding digital audio input signal. The column "ID6" specifies the code that the DAT recorder will record on the tape in ID6 in response to the digital audio input signal. The last two columns set forth the correct channel status information in the C Bit and L Bit that are sent in the digital audio output signal of a DAT recorder in response to the setting of ID6.

Each of the appropriate codes is set forth in the cases described below:

Case 1: Where copyright protection has been asserted over the digital audio input, and the source of the input is "original" material (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Laser Optical	0	100XXXX	0	10	0	0
D/D converter	0	010XXXX	1	10	0	0
Magnetic prod	0	110XXXX	1	10	0	0
Musical Instrum	0	101XXXX	1	10	0	0
Future A/D conv	0	01101XX	1	10	0	0
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0
Experimental	0	0000001	1	10	0	0
Solid state dev	0	0001XXX	1	10	0	0

Case 2: Where copyright protection has not been asserted over the digital audio input, and the source of the input is "original" material (First-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Laser Optical	1	100XXXX	0	00	1	0
D/D converter	1	010XXXX	1	00	1	0
Magnetic prod	1	110XXXX	1	00	1	0
Musical Instrum	1	101XXXX	1	00	1	0
Future A/D conv	1	01101XX	1	00	1	0
Digital Receiver	1	001XXXX	0	00	1	0
Digital Receiver	1	0111XXX	0	00	1	0
Experimental	1	0000001	1	00	1	0
Solid state dev	1	0001XXX	1	00	1	0

Case 3: Where copyright protection has been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Laser Optical	0	100XXXX	1	—	–	–
D/D converter	0	010XXXX	0	—	–	–
Magnetic prod	0	110XXXX	0	—	–	–
Musical Instrum	0	101XXXX	0	—	–	–
Future A/D conv	0	01101XX	0	—	–	–
Experimental	0	0000001	0	—	–	–
Solid state dev	0	0001XXX	0	—	–	–

Case 4: Where copyright protection has not been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (Second-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Laser Optical	1	100XXXX	1	00	1	0
D/D converter	1	010XXXX	0	00	1	0
Magnetic prod	1	110XXXX	0	00	1	0
Musical Instrum	1	101XXXX	0	00	1	0
Future A/D conv	1	01101XX	0	00	1	0
Experimental	1	0000001	0	00	1	0
Solid state dev	1	0001XXX	0	00	1	0

Case 5: Where the digital audio input signal includes Category Code information, but cannot provide information concerning copyright protection of the source (First- and second-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
General	X	0000000	0	11	0	1
Present A/D Con	X	01100XX	X	11	0	1

Case 6: Where the digital input signal does not include a defined Category Code (First-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Undefined	X	———	X	10	0	0

Case 7: Where copyright protection has been asserted over the digital audio input from a compact disc that is not an "original" by fluctuating the C Bit at a rate between 4–10 Hz (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
CD Player	0/1	1000000	X	—	–	–

Case 8: Where the digital signal transmitted to a Digital Receiver does not include information concerning copyright protection (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0

Case 9: Where the digital signal transmitted to a receiver for Electronic Audio Software Delivery provides generation status information as if the status were first-generation or higher (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Digital Receiver	0	001XXXX	1	—	–	–

Case 9: Where the digital signal transmitted to a receiver for Electronic Audio Software Delivery provides generation status information as if the status were first-generation or higher (No recording permitted):—Continued

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L Bit (Bit 15)	ID6	C Bit (Bit 2)	L Bit (Bit 15)
Digital Receiver	0	0111XXX	1	—	–	–

SEC. 6. REPEAL OF SECTION 5.

Effective upon publication of the Technical Reference Document in the Federal Register pursuant to section 1022(a) of this title—

(a) section 5 of this Act shall be repealed, and

(b) section 1001(14) of this title shall be amended by striking "in section 5 of this Act" and inserting "as such document was published in the Federal Register pursuant to section 1022(a) of this title".

AUTHORITY FOR COMMITTEES TO REPORT

Mr. FORD. Mr. President, I ask unanimous consent that, during the recess/adjournment of the Senate, Senate committees may file reported legislative and executive calendar business on Wednesday, July 15, 1992, from 11 a.m. to 3 p.m.

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

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:45 a.m. Wednesday, June 24; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator MCCONNELL recognized for up to 5 minutes; and that at 10 a.m., the Senate resume consideration of Calendar No. 464, S. 2733, a bill to improve the regulation of Government-sponsored enterprises, with the Dodd amendment pending.

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

RECESS UNTIL 9:45 A.M. TOMORROW

Mr. FORD. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess, as previously ordered.

There being no objection, the Senate, at 7:37 p.m., recessed until Wednesday, June 24, 1992, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate after the recess of the Senate on June 19, 1992, under authority of the order of the Senate of January 3, 1991:

DEPARTMENT OF STATE

JOHN STERN WOLF, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO MALAYSIA.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BROOK HEDGE, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE EMMET G. SULLIVAN, ELEVATED.

LEE F. SATTERFIELD, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE ROBERT MCCANCE SCOTT.

Executive nominations received by the Senate June 23, 1992:

DEPARTMENT OF STATE

WILLIAM HARRISON COURTNEY, OF WEST VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF KAZAKHSTAN.

PATRICIA DIAZ DENNIS, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF STATE FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, VICE RICHARD SCHIFTER, RESIGNED.

BOARD FOR INTERNATIONAL BROADCASTING

MALCOLM S. FORBES, JR., OF NEW JERSEY, TO BE A MEMBER OF THE BOARD FOR INTERNATIONAL BROADCASTING FOR A TERM EXPIRING APRIL 28, 1995. (REAPPOINTMENT)

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

NANCY M. DOWDY, OF THE DISTRICT OF COLUMBIA, TO BE SPECIAL REPRESENTATIVE FOR ARMS CONTROL AND DISARMAMENT NEGOTIATIONS, VICE EDWARD L. ROWNY, RESIGNED.

THE JUDICIARY

JAMES J. MCMONAGLE, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO VICE ALICE M. BATCHELDER, ELEVATED.

KATHARINE J. ARMENTROUT, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND VICE NORMAN P. RAMSEY, RETIRED.

UNITED STATES INSTITUTE OF PEACE

CHRISTOPHER H. PHILLIPS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 19, 1993, VICE EVRON M. KIRKPATRICK, RESIGNED.