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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. LAHOOD).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
May 12, 2004.

I hereby appoint the Honorable RAY LAHOOD to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Reverend Dr. Cynthia L. Hale, Pastor, Ray of Hope Christian Church, Decatur, Georgia, offered the following prayer:

Gracious God, Creator, Redeemer and Sustainer of all life. In the words of the Psalmist, ''When I consider Your heavens, the work of Your hands, the moon and the stars which You have set in place, what is man and woman that You are mindful of them? You made them a little lower than the heavenly beings. You made them ruler over the works of Your hands.''

God, You have given each of the persons assembled in this place the ability and the authority to govern this great Nation of ours. You have positioned them to set policy for the provision and protection of the people. You have designated these men and women to make decisions for the continued liberty and justice for all.

Now, God, grant them wisdom. Give them the courage this day to govern with Your grace and for Your glory. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Washington (Mr. NETHERCUTT) come forward and lead the House in the Pledge of Allegiance.

Mr. NETHERCUTT led the Pledge of Allegiance as follows:

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

WELCOMING THE REVEREND DR. CYNTHIA L. HALE, PASTOR, RAY OF HOPE CHRISTIAN CHURCH, DECATUR, GEORGIA

(Ms. MAJETTE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. MAJETTE. Mr. Speaker, I am pleased this morning to welcome the Reverend Dr. Cynthia L. Hale, Senior Pastor of the Ray of Hope Christian Church in Decatur, Georgia. Pastor Hale is a 1979 graduate of Duke University's School of Divinity and she was ordained that same year. She has been the Pastor of the Ray of Hope Christian Church for 18 years. The church is known to all of us in my district affectionately as ''The Ray.''

Pastor Hale has been a good steward of the resources that God has entrusted to her. She has helped countless people be able to continue their lives and to grow in faith and strength. She has been a mentor and a friend to me over the years.

Mr. Speaker, I am truly blessed, we are all truly blessed, to have her here with us this morning.

APPRECIATING ALL COMPANIES, BOTH FOREIGN AND DOMESTIC, THAT WANT TO DO BUSINESS IN THE UNITED STATES

(Mr. SHIMKUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHIMKUS. Mr. Speaker, in April it was reported that employers added 288,000 jobs to the payroll, including 21,000 in the manufacturing sector. Progress is being made. The outsourcing-insourcing debate then has waned a little bit.

But I want to highlight Richland County in Illinois, 16,000 people in the community of Olney, that has 8,000. They actively pursue and ask for international business to come. In fact they are home for companies from Germany, Austria, Japan, Belgium, Switzerland and the Netherlands. These international companies located in rural Illinois provide high wages and great benefits to their citizens.

We should be appreciative of all companies that create jobs, both U.S. companies and international companies, that want to do business in the United States.

TIMING OF RED CROSS CONCERNS

(Mr. CONYERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, reading the Wall Street Journal yesterday, which I read more than some suspect, I was told that the Red Cross had complained to Secretary of State Colin Powell about the prison abuses and torture and other embarrassments for months, which was a new revelation to me.

But today the Baltimore Sun says, and here it is, ''Powell says Bush was informed of Red Cross concerns and that he had been fully informed in general terms about complaints made by

the Red Cross and others over ill-treatment of detainees in custody.''

Now, this is not about privates and corporals. And, by the way, the woman in charge of the camp said that she was put under pressure.

AL QAEDA CONNECTION, ZARQAWI, CONTINUES TO HARM AMERICA

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, yesterday the world was shocked by a video depicting the savage beheading of an American civilian by Iraq's al Qaeda connection, Abu Musab al Zarqawi.

It is time to put an end to the intentional denial that al Qaeda had no connection with Saddam Hussein. Secretary of State Colin Powell warned the U.N. in February 2003 that after the victory in Afghanistan, al Qaeda operatives set up new camps in Iraq, led by Osama bin Laden's lieutenant, Zarqawi, who was allowed free operation in Baghdad by Saddam Hussein.

Since then, Zarqawi has led al Qaeda within Iraq to bomb the U.N. headquarters in Baghdad and to attempt the killing last month of 80,000 in Jordan with chemical weapons. Additionally, in his letter to al Qaeda leadership, Zarqawi admitted to masterminding the daily attacks in Iraq.

We are fighting al Qaeda terrorists in Iraq as part of the global war on terror. Yet, despite our enemy's savagery, our brave troops will fight and win this war to protect American families.

In conclusion, may God bless our troops, and we will never forget September 11.

COVER THE UNINSURED WEEK

(Ms. SOLIS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SOLIS. Mr. Speaker, today I rise in support of the goals of Cover the Uninsured Week. In California, 1 out of every 5 of our uninsured population is a child under the age of 18.

This week, the House leadership has scheduled votes that would help big insurance companies. Instead, Congress should be taking action to ensure that no child has to skip needed health care checkups and is not left behind.

We should pass the Family Care Act to provide working families and children with health insurance. The bill could cover approximately 7.5 million low-income parents and improve health care coverage.

We should also pass the Health Care Equality and Accountability Act, H.R. 3459, which would both provide expanded health coverage and eliminate racial and ethnic health care disparities. More than one-third of Latinos and 19 percent of Asian Pacific islanders lack health insurance.

We must come together to combat our uninsured crisis. Together, we can make sure that every family has access to high quality and affordable health care.

PROVIDING THE SECURITY OF AFFORDABLE HEALTH INSURANCE

(Mr. KNOLLENBERG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KNOLLENBERG. Mr. Speaker, in response to the gentlewoman that just spoke, there is another alternative that we can talk about as well, because throughout the country, small business owners face a problem, because they cannot afford to offer their employees health insurance.

The Small Business Health Fairness Act, H.R. 4281, which we are going to debate this week, helps to resolve health care benefit concerns for small businesses and their employees. Through Association Health Plans, small businesses will have the ability to secure affordable health care contracts. Uninsured employees will receive the security of affordable health insurance.

Here is something that I think is significant: Out of the 44 million uninsured Americans, so called, about 25 million of them are people in small businesses, either the dependents or the employees themselves.

The price of health care benefits has risen by 12 percent this year alone. Escalating health care premiums makes it nearly impossible for small business owners to afford to offer health care benefits to their employees.

H.R. 4281 will make health insurance a reality for small businesses. I strongly urge my colleagues to support this bill.

PROVIDING HEALTH CARE FOR ALL AMERICANS

(Mr. BERRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BERRY. Mr. Speaker, every American should be confident that whether they lose their job, change jobs, get sick or just grow old, they should be able to find affordable, reliable health care.

We know how to do this. I agree with the gentleman on the other side of the aisle. We have the ultimate association health plan available. We could make every American eligible for the Federal Employees Benefit Plan at their own expense. That would be the ultimate in the association health care plan. We can also make people over 55 eligible for Medicare. We can make low-income working families eligible for Medicaid.

We know how to provide health care coverage for the American people. If we are going to do this, we also know that we have to provide a fair, reasonably priced pharmaceutical product to these same people. We cannot continue to allow the drug manufacturers to rob the American people.

COMMEMORATING THE 50TH ANNIVERSARY OF BROWN V. BOARD OF EDUCATION

(Mr. RYUN of Kansas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RYUN of Kansas. Mr. Speaker, next Monday, May 17, 2004, marks the 50th anniversary of the Supreme Court's decision in Brown versus the Board of Education. On this historic day, the Supreme Court issued a definitive interpretation of the 14th amendment to the Constitution, stating that the discriminatory nature of racial segregation is a violation of the 14th amendment.

Although 50 years have come and gone, this decision continues to have a profound effect upon our society. It has permanently altered the conventional social structure in traditionally segregated areas and has outlawed discrimination.

Although the celebration next Monday bears the name of Reverend Oliver Brown, it will be a celebration of all those who fought to rid our society of the practice of separate and unequal public schooling.

I would like to thank the Members of Congress who voted for the legislation which established the commission to commemorate the 50th anniversary of this historic decision, and I would also like to thank especially Cheryl Brown Henderson, the granddaughter of plaintiff Oliver Brown, along with the members of the Brown Commission, for the work in making this celebration a reality.

I am grateful for the small part I played. I encourage our colleagues to join us in celebration on this day.

CONGRESS SHIRKING ITS RESPONSIBILITY

(Mr. BLUMENAUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BLUMENAUER. Mr. Speaker, this last month has been a hard month: Hard for our soldiers in Iraq as we lost more lives than any previous month; it was hard on the people of that troubled country; and it was hard on the American public as citizens of conscience and people who are footing the bill. It has also been hard on Congress.

I personally believe the Speaker and the chair of the key committees to be people of conscience, and they must be terribly embarrassed as the world sees what happens when Congress shirks its responsibility to set policy, control spending and provide oversight.

It is as sad as it is outrageous that Congress and the President of the United States find out at the same time as millions of people around the

world about the unconscionable abuses in Iraqi prisons.

Now, the President will have to settle with Donald Rumsfeld as to why he has been kept out of the loop, but we in Congress have only ourselves to blame if we continue to avoid being a constructive partner, making sure that these abuses stop.

ENCOURAGING THE RELEASE OF PHOTOGRAPHS OF IRAQI PRISONER ABUSE

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, despite the horrendous acts of a few American soldiers at Abu Ghraib prison, we are winning the war in Iraq. We are investigating and punishing those among our own engaged in wrongdoing. And as the brutality and desperation of yesterday's beheading of an American attest, our enemies know they are losing.

While I support freedom for the good people of Iraq, I support President Bush and Secretary Rumsfeld, I respectfully encourage the administration to bring an end to the lurid parade of photographs leaking their way into the national media by immediately releasing all photographic records of abuse of prisoners by American personnel.

Abraham Lincoln said it best: ''Give the people the facts, and the Republic will be saved.'' In this case, Mr. Speaker, the republic that we save may be that free and democratic republic of Iraq in the 21st century.

□ 1015

ASK QUESTIONS OR STUPID THINGS HAPPEN

(Mr. EMANUEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, since April 1, 42 days, the House has been in session 12 of those 42 days; and in that period of time, we have lost 171 of our fellow citizens, bringing the total to 772.

While that was happening, what has Congress done? We have named eight post offices, recognized the Garden Club of America, recognized the importance of music education, and authorized the use of the Capitol grounds for the Soap Box Derby. That is what Congress has done in the last 42 days, 12 days working; that is what we have done while we have lost loved ones in this country.

Our constituents are asking the whys and the hows of this war. They want us to get the answers. We have a constitutional responsibility, the checks and balances, to ask those questions. It is imperative that we do that.

President Kennedy once said, ''To govern is to choose.'' We can name post offices, or we can ask the hard questions about the direction of our Nation. We may even be able to do both.

MURDER OF NICK BERG

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, yesterday we were reminded of who the real enemies are in Iraq. A video was released showing the brutal murder of a young man from Pennsylvania, 26 years old, a small businessman who was there to help rebuild Iraq. I offer my deepest condolences to his family and friends, and I join with my colleagues to call for bringing these terrorists to justice.

The fact is, Nick Berg's murder comes from the same terrorist extremists as the September 11 attacks. It was not about revenge; it was about intimidation. They brutally murdered an innocent civilian on camera so that the world could see it and tremble. These terrorists will use any convenient excuse to take innocent life if they believe it will advance their agenda.

Mr. Speaker, yesterday's murder should not shake us. It should steel our resolve to do the right thing in Iraq, and it should remind us that there can be no negotiating with an enemy who hates freedom, despises human rights, and uses any excuse to brutally murder innocent civilians.

SUPPORT SALES TAX DEDUCTIBILITY

(Mr. LAMPSON asked and was given permission to address the House for 1 minute.)

Mr. LAMPSON. Mr. Speaker, once again, the House appears to be in an all-tax-cuts-all-the-time mode all over again.

By listening to the talk coming from this body, one would want to believe that we really want tax fairness for all Americans. Last week we had the opportunity to amend a part of the Tax Code which unfairly penalizes residents of States with no local or State income tax, and we did not. Unfortunately, we did not get it right last week, but luckily we have another chance to fix the problem today.

I hope that my colleagues will support allowing sales-tax deductibility for residents of States with no sales or State or local income taxes so that the hard-working residents, like people in my State of Texas and many others, get the same benefits given to almost all other Americans. Should we not be looking for ways to create equity and fairness for all of our citizens and not always seemingly helping just a few?

Let us pass this sales-tax deductibility amendment and take a true step toward equity.

MEDICARE AND PRESCRIPTION DRUG CARDS

(Mr. FOLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOLEY. Mr. Speaker, when Senator CHUCK HAGEL and I drafted the drug discount card 3 years ago, we realized at the time that it would be a very important tool for seniors to save money on their prescription drugs. It is the reason so many people join Costco, or Price Club, and so many millions of America's seniors have joined AARP, for discounts, because they save money. It is simple, it is effective, and last Monday, on May 3, when we rolled out the drug discount card as part of the Medicare legislation, over 400,000 seniors called the 1–800 Medicare number to inquire about the plan.

Interestingly enough, almost every national chain, be they a grocery store or a pharmacy, advertised that they would be offering a drug discount card. It is simple. It is easy. It is convenient. And it allows seniors the choices that they deserve: to buy from their local pharmacist, their drugstore, their Costco, their Price Club, you name it.

Medicare should be simple. Seniors 65 and older deserve discounts on their drug cards, their drug and pharmaceutical usage. They are receiving it under this legislation.

SEND THE PRESIDENT BACK TO TEXAS

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, with everything going wrong for our war President in Iraq, it would be easy to overlook another tragedy confronting the United States.

Almost 44 million people are uninsured in this country; they go without health care and hope they do not get sick. The vast majority of these people come from families where one person works full-time.

By our actions, we are forcing Americans to choose between food and health care. That is not a choice. That is a cruel reality perpetuated by this administration.

The administration pretends every American has health care because there are emergency rooms, and we have a cabinet Secretary who says so, knowingly misleading the American people, and we wonder why the world questions our moral leadership.

Almost 44 million Americans do not have health care, and we can change that. Bills have been brought before the Congress for years, but the administration ignores them. We are going to deal with two useless ones today.

Every other industrialized country offers affordable health care except us. We could change it today, but we will not under this administration. We are going to have to have an election and send the President back to Texas.

LOWERING THE NUMBER OF THE UNINSURED

(Mr. SAM JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, I hesitate to disagree with my fellow representative; but, Mr. Speaker, the President's program and the House program this week is going to find a solution for the uninsured for health care. Small businesses are dropping health plans because they cannot afford it.

This week, the House is going to take up the Small Business Health Fairness Act, and it will allow small businesses that would otherwise be unable to afford health insurance to join together to form association health plans which, by the way, is one of those things that we have had out there for a long time and needs to be passed. It will insure more people with quality care at lower rates.

Another important step today will be lowering the cost of health care by putting consumers in the driver's seat through health savings plans. Those plans give more people options when it comes to their health insurance, and they are a great part of lowering the cost of health care and helping to lower the number of uninsured.

Mr. Speaker, we are moving forward in this Congress, and we are going to move forward on these issues today for a better America.

LIVING UP TO THE PROMISE OF EDUCATION FUNDING

(Mr. ETHERIDGE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ETHERIDGE. Mr. Speaker, I rise today to call on the Bush administration and this Congress to live up to its promise on education.

Despite the White House's media event this week, the administration's own budget request for next year would cut $9.4 billion from the President's own No Child Left Behind Act. In the first 3 years under this new law, this administration has shorted America's schools by $27 billion. That is a pretty poor record and a failure of leadership.

This week, the White House claimed that the States have billions of dollars of unspent Federal education funds, as if there is a stack of money sitting on some bureaucrat's shelf. As the only former State school chief serving in this Congress, I can tell my colleagues that nothing could be farther from the truth. School officials are struggling to fill countless unmet needs for funding, and this administration's failure to provide our needed education funds is a crushing burden.

Democrats have a better way. I have introduced legislation to require full funding for No Child Left Behind. Democrats support school construction and helping local leaders build new schools, relieve overcrowding, reduce class sizes, and improve security. We must make sure every public school works to educate our children to meet the needs of the 21st century.

In conclusion, Mr. Speaker, Congress needs to live up to its promises made on education.

WE NEED NATIONAL UNITY

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, the Democrats are proud of saying, which they say often, that they oppose the war, but support the troops. That is kind of like saying the tank is not empty, but the car is out of gas. It just does not make any sense. How do you support the troops if you are opposed to what they are doing?

Of course, then again, the statements by their party leader said, I voted ''yes'' before I voted ''no'' on the supplemental appropriations bill that would have given the troops the armor and the ammunition and the food and the supplies they need, but that is Democrat thinking.

When the statue of Saddam Hussein was being pulled down and celebrated, the gentlewoman from California (Ms. PELOSI) said, well, we could have pulled that statue down for a lot less money. I am sure the U.N. would have gotten around to it eventually through their, what, another resolution? We did 17; maybe one more resolution and the statue would have come on down.

Mr. Speaker, winning a war is not easy, and when you have leading Democrats saying the war is unwinnable, it sends a very bad signal to the troops whom they allege to support. That is not what we need.

Right now what we need is unity, national unity, getting behind the cause, getting behind the soldier in the foxhole. Let us think of him and put politics aside.

PROVIDING HEALTH CARE FOR ALL AMERICANS

(Mr. KENNEDY of Rhode Island asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KENNEDY of Rhode Island. Mr. Speaker, so much is in the news these days, it is hard for us to keep sight of any one thing; but as a great Nation, we ought to be able to do more than one thing at one time. One of the things we ought to be doing is taking care of our people in this country when it comes to delivering to them health care insurance.

We talk every day about how there are 44 million Americans who are uninsured, but what are we actually doing about it?

I often hear from my constituents who say to me, Congressman, if you had to worry about your health insurance the way we have to worry about our health insurance every single day of the week, if you had to worry about your child the way we have to worry about our children, you would have health insurance for all Americans tomorrow.

Yet, we have Members of Congress who are coming here on the floor and saying that they are for health insurance. They say they are not for government insurance, no, no, they are against that, and yet name me one Member of Congress that does not sign up for the government-paid program in this Congress.

That is the hypocrisy we see in this Congress, not a Congress that is actually interested in the people's health care, but only their own.

DEPARTMENT OF JUSTICE INVESTIGATION OF THE MURDER OF EMMETT TILL

(Mr. RUSH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUSH. Mr. Speaker, 2 days ago, the Department of Justice announced that it would be forming a partnership with the State of Mississippi to investigate the 1955 murder of 14-year-old Emmett Till. As I heard the news, two thoughts ran through my mind. On the one hand, as the Member of Congress who introduced a resolution, a bipartisan resolution calling upon the Justice Department to investigate Emmett's murder, I feel a sense of relief. On the other hand, four words come to my mind: it is about time.

Mr. Speaker, many of us regard the murder of Emmett Till and the subsequent sham Jim Crow trial that acquitted Emmett's murderers as a mockery, as a miscarriage of justice, and as the single motivational spark for the civil rights movement. Young Emmett's savage murder and his open funeral casket made international news, and it galvanized African Americans and others interested in the cause of civil rights to take matters into their own hands and to demand basic human rights to which all citizens are entitled.

Mr. Speaker, I believe that now maybe Ms. Till-Mobley and Emmett Till can begin to rest in peace.

GIVE SENIORS THE HEALTH CARE BENEFITS THEY DESERVE

(Mrs. JONES of Ohio asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. JONES of Ohio. Mr. Speaker, I rise this morning, after having listened to Washington Journal, wherein the head of the Medicare-Medicaid program said, seniors are now, in fact, in a program with this discount drug card where they can pool their resources and get lower prices for their drugs.

If that is what we are doing with the discount drug card, why, in fact, did the legislation itself not allow the Secretary of Health and Human Services to seek best prices on prescription drugs for seniors?

I say, as we talk about covering the uninsured this week, we ought to be covering our seniors. They ought to have a prescription drug benefit that gives them one card without all of this complication where they have to ruffle through cards, ruffle through the Internet when they do not even have access to be able to determine what is the best way for them to get their prescription drugs.

Cover seniors. Give them the benefit they have worked for; give them the benefit they deserve.

HEALTHY TROOPS ACT

(Mr. BISHOP of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BISHOP of Georgia. Mr. Speaker, as I speak today, more than 170,000 of our servicemen and -women are serving in harm's way in Iraq and Afghanistan.

□ 1030

We are grateful for their service. We owe these brave men and women the best that we have to offer. At a minimum, we owe them what they were promised. I am talking about medical exams before and after we send them into combat.

A 1997 law requires the DOD to perform comprehensive pre- and post-deployment medical examinations on all deployed troops, including National Guard and Reservists. DOD has unilaterally decided to define these exams not as was intended, as a hand's-on examination by a doctor, but as a self-administered survey to determine if a service member is fit for combat or if he or she suffered as a result of war.

It is beyond irresponsible to base the health of our troops on their individual ability to self-diagnose. Therefore, today, I am introducing legislation to require the Department of Defense to comply with the 1997 law and guarantee each of our men and women will receive an actual clinical examination before and after they are deployed.

Today, I request my colleagues to join me and support the Healthy Troops Act. We owe our troops that much.

MEDICARE

(Ms. PRYCE of Ohio asked and was given permission to address the House for 1 minute.)

Ms. PRYCE of Ohio. Mr. Speaker, beginning May 3, seniors across the country can take the first steps towards a much-needed prescription drug benefit when they enroll in the new Medicare prescription drug discount card.

The plan gives seniors the power of choice. Seniors will select from a host of prescription discount drug cards and choose the best option suited to their very own needs. On average, seniors will save 10 to 25 percent on their prescriptions.

Not only that, but choice encourages competition. Private companies will be making their prices available for seniors to compare. This, in turn, will foster new, lower prices in an effort to secure seniors' business. We already see this happening. By giving the seniors the choices they need, we also give them lower prices.

Mr. Speaker, the Medicare prescription drug coverage card is long overdue. I am proud of Republicans for providing a viable solution to America's seniors, and I encourage seniors across the country to take advantage of these added benefits.

EXTEND UNEMPLOYMENT BENEFITS

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute.)

Mr. BROWN of Ohio. Mr. Speaker, last week President Bush came through my State, the State of Ohio, in a bus trip to argue and defend his economic policies which have inflicted great damage on my State.

We have lost, since President Bush took office, 177,000 manufacturing jobs. One out of every six manufacturing jobs in Ohio has simply disappeared since President Bush took office. We have lost 200 jobs every single day of the Bush administration, and the President's answer is more tax cuts for the rich, hoping it trickles down and creates some jobs. That has not worked.

His other answer is more trade agreements like NAFTA, which frankly have shifted all too many jobs to China and Mexico.

Instead, Congress should extend the unemployment benefits for those workers who are trying to find jobs, 50,000 in Ohio, a million across the country, who are trying to find jobs, who have lost their jobs.

Extend unemployment benefits and pass the Crane-Rangel bipartisan bill which will give incentives to companies that manufacture in this country, rather than to give incentives and tax breaks to the President's biggest contributors, those corporations which shift jobs overseas.

OUTRAGE AND DISAPPOINTMENT OVER CRISIS IN IRAQ

(Ms. LEE asked and was given permission to address the House for 1 minute.)

Ms. LEE. Mr. Speaker, I rise to express my outrage and disappointment over the crisis in Iraq.

I must start by condemning, in the strongest possible terms, the brutal decapitation of Nicholas Berg. The act was unconscionable, and I join all of my colleagues in sending my deepest sympathies to his family and loved ones.

What kind of climate allows for such unbelievable, gruesome acts? What kind of climate are we creating with the abuses at Abu Ghraib?

Secretary Rumsfeld has dismissed the Geneva Convention. That sends the wrong message. That message clearly, however, stuck.

The horrifying photographs of the abuses in Abu Ghraib are symptoms of a much larger failure of leadership.

Earlier this week, President Bush said that Secretary Rumsfeld is doing a superb job. Of course, that is the same President who communicated that the mission in Iraq was accomplished over 12 months and 500 American lives ago.

Nothing is superb about this situation, and little has been accomplished. The buck stops with the Commander in Chief, and so does the responsibility for the disaster we now face.

PROVIDING FOR CONSIDERATION OF H.R. 4279, PROVIDING FOR DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS; H.R. 4280, HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2004; AND H.R. 4281, SMALL BUSINESS HEALTH FAIRNESS ACT OF 2004

Ms. PRYCE of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 638 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 638

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4279) to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the amendment in the nature of a substitute printed in part A of the report of the Committee on Rules accompanying this resolution, if offered by Representative Rangel of New York or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

SEC. 2. Upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4280) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening

motion except: (1) one hour of debate on the bill, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; and (2) one motion to recommit.

SEC. 3. Upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4281) to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce; (2) the amendment in the nature of a substitute printed in part B of the report of the Committee on Rules, if offered by Representative Kind of Wisconsin or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

SEC. 4. (a) In the engrossment of H.R. 4279, the Clerk shall—

(1) await the disposition of H.R. 4280 and H.R. 4281;

(2) add the respective texts of H.R. 4280 and H.R. 4281, as passed by the House, as new matter at the end of H.R. 4279;

(3) conform the title of H.R. 4279 to reflect the addition of the text of H.R. 4280 or H.R. 4281 to the engrossment;

(4) assign appropriate designations to provisions within the engrossment; and

(5) conform provisions for short titles within the engrossment.

(b) Upon the addition of the text of H.R. 4280 or H.R. 4281 to the engrossment of H.R. 4279, H.R. 4280 or H.R. 4281 (as the case may be) shall be laid on the table.

(c) If H.R. 4279 is disposed of without reaching the stage of engrossment as contemplated in subsection (a), H.R. 4280 shall be treated in the manner specified for H.R. 4279 in subsections (a) and (b), and only H.R. 4281 shall be laid on the table.

The SPEAKER pro tempore. The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to my colleague and friend, the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, H. Res. 638 provides for separate consideration of three different measures. The rule provides that when these measures are agreed to, each will be engrossed as one bill and sent to the other body.

Mr. Speaker, this week communities across this country are participating in activities associated with Cover the Uninsured Week. Why? Well, because almost 44 million Americans have zero health insurance.

These 44 million Americans live in sleepy towns and bustling towns all across America in each and every one of our districts. They are children and adults. They are families. The majority are hardworking men and women just trying to make a living, provide for their families and offer their children opportunities they may never have had.

Yet nearly 44 million of our constituents are living every day without health insurance coverage. They are living without the security of knowing that they have a family doctor to call upon when they are sick and when it comes to time for their annual checkup. They are living without the security of knowing that when their child is ill, whether it is just a bad bug or a life-threatening ailment, they can access emergency care or see a specialist.

Without a doubt, the major reason people do not have health insurance is because they simply cannot afford it. In fact, 71 percent of the uninsured forego health insurance because of the cost.

As I have come to find, for every 1 percent increase in health insurance premiums, 300,000 more individuals go without health insurance. Whether in the halls of Congress, at the Washington think tanks, among not-for-profit organizations, in the boardrooms of businesses or at the corner coffee shops, everyone is talking about what they believe is the remedy to one of the toughest questions ever asked: How do we stop sky-rocketing health insurance costs and get more people insured?

Quite frankly, I think we have talked long enough. Mr. Speaker, it is time we place on the table the best market-based solutions to provide more Americans with access to quality and affordable health care. So here we are.

Today and tomorrow, this House will debate and consider three legislative solutions. These steps in the right direction will address this larger challenge by focusing on the three major pieces to the puzzle: access, quality and affordability.

The rule we are debating today will allow us to consider legislation to improve upon and strengthen flexible spending accounts, address the sky-rocketing costs of medical liability insurance, and allow small businesses to join together through association health plans.

As I begin to talk in greater detail about each of these initiatives, they may sound rather familiar to my colleagues and to those watching C–SPAN this morning. That is because the House has already considered each of these initiatives in one way, shape or form already, but so far they are going nowhere in the other body. So let us give them one more opportunity.

The first part of our health security plan will improve upon and strengthen flexible spending accounts or FSAs. FSAs allow workers to put money from their paychecks into an account, tax free, to pay for health care expenses. Employees spend this money on health services, giving them responsibility over their own health care decisions and spending.

While FSAs are a great concept and have worked well under current law, the money contributed by employees have actually forfeited to the employer at the end of the year if it is not used. That means use it or lose it.

Our plan would allow up to $500 of that money to be carried over into the following year. If an employee gets to keep $500 in unused money, they will have a greater incentive to make wise decisions about their spending.

Mr. Speaker, we see a barrier standing in the way of access to quality and affordable health care so we are trying to knock it down. It is a solution.

In the second part of our plan, we will revisit a critical initiative to address a growing and dangerous problem in our legal system that impacts each and every one of us, if not today, then tomorrow or in the future. I am talking about our medical liability system, a system that must be reformed if health care in America is to remain affordable.

The medical liability crisis in America is virtually everywhere, but one of the places that we are seeing the most frightening and tangible effects of this crisis is in the area of prenatal care and delivery. This crisis is turning the very necessary treatment of prenatal care into a luxury, sometimes totally unavailable to far too many women.

□ 1045

It is estimated that about one in 10 obstetricians nationwide have actually stopped delivering babies. The crisis is most acute in rural areas where obstetricians are already in short supply. In my State of Ohio, professional liability insurance premiums have increased by 60 percent in the past 2 years. Sixty percent. According to a recent survey, more than 58 percent of responding Ohio OB–GYNs have been forced to make changes to their practice, such as quitting obstetrics all together, retiring, or relocating because of the unaffordability and unavailability of medical liability insurance. Fifty-eight percent of Ohio's obstetricians.

These statistics reflect the reality of real people in our cities and towns who are cutting back their practices or closing up all together. Just last month, an article ran in my local paper about a baby doctor in Columbus, Ohio, facing the prospect of a third year in which he and his OB–GYN partners have seen their malpractice insurance rise by 40 percent or more. He is leaving his practice to teach residents at the local hospital. His two other partners are leaving too, one to an early retirement and the other to Utah, where she will not have to pay malpractice premiums as large as the ones in Ohio. They say they do not have a choice, they have to leave. Together, just this one practice will leave 4,500 patients looking for new doctors. That is 4,500 women who have relied on these talented doctors for years, in just this single practice, with no one to turn to.

One of these women is 7 months pregnant with her fourth child. At 7 months along, she is looking for another doctor to deliver her baby.

This example is not uncommon to my State. It is not only affecting the doctors who currently practice, but it is affecting future doctors and patients. Recently, the chairman of an OB–GYN residency department in Ohio said he is even unable to train future OB–GYNs. He said that due to high liability premiums, it is difficult to find faculty to teach obstetrics residents. When counseling his students, he encourages them to still choose obstetrics as a profession, but now he offers a warning: just pick the right State, a State with good medical liability reforms. He also said in the past 2 years not a single one of his OB–GYN residents set up practice in Ohio.

The strides our country has made in reducing maternal and infant mortality rates through quality prenatal care are now being jeopardized. Across America, too many expectant moms are foregoing essential prenatal care, and they are asking, who will deliver my baby? I am concerned that without a change, the future of pregnant women's health is in serious jeopardy.

The American people are fed up with abusive personal injury practices, aggravating frivolous lawsuits, and a health care system that is getting more expensive and less accessible as a result. That is why we are here today. That is why we must pass this important initiative. The Congressional Budget Office estimates that when our plan is enacted, premiums for medical malpractice insurance ultimately would be an average of 25 to 30 percent less than they are now.

Mr. Speaker, we see a barrier standing in the way of access to quality and affordability in health care, so we are trying to knock it down. It is a solution.

And the third piece of our puzzle will help address skyrocketing health care costs where they hurt the most, small businesses. When you consider that small businesses employ 50 percent of employees across our country, it is troubling to learn that 60 percent of the uninsured work for small businesses. They are uninsured because small business owners cannot afford to pay the cost of health insurance for their workers. The Small Business Health Fairness Act brings the benefits enjoyed by corporate America to these small businesses.

This important initiative will allow small businesses to create association health plans, or AHPs. AHPs will enable small businesses to join together through existing trade associations to purchase health insurance for their workers at a lower cost than what is available to them now. It is the wholesale strength-in-numbers approach that will allow these groups of small businesses to band together to negotiate for lower prices on health insurance than individual employees could secure on their own.

AHPs will save small businesses an average of 13 percent on their employee health care costs, which means more small business employees will have access to affordable health care coverage. And there is no question that 13 percent will be better spent by employers expanding their businesses by hiring unemployed Americans.

Mr. Speaker, once again we see a barrier stand in the way of access to quality and affordable health care, so we are trying to knock it down. Once again, it is a solution.

We have laid our common-sense solutions on the table, and now it is time to put them to work. I urge my colleagues to join me in implementing these critical initiatives that will help control the cost of health care in this country.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, two wrongs do not make a right, and three wrongs do not make a right, and passing bad legislation a second and third time will not make it a good bill. And I do not believe the Senate is going to like it a bit better. As a matter of fact, if the problem is the United States Senate, the other body, it would seem to me that we could take the bill over to the other body and find out exactly what the problem is and not take the time of the House over and over passing a bill that will go nowhere.

Last year, the House considered and passed the legislation that is identical to two of the bills considered under the rule, and I do not believe the people of this great Nation sent us here to change the number on a bill and pass it again during the same Congress.

Instead of playing these legislative games, we should be working on the grave issues that face this country. Americans are out of work, the Federal deficit is reaching all-time highs, American troops are in even greater danger in Iraq, the serious abuses of Iraqi prisoners and the failure to find weapons of mass destruction in Iraq should be aggressively investigated, and our hard-earned reputation and relationships throughout the world are in a shambles. So why, Mr. Speaker, are we on the floor of the people's House doing the same thing we did last year?

Why are we wasting valuable time reconsidering the bills that were passed and sent to the other body? The bills do nothing to help the more than 40 million uninsured Americans. It is shameful, with so many issues facing this Nation, that so many pieces of good legislation languish while we waste valuable floor time on bills that have already been passed and are not expired.

Why are we not considering bipartisan legislation to expand access to preventive health care services and to education programs that help to reduce unintended pregnancies, reduce infections of sexually transmitted diseases? And why are we not considering legislation that would allow children of deployed servicemembers to remain at their public schools in the event of a temporary residences change? Why do we not consider legislation to keep law enforcement uniforms out of the hands of criminals and terrorists? Why are we not on the floor debating and passing important bipartisan genetic nondiscrimination legislation?

This replay game is not even an effort to improve the earlier work. The bills are not new and improved. Last year's medical malpractice legislation was considered under a closed rule, and this year the same malpractice legislation is subject to a closed rule. In the Committee on Rules hearing on each of the medical malpractice bills, Democrats offered a total of 39 amendments. Zero were made in order. Last year, the rule on the association health plans, the AHP bill, was restrictive, allowing only one amendment. This year, the same AHP bill with a new number is subject to a restrictive rule and again only one amendment is made in order.

I make the point again, Mr. Speaker, there is no change in the bill that has already passed the House.

Mr. Speaker, it does not help the millions of uninsured Americans at all. The wealthy are able to take advantage of the health savings accounts, but the poor are not. The uninsured will continue to be the uninsured.

H.R. 4281 suffers from the same fatal maladies as last year's bill creating the AHPs. The Congressional Budget Office found that under this proposal, now this is very important, the Congressional Budget Office found that under the proposal passed that the premiums would increase for 80 percent of workers in small firms, and that 100,000 of the sickest workers would lose coverage all together.

The bill would eliminate the protection of over 1,000 State consumer protection laws and vital State oversight. AHPs are likely to destabilize the health insurance market. Over 850 organizations oppose this legislation, including the National Governors' Association, the National Conference of State Legislators, and the National Association of Insurance Commissioners.

The cure offered by the same medical malpractice bill is worse than the disease. Just like last year's bill, the bill ignores the major player in rising malpractice insurance premiums: the insurance corporations. Why we do that, I do not know; but they are continually left out of this equation. Proponents want to blame the jury awards for rising insurance premiums, but a study by Americans for Insurance Reform reported that rising insurance premiums are in no way tied to jury awards.

Nothing in the bill requires the insurance corporations to lower premiums for medical malpractice insurance. Nothing in this bill requires the insurance companies to pass along to the physicians any savings the corporations might gain from this legislation.

And, disappointingly, nothing in this bill gets rid of incompetent doctors.

Statistics say that 5 percent of doctors are responsible for 54 percent of all medical malpractice claims paid. Logic cries out that those 5 percent of doctors be dealt with. Now, this legislation punishes injured patients with valuable claims against negligent or reckless physicians and allows repeatedly reckless doctors to continue to practice medicine. We should weed out the 5 percent of physicians causing most of the harm and who force the insurance to pay again and again for their mistakes.

We should stop playing games and consider legislation that will really help patients and that will really aid the doctors in providing quality health care. What we need is a reasonable regulation of the insurance industry, aggressive removal of bad doctors, and affordable prescription drugs.

Mr. Speaker, my concern goes beyond this obvious waste of time and resources and the poor substance of these three bills. Once again, the House is denied the opportunity to engage in full and open debate. Members are being muzzled. This abuse of process is becoming the norm rather than the exception.

Excluding H. Res. 638, the Committee on Rules has produced 22 rules this year: one open rule, 14 restrictive, five closed, and two procedurals. Debate is narrowed and stifled. Amendments and policy alternatives routinely are made out of order and not allowed on the floor. The body is elected to deliberate and debate, but the process is becoming much less democratic and much less deliberative.

This abuse of power and process harms this institution and does nothing to help the over 40 million Americans without health care insurance. Reconsideration and repassage of these bills is a meaningless exhibition of political theater, and I urge my colleagues to vote ''no'' on this rule so the House can get down to some serious work on behalf of the American people.

I must also say, Mr. Speaker, that I am particularly aggrieved at the portion of this bill that allows the pharmaceutical companies and the producers of medical devices to get off without being sued.

Mr. Speaker, I reserve the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I am very pleased to yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), who has such a passion for health care concerns for her constituents.

Mrs. CAPITO. Mr. Speaker, I wish to speak about the medical liability reform bill.

Being from a State like West Virginia, we have been in crisis for many years, and I am exceedingly frustrated that we are not able to pass this bill and get it to the President for signature. We have passed this bill seven times, while our colleagues in the other Chamber have not acted on this. As a result, we are a Nation faced with torts gone wild.

Mr. Speaker, the medical liability crisis our Nation is faced with is not a recent development. It has been an ever-present problem of varying degrees over the last 3 decades. Some States, like California, have been proactive and enacted tort reforms 3 decades ago. The California reforms, commonly referred to as MICRA, resulted in significantly limiting the increase in medical liability premiums as compared to the rest of the Nation.

The other States' premiums have risen over three times as much as those in California. Doctors are retiring, moving, and throwing up their hands in frustration across this land. Access, affordability, and quality of our health care is at stake.

Mr. Speaker, some State legislatures have acted recently to change their respective tort law system for medical liability claims. I am proud to say my own State of West Virginia has been a leader in this. However, this much-needed reform is now vulnerable to judicial review and can be ruled unconstitutional.

Other States, like Pennsylvania, are specifically prohibited by their State constitution from considering such reforms. Mr. Speaker, this is why a Federal reform is so desperately needed. This reform will defer to State tort law where it is present, but will serve as a backstop for States where the respective State supreme court rules against the new laws.

□ 1100

Mr. Speaker, it is time to take control of the health care costs that are spiraling out of control due to a legal system gone wild. Our Nation's health care is at risk.

Ms. SLAUGHTER. Mr. Speaker, I yield 6½ minutes to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, I thank the gentlewoman for yielding me this time. I am almost a little embarrassed to be here today. This country is dealing with serious problems in Iraq, this country is dealing with serious unemployment problems. In Ohio, we have lost 1 out of 6 manufacturing jobs. This country is facing incredible confusion with the new Medicare bill and seniors are sorting through 50 Medicare cards to get a 10 or 15 percent discount while drug prices go up 15 or 20 percent a year, yet we are here today to debate issues which have already passed in the House and bills that clearly will not make a dent in the problem of the uninsured, the 40 some million uninsured.

Instead of debating proven solutions, solutions that we know will work, but solutions that just might, they just might hurt the drug industry and the insurance industry, they might be bills the insurance companies do not like, instead of working on bills that expand access to health insurance, the Republican leadership has chosen to pat itself on the back. They are frittering away the Cover the Uninsured Week by reconsidering bills which have already passed this House, bills that cater to the insurance industry, some of the biggest contributors to President Bush and the Republican Party, bills that give away the Federal Treasury to the drug industry, industries that give tens of millions of dollars to Republican leadership and to President Bush, and bills that help the HMO industry by sheltering them from liability.

These bills will not necessarily reduce the number of uninsured, but we know they will undermine hard-fought State insurance laws, they will cover some small number of employers at the expense of others, they will provide tax shelters to people who already have coverage, and they will perpetuate the type of high-deductible coverage that actually discourages people from seeking preventive care.

Republican leadership will spend this week, Cover the Uninsured Week, trying to cull out the uninsured issue so they can hand out more tax breaks to their HMO and insurance companies and prescription drug company contributors and butter up more of their campaign contributors.

The President's budget does not spend a dime on the uninsured, but it will cut $24 million from the Medicaid program, clearly a program that works and which has helped millions of America's elderly and poor families.

The President's plan will increase the number of uninsured. My Republican colleagues would also cut the Medicaid program by billions, stripping health insurance coverage from the most vulnerable among us.

So let me see, the Republican bills protect the drug companies and the HMOs from harm they cause their patients, they destabilize the entire small group insurance market to buck State insurance laws, and they give tax breaks to the already insured. I am sure none of this has anything to do with the fact this is an election year, President Bush is out raising $200 million, Republican leadership is trying to equal that amount of money, and so much of it comes from the drug industry, the insurance industry and the HMOs.

Now, this is my Republican friend's response to the fact that 43 million people in this country are uninsured. It is outrageous that we are voting for a second time on these issues. It is not just futile; frankly, it is shameful.

The other side of the aisle were talking about the malpractice crisis for physicians which is very real in many places. The gentlewoman from New York said this bill has liability protections, not just helping the doctors but for the drug industry?

Ms. SLAUGHTER. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentlewoman from New York.

Ms. SLAUGHTER. Not only for the drug industry, Mr. Speaker, but for the

people who manufacture medical devices. I know that is hard to believe, given that the drug companies just cleaned up from the Medicare bill passed here, but they are indemnified in this bill if the FDA has approved what they are doing.

Mr. Speaker, this is the same FDA that just last week threw science overboard and declined to approve a drug that has been found safe in 36 countries and by 24 of 29 scientists that studied it for the FDA. I do not trust the FDA anymore. But the FDA gives it approval, and then says citizens will have no recourse.

Mr. BROWN of Ohio. So to make sure I understand this, the FDA, the same FDA that has begun to throw overboard science, the same FDA that is clamping down on Americans going to Canada for less expensive drugs, the same FDA that approves prescription drugs, if they approve them, this FDA which is way too controlled by the drug industry, which is controlled and influenced by the drug industry, if they approve a new drug, even if that drug is found to be unsafe and injures hundreds of thousands of people, there is no liability? There is no way to bring suit?

Ms. SLAUGHTER. Mr. Speaker, if the gentleman would continue to yield, there is no punitive damage; none. In addition to that, just last week it was reported that science in the United States is falling considerably behind. We are no longer the leaders. This is the same leading by this FDA. I am very sorry to see that in this bill, and I believe most Americans will not approve it being in this bill. Frankly, I hope the Senate will again refuse to take it up.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, buttressed by our colleagues in the other body who are holding all these bills hostages, certainly they would like to have us give up, but when 58 percent of the OB–GYNs in Ohio are changing or leaving their practices, it is exactly the right time to turn up heat on these bills, and that is exactly what we are doing.

Mr. Speaker, I yield 2½ minutes to the gentleman from Texas (Mr. SAM JOHNSON).

Mr. SAM JOHNSON of Texas. Mr. Speaker, I am appalled at some of the rhetoric going on around here. The FDA is doing a good job. The FDA is controlling drugs. I have seen drugs out of Canada that are not good, so I think they are doing a good job.

Mr. Speaker, I want to say I am here today to support the rule for H.R. 4280, the Small Business Health Fairness Act. The state of health care in America is reaching a crisis level. Costs continue to escalate annually at unprecedented rates. Our employers are being forced to drop health care coverage. This disproportionately affects small businesses burdened with shopping for health insurance in the costly small group markets. Large employers bring bargaining clout to the table when they work with insurance companies. Small businesses have fewer employees, and thus have little or no bargaining power. Not only that, but large employers and unions are exempt from burdensome State mandates already. These mandates dictate what health plans must cover and vary from State to State. Small employers do not have that luxury.

We know that more than 60 percent of the uninsured Americans either work for a small business or are dependent upon someone who does. The clear course of action here is to help our small businesses afford health coverage by giving them those same opportunities that unions and large businesses have. Association health plans or AHPs do just that. Small businesses would be able to group together in bona fide trade associations. AHPs would then be able to use economies of scale to their advantage and provide more affordable health care for working families while avoiding administrative costs of State mandates. According to the CBO, AHPs would save small business owners and their employees as much as 25 percent on their health insurance.

I was pleased to see that the Senate task force on the uninsured included association health plans in their report just this week. They are not the only solution to the uninsured in America, but they are certainly an important part of any solution. This is a bipartisan bill. The time to act is now. I urge a yes vote on the rule and on the bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, the previous gentleman would not yield to my colleague, but it is the FDA's own assistant commissioner, Mr. Hubbard, who said they have seen no unsafe drugs from Canada but have found adulterated drugs in our relatively unregulated secondary wholesale market. So the gentleman is wrong on that. He said he has seen them. He ought to contact the FDA.

Mr. Speaker, there is some room for agreement here. There is a problem in the affordability of insurance, health insurance for many Americans and businesses, medical malpractice insurance for many doctors. But guess what? It has spilled over into car insurance, homeowners insurance, personal liability insurance. It seems to be a big crisis in the health insurance industry. And is it that there is this whole new tide of claims in these areas? No, it is because the industry mismanaged its funds.

It is an industry that is exempt from antitrust laws of the United States of America. They can and do collude to fix prices, redline people, and choose who they want to cover and who they do not. So they are sticking it to the docs and the American people and American businesses who buy health insurance in all lines of insurance.

So one logical thing to do would be to subject the health insurance industry to the same rules that every other industry in the United States of America has to follow, make them follow antitrust laws, do not allow them to collude to set prices. But since they are such generous contributors to the other side of the aisle and to the President, oh, no, we are not going to make them like other industries, we are not going to make them competitive, let us give them a little gift here. We are going to go after other ways of dealing with this problem.

Of course, the other way of dealing with this problem is exactly the same bill passed by the House of Representatives last year which is not going to pass the Senate. So why are we here today? We are here today because they want to remind their political contributors they did this last year and they can do it again this year. The Senate is not going to do it. They do not want to really legislate. They do not want to come up with compromises that might pass.

There is a problem in affordability and access. There is a problem for both citizens and for docs to get the health insurance that they need. We are losing specialties. All those things are true, but their conclusion is to bail out their friends, the HMOs, the pharmaceutical companies, the insurance industry, not to help the docs, because there is not going to be a bill, and not to help the American people get affordable health insurance.

Mr. Speaker, there are better ways to deal with this problem. A number of States have adopted things that are called soft caps. The bill the other side of the aisle is trying to pass here today was brought up by initiative petition in my State. We hear people in America want this legislation. Guess what? In my State, which I think is a pretty good cross-section, the initiative for hard caps at $250,000 when people saw the egregious things that happen to some people through negligence, was rejected 4 to 1. The other side of the aisle is telling us the American people want this solution. No, the American people want access to their doctors, and they want access to affordable health insurance. But the other side is not going to do either of those things today because it would go against the economic interests of some of their most generous political contributors.

This is identical to legislation passed in the House of Representatives last year, but here we are doing it again for political purposes, not legislative purposes.

Ms. PRYCE of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. NETHERCUTT).

Mr. NETHERCUTT. Mr. Speaker, Washington State is facing a health care crisis because medical liability lawsuits have run amok. We are one of 19 States in the country that is in a

health care crisis. We have lost 500 doctors because they could not afford medical liability insurance in my State. What this means is women who are seeking an OB-GYN in some of our communities cannot find one to deliver their babies. That is a crisis. Emergency rooms are not able to stay open 24 hours a day; that is a crisis. We are losing doctors to Idaho, right across the line from my State.

As a member of the Medical Malpractice Crisis Task Force, I am pleased to support H.R. 4280, the Health Act, and pleased to support the rule. It is the right thing to do. There is every reason in the world that critics of any reform can try to give to mask the concept that we have to address the issue of medical liability reform first. We will not do that until we pass a bill in this House and we pass a bill in the other body so there can be communication and discussion and resolution of this problem.

□ 1115

To do nothing does not solve the problem, Mr. Speaker. So I am pleased that this HEALTH Act is being brought up again. We have to make sure we establish again and again and again the commitment of the House to medical liability reform, because doctors, hospitals, nurses, and patients are at risk if we do not change this system, modify this system, reform this system with a commonsense proposal that will lower costs and premiums so that doctors can stay in business. The damage that is being done here is that we are losing very good physicians and hospitals are at risk, risking closing, and also nurses are leaving the practice. They are going elsewhere because they are concerned about the liability insurance that they cannot get in States like mine. I urge my colleagues, vote for this measure, vote again in this House to pass it. Then let us urge the other body to adopt the same sort of commonsense reform. We can do that. I urge my colleagues to support the rule and the bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Speaker, first let me thank the gentlewoman from New York for yielding me this time. I was listening to her comments. I just want to concur in that this is a very unusual process. Once again we are not going to have full debate and the opportunity to offer amendments. Although we might be getting used to it because it seems to be the norm around here, we should never be silent as to how this is wrong. We should have an opportunity to offer amendments. We should have an opportunity for an open process. We should have an opportunity to debate a bill on its merits. And we are not going to get that chance.

Mr. Speaker, let me mention just two matters that affect the people that I represent in Maryland and the reason I took this time. First, I agree with the previous speaker on this side of the aisle that we should be doing something to bring down the cost of prescription medicines in this country. That is why I will vote against ordering the previous question, because I think we should have a debate on the floor dealing with the cost of medicines which is still the number one problem that I hear when I go to my town hall meetings. The second issue deals with these association health plans. I went to the Committee on Rules and asked for an amendment that would exempt States from these association health plans if the State requested it and they had a small-market reform which already provided help for their small businesses. In my State of Maryland, the adoption of the association health plans will actually be counterproductive. There will be fewer companies that will be offering health care benefits than there are today. That is why Governor Ehrlich has opposed that plan and many other Governors around the Nation have done the same. But I am not even going to have an opportunity to offer that amendment that would give the States the opportunity to continue their initiative. After all, I thought we believed in States rights here and the ability of States to be able to move forward with initiatives to cover their uninsured. But no, this bill works just the opposite. That is why many of our States we have heard from would oppose the association health plans in the way that it is currently drafted.

Mr. Speaker, I regret that the Committee on Rules did not allow that amendment to be made in order nor did they allow any amendment to be made in order. That is not the way that we should be operating in this body. It does not speak to the democratic process. Therefore, I would oppose the rule.

Ms. PRYCE of Ohio. Mr. Speaker, I am very pleased to yield 3 minutes to the gentleman from Florida (Mr. WELDON), who, as a doctor, has personal knowledge of how this stuff works.

Mr. WELDON of Florida. Mr. Speaker, I thank the gentlewoman for yielding me this time. Yes, I do confess to being a doctor. I practiced medicine for 15 years before I was elected to the House of Representatives. I still see patients. I see them once a month. I want to address the issue in this rule of medical malpractice reform. A lot of people when they debate the issues surrounding the need for medical malpractice reform and reining in all of these plaintiffs' attorneys who are advertising on television, a lot of focus is on the size of the judgments and the costs, the legal fees associated with this system. But the real burden on our health care system is the high cost of defensive medicine.

What is defensive medicine? I can tell you exactly what defensive medicine is because I practiced it for 15 years. I spent daily between $300 and $3,000 a day unnecessarily. Primary care providers, they do not like to talk about this because it gets them in trouble with their insurance companies, not with their medical malpractice insurance companies but with the Blue Cross/Blue Shields and the Aetnas. The executives of those companies, if they hear doctors saying that they are spending money unnecessarily, they get very upset and they try to clamp down on it.

But how does it work? You come in and you have a headache, you have just lost your job or you have got problems at home. You order a CAT scan, anyway, just because you are worried that you might miss something. And you see the next patient and you are worried about this. Some of you may listen to me and say, oh, this is just rhetoric, this is just hot air. This has been studied scientifically. They studied it in California. They studied it before and after the medical malpractice reforms went through. They discovered that just in the Medicare plan alone that for one diagnosis of heart disease, we are probably spending in excess of $600 million a year unnecessarily just within Medicare, just within one disease, because of defensive medicine.

They passed medical malpractice reform in California. They looked at a reduction in costs with no increased incidence of complications, what we call morbidity and mortality. In other words, quality stayed the same and costs went down. The only way to explain that, the researchers said, is a reduction in defensive medicine. What does this mean? This means if you want to save Medicare money so we can afford prescription drugs, pass medical malpractice reform. If you want to reduce the number of uninsured, pass medical malpractice reform. If you want to reduce the cost of health insurance for American businesses so they can be more competitive in the international marketplace, pass medical malpractice reform.

Ms. SLAUGHTER. Mr. Speaker, I yield myself 1 minute. CBO reports that proponents of limiting malpractice liability argue greater savings in health care, possible through reductions in practice of defensive medicine. However, the defensive medicine is motivated less by liability than by the physicians, by the money it generates for them. And on the basis of existing studies and its own research, the Congressional Budget Office says savings from reducing defensive medicine would be very small.

Also, there is no evidence that restriction on tort liability reduced medical spending.

Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, I thank the gentlewoman from New York for yielding me this time. I rise in strong support of the motion of the gentleman from Texas (Mr. FROST) to move the previous question and allow a vote on the two bills that are essential to lowering health care costs and helping

Americans afford their prescription drugs.

I would like to note the irony that today in the House of Representatives we are dealing with health care, the Senate is dealing with health care, and Senator KERRY is dealing with the issue of the uninsured and health care. The only person missing from this debate is the President of the United States, who still lacks an agenda as it relates to health care.

As we are focusing on health care costs, for the last 6 years the cost of prescription drugs in this country have gone up on average 18 percent. This year alone they are going to go up 18 percent. They are projected to go up next year 20 percent. That is five times the rate of inflation. The two bills that this motion would bring up on the floor would make an immediate and lasting impact on the cost of prescription drugs that our seniors are being asked to pay and our taxpayers are being asked to also pay. People from around the world come to America for their medical care. Yet Americans are forced to go around the world for their medications. That is wrong, and we can do better.

Just recently, the CEOs of Walgreens and CVS now came out in favor of allowing people to buy their drugs in Canada and in Europe. Secretary of Health and Human Services Tommy Thompson, who has opposed it, now supports allowing Americans to buy their prescription drugs in Canada and in Europe. The Secretary of Health and Human Services uses Lipitor. Where is that made? Ireland. The difference between that Lipitor that he buys and the people in Canada and Europe is that in the United States that costs 67 percent more here in the United States than it does in Europe and Canada, yet it is made from the same factory in Ireland and we import it into this country. It is distributed worldwide from one country.

Last year alone we imported $14.5 billion worth of prescription drugs. They are safe. The only thing different with those drugs from anywhere else in the world is those drugs here in the United States at our pharmacy cost 50 to 60 percent more here in the United States than they do in Canada and in Europe. It is high time we bring competition and choice to market and bring prices down. This legislation would allow us to do that.

In addition to that, half the States in the country now have legislation or some ability allowing people to buy prescription drugs in Canada and Europe. Congress has passed this on a bipartisan basis. It is not a Democrat-Republican issue. It is between right versus wrong. It is high time we bring this legislation back up and give people real financial relief from a cost where inflation is running 2 percent, prescription drug costs are running close to 20 percent each year for the last 6 years. It is time we bring competition to bear on the market and allow prices to drop through choice and through competition.

I would hope that my colleagues on the other side, given that 83 Members voted for this, allow this legislation to bear so we can finally force the other Chamber to allow prescription drugs prices to be driven down. This is about cost, cost, cost. When somebody tells you it is not about money, it is about money. The prescription drug companies have a hold on this Congress. It is time we break the hold and allow the voices of our constituents to be heard and the pressure on their wallets to be relieved.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

I may have misheard my colleague earlier when I thought she said that CBO estimates on the premiums for medical malpractice insurance would be very small. If that is the case, I am sorry, but let me just let the record stand that CBO estimates predict that under this very act, premiums for medical malpractice insurance ultimately would be an average of 25 to 30 percent below what they are under current law. Twenty-five to 30 percent below the premiums that we have currently is not a small amount. It is very, very significant.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, let me yield myself 1 minute to respond to my colleague who did misunderstand what I was saying. The speaker had said that practicing defensive medicine was one of the reasons that the costs were so high. What the CBO has said was that defensive medicine is motivated less by liability concerns than the income it generates for the physician. On the basis of CBO's own studies and research, they believe that savings from reducing defensive medicine would be very small.

Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I have been on the floor yesterday as well as earlier today essentially pointing out that the Republicans who have now said that this is the week of the uninsured, that somehow this is the week they are going to pass legislation to help the uninsured are, in fact, doing nothing of the kind. We face a health care crisis in this country. It is a crisis that is based primarily on cost because the cost of health care keeps going up and also because more and more people have no health insurance. Nothing that is being presented in these bills today and tomorrow is going to do anything major to bring costs down for the patients or for those people who are now uninsured.

I oppose the rule because I think there should be an opportunity to bring up some Democratic measures that would do exactly that, reduce the costs of health care and also cover more people. Specifically, I know it has already been mentioned with regard to cost, is the idea of reimportation from Canada and other countries. We all know that that saves the consumer money. Why not let us have an opportunity to bring that up? The Republicans are wrong in not allowing it to be brought up.

Secondly, let us amend the Medicare prescription drug bill so that we can have negotiated price reductions. Let the Medicare agency, let the Federal Government negotiate prices to bring prices down. This is what other countries do. This is what we do with our VA and with our military. It is a way of lowering costs. But beyond that for the uninsured, allow us as Democrats to bring up other measures. We have a measure that would allow the nearly elderly, those who are over 55, not yet eligible for Medicare, to buy into the Medicare program so that they can be insured. That is the second largest group around this country that have no health insurance right now.

In addition to that, we have a very successful bipartisan program called S-CHIP that insures a lot of the kids around this country who were uninsured. Let us amend that bill. Let us bring up an amendment that would allow us to expand the S-CHIP program to cover the parents of the kids. These are people that are working, they are lower-income but they are working, and they cannot get health insurance on the job.

Let us also address the problem that small businesses have. The Democrats have another proposal, a piece of legislation that would increase what small businesses can do in terms of tax deductions if they provide health care for their employees. The Republicans do not allow us to do this. They are doing nothing to deal with the crisis of health care in terms of cost and the uninsured.

Ms. SLAUGHTER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I will be asking for a ''no'' vote on the previous question. If the previous question is defeated, I will offer an amendment to the rule that will allow the House to add two more important health-related bills to this multibill rule.

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Since we are revoting on health initiatives that have already passed the House in some form in this Congress, I think we should take this opportunity to consider two other very important pieces of healthcare-related legislation. My amendment would allow for the consideration of a bipartisan drug reimportation legislation. If the purpose of this rule and these bills is to restate our commitment to House-passed health-related matters, this bill certainly deserves to be included. It has been passed several times. Drug reimportation legislation would provide relief for millions of Americans including the over 40 million uninsured. The House overwhelmingly passed similar legislation last year but it is worth

considering again, now that the Secretary of Health and Human Services has said that he supports reimporting drugs from Canada.

The second bill would amend the Medicare Prescription Drug Act to provide for negotiation of fair prices for Medicare prescription drugs. I cannot think of a more important correction to the Medicare prescription drug bill than fixing the irresponsible language in that bill that prohibits the Federal Government from negotiating lower prices for prescription drugs for our Nation's senior citizens.

Let me emphasize that a ''no'' vote on the previous question will not stop consideration of the three bills already covered by the rule. It will allow the House to add these two important health bills to this multibill rule. However, a ''yes'' vote will block Members from considering two more critical health initiatives. Again, I urge a ''no'' vote on the previous question.

Mr. Speaker, I ask unanimous consent that the text of the amendment be printed in the RECORD immediately prior to the vote on the previous question.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I cannot stress enough the importance of moving forward with these solution-based initiatives. We have a chance here now to make a difference in the lives of hardworking Americans across this great Nation. So let us put a stop to the politicizing of the plight of the uninsured. Let us help the small business owners insure their employees. Let us help Americans have more say about how their health care dollars are spent. Let us help these pregnant women and their babies who have no doctors to deliver them and care for them. Let us help the 58 percent of OB–GYNs in Ohio that have to leave or change their practices than stay in the profession they have chosen.

Mr. Speaker, I urge my colleagues in the strongest way to support this rule and the underlying legislation.

Mr. COSTELLO. Mr. Speaker, I rise today to oppose the rule that refuses to allow for an open debate or the ability to offer amendments to the medical malpractice legislation brought to the floor today by the Republican leadership.

We have a medical malpractice crisis in downstate Illinois. Doctors are leaving the area at an alarming rate.

There is not a simple solution to this complex problem. Some believe that restricting or capping damages that victims of malpractice receive alone will solve the problem. Others believe that placing restrictions on the insurance industry is the answer. There have been many studies on the issue reaching conflicting conclusions on the cause of the problem or the solution.

However, one thing is clear. If we do not have the ability to put all of the issues on the table for consideration, and if we do not have the ability to debate each issue and offer amendments on medical malpractice legislation, we will not be able to solve the problem.

The bill before us today is identical to the bill passed by the House that has been tied up in the Senate for months. The bill restricts or caps damages that a victim of malpractice can receive. However, the bill does nothing to restrict premiums that insurance companies can charge doctors or health care providers. It does nothing to stop or restrict the frivolous lawsuits that clog our court system and the bill does nothing to establish an alternative arbitration system to settle claims outside of the court system.

If we are serious about finding real solutions to the crisis rather than scoring political points, the Republican leadership should allow for open debate on all points of view and allow members to offer amendments to the bill to be considered and vote them up or down.

Unfortunately, they have restricted debate on the bill and have refused to allow any amendments to be offered, debated or considered. It is—take it or leave it as is with little debate and no amendments—no room to compromise.

I will vote no on the closed rule prohibiting amendments and restricting debate, and I will vote to recommit the bill so that we can come back to the floor with a bill that fully addresses all issues putting everything on the table for consideration and adoption.

I urge my colleagues to join me.

Mrs. CHRISTENSEN. Mr. Speaker, the House today considered a rule providing for the consideration of three bills that are intended to solve our nation's insurance crisis which has reached epidemic proportions. Today, an estimated 43 million in the United States have no health insurance. About 60 percent of those, approximately 24 million, are employed by a small business or are a member of a family whose income derives in some way from a small business. The skyrocketing prices of malpractice liability is driving insurance premiums up and making it impossible for employers of 500 or less individuals to afford the high cost of health care.

The bills being debated today while seeking to address these issues does so unfortunately, by providing the wrong solutions. Today, the House will once again bring up a bill to create Associated Health Plans (AHP). Providing a permanent solution to the uninsured is critical to our nation's economy because Small Businesses, the engine of our nation's economic growth because they create about 75 percent of new jobs in America, deserve a sound and permanent solution to the affordable health care.

Mr. Speaker I oppose the rule that will control the disposition of these bills primarily because it does not provide for Democrats to include their measures in solving the issue of the uninsured. The proposed rule only makes in order a substitute amendment and not an amendment to the underlying bill. Stacking the deck against the Democratic efforts to ensure that the legislation has a sense of balance and accurate in addressing the need of the American people.

Additionally, Mr. Speaker, I must also express my displeasure with the majority's efforts to address the current malpractice crisis. As a former family doctor I am fully aware of the feeling many doctors have about being forced out of practice by very high insurance premiums. The Republican bill, H.R. 4280 does not address the problem, however.

According to the Institute of Medicine, ''At least 44,000 and perhaps as many as 98,000 Americans die in hospitals each year as a result of medical errors. Deaths due to preventable adverse events exceed the deaths attributable to motor vehicle accidents (43,458), breast cancer (42,297) or AIDS (16,516).'' The IOM estimates annual costs to the economy of medical errors between $17 billion and $29 billion. Congress would better serve the public with legislation that promotes patient safety, rather than overriding state-law deterrents that help prevent patient deaths and injuries.

Instead of reducing the costs of medical malpractice and defective products, the majority's approach would shift costs onto injured individuals, their families, voluntary organizations and taxpayers. Not only are the provisions unfair to victims, they also sacrifice the principles of market economics and private property long professed by the bill's conservative advocates.

Furthermore, punitive damages are rarely awarded in medical malpractices cases, but the threat of punitive damages is important to deterring reckless disregard for patient safety by HMOs, nursing homes, and drug and medical device manufacturers. The $250,000 cap on non-economic damages awards are for non-economic loss (pain and suffering resulting from injuries such as lost child-bearing ability, disfigurement, and paralysis) compensate for the human suffering caused by medical negligence and defective medical products.

These damages generally account for 35 to 40 percent of a jury's award. Typically, such damages exceed $250,000 only in cases of NAIC Level 6 injury severity or higher—that is cases involving permanent significant injuries. Thus, the cap will not affect patients with minor injuries; instead, it targets only victims of injuries such as deafness, blindness, loss of limb or organ, paraplegia, or severe brain damage. Since the cap makes no allowance for inflation, its arbitrary limits become more unjust as each day passes.

I implore my colleagues to reject this rule and H.R. 4280 and support the Conyers-Dingle substitute. The Democratic substitute does not restrict the rights of injured patients who file meritorious claims. It requires certification, with civil penalties, that a pleading is not frivolous, factually inaccurate or designed to harass. It includes a 3-year statute of limitation; establishes an alternative dispute resolution process; limits suits for punitive damages; and applies 50% of awards from any punitive damages to a patient safety fund at HHS. Finally, it requires insurance companies to develop a plan to give 50% of their savings to reductions in medical malpractice rates for doctors.

The Democratic substitute also addresses the causes of rising medical malpractice insurance rates by creating a new commission to evaluate the causes of the malpractice premium crisis and recommend solutions, including a medical reinsurance program, risk distribution among health providers and other changes that might avoid such increases in the future.

Because experience has shown that capping damages will not lower malpractice insurance rates for doctors, the Democratic substitute promotes competition in the marketplace so doctors can get lower insurance rates. The five states with the highest malpractice insurance premiums in the country in 2002 already had damage caps. Only insurance reform will help bring down rates. The Democratic substitute specifically requires the newly created commission to study various insurance reform proposals, particularly repealing the medical malpractice insurance exemption under the McCarran-Ferguson Act (which would foster competition).

Mr. Speaker, we need a real malpractice relief, I urge my colleagues to put partisan gamesmanship aside and pass health legislation that our nation is so badly in need of.

The material previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION FOR H. RES. 638 RULE FOR H.R. 4279, H.R. 4280, & H.R. 4281

Strike section 4 and insert the following:

''Sec. 4. That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider a bill consisting of the text of H.R. 2427, to authorize the Secretary of Health and Human Services to promulgate regulations for the reimportation of prescription drugs, and for other purposes, as passed by the House. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; (2) an amendment in the nature of a substitute if offered by Representative Dingell of Michigan or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

''Sec. 5. That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 3672) to amend part D of title XVIII of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to provide for negotiation of fair prices for Medicare prescription drugs. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; (2) an amendment in the nature of a substitute if offered by Representative Dingell of Michigan or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

Sec. 6.(a) In the engrossment of H.R. 4279, the Clerk shall—

1. await the disposition of all the bills contemplated in sections 2–5;

2. add the respective texts of all the bills contemplated in sections 2–5, as passed by the House, as new matter at the end of H.R. 4279;

(3) conform the title of H.R. 4279 to reflect the addition to the engrossment of the text of all the bill contemplated in sections 2–5 that have passed the House;

(4) assign appropriate designations to provisions within the engrossment; and

(5) conform provisions for short title within the engrossment.

(b) Upon the addition of the text of the bills contemplated in sections 2–5 that have passed the House to the engrossment of H.R. 4279, such bills shall be laid on the table.

(c) If H.R. 4279 is disposed of without reaching the stage of engrossment as contemplated in subsection (a), the bill contemplated in section 2–5 that first passes the House shall be treated in the manner specified for H.R. 4279 in subsections (a) and (b), and all other bills contemplated in sections 2–5 that have passed the House shall be laid on the table.

Ms. PRYCE of Ohio. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

PROVIDING FOR CONSIDERATION OF H.R. 4275, PERMANENT EXTENSION OF 10-PERCENT INDIVIDUAL INCOME TAX RATE BRACKET

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 637 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 637

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4275) to amend the Internal Revenue Code of 1986 to permanently extend the 10-percent individual income tax rate bracket. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Rangel of New York or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purposes of debate only.

The resolution before us is a modified closed rule, the standard rule used for considering tax bills. It provides for 1 hour of debate in the House to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

It also provides for consideration of the amendment in the nature of a substitute printed in the Committee on Rules report accompanying the resolution, if offered by the gentleman from New York (Mr. RANGEL) or his designee, which shall be considered as read and shall be separately debatable for 1 hour equally divided and controlled by the proponent and an opponent.

Finally, the rule waives all points of order against the amendment printed in the report, and it provides one motion to recommit with or without instructions.

Mr. Speaker, the legislation that we will be considering this week, H.R. 4275, the 10 percent tax bracket permanent extension bill, is very important to me, to my party, to the American taxpayers, and I believe this country. I support this legislation to fulfill a promise made by our great President, George W. Bush, and the Republican Party that was begun in 2001 when the 107th Congress overwhelmingly passed H.R. 1836, President Bush's visionary plan to provide American workers with comprehensive tax relief.

Among other things, the President's bold 2001 tax plan created a new 10 percent tax bracket, enabling millions of American families to keep more of their hard-earned money. In the period immediately preceding Congress' passing the President's tax proposal, between 1986 and 2000 the lowest tax rate available to these American workers was 15 percent.

The tax relief this new bracket provides to middle-class taxpayers has proven to be very beneficial to our economy and for hardworking families all across the United States. As a result, in 2003 Congress passed H.R. 2, another tax cut championed by President Bush that accelerated the phase-in of an expanded 10 percent tax bracket, increasing the amount of taxable family income that will be subject to this new lower rate. Under this bill the income eligible for this tax rate went up to $14,000 from $12,000, and up to $7,000 from $6,000 for singles.

Unfortunately, because this tax cut language was written as a compromise with the Senate. If Congress fails to pass my bill and permanently extend the 10 percent tax bracket, in 2005, 2006, and 2007 the bracket will shrink back to $12,000 and $6,000 for singles, increasing again briefly and then disappearing forever in 2011 to satisfy the arcane Senate budgetary rule.

If this were allowed to happen, it would mean that some 22 million low-income filers whose tax liability is contained wholly within the tax bracket of 10 percent would immediately be shouldered with a 50 percent income tax increase. I believe that this kind of tax increase on working-class Americans is simply unacceptable. My legislation offers a simple solution to prevent this major tax increase on middle-class families from occurring. It maintains and adjusts for inflation the size of the 10 percent bracket at $14,000 for married couples, $7,000 for singles, and makes this bracket a permanent part of the Tax Code.

If H.R. 4275 is not enacted, it would mean that 73 million tax returns, representing almost 150 million individual Americans, will be hit with a higher tax bill next year, and these taxpayers will face an average income tax increase of over $2,400 over the next decade. It would mean that those 22 million lower-income workers would be pushed into a higher tax bracket, including over 1.7 million hardworking Texans from my State who struggle every day to make ends meet. Congress should not and cannot allow this massive tax increase to occur, and my legislation would prevent this antigrowth scenario from happening.

No other provision of the 2001 Bush tax cut has benefited taxpayers more broadly than the creation of this 10 percent bracket. Studies have shown that the benefits for this provision overwhelmingly flow to lower-and middle-income married earners between the ages of 25 and 54. These are precisely the people that this legislation will help, and I urge all of my colleagues to support this important tax measure on behalf of all American taxpayers.

This week's vote on H.R. 4275 will provide the kind of broad-based middle-class tax relief to which the Republican Party is strongly committed and so am I.

Mr. Speaker, I urge my colleagues to vote with me in supporting this rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia (Mr. SCOTT) for a brief personal privilege matter.

(By unanimous consent, Mr. SCOTT of Georgia was allowed to speak out of order.)

MOURNING THE PASSING OF GLORIA AARON

Mr. SCOTT of Georgia. Mr. Speaker, I thank the gentleman from Texas (Mr. FROST) for yielding to me, for being kind and generous for this moment.

Mr. Speaker, I rise really with a heart of sorrow. I rise to ask to be excused from voting so that I may be able to attend a funeral for my wife's sister, my sister-in-law, Gloria Aaron in Mobile, Alabama, who passed on Mother's Day weekend, Saturday. The funeral will be tomorrow and the wake this evening.

Of course, voting is paramount and most important to us here and I wanted to make sure it is a part of the RECORD as to why I will miss voting.

And while I am here, Mr. Speaker, I would like to say just one word about Gloria Aaron. She was more than just a sister-in-law. She was a sister, very strong in her faith and belief in God, worked very hard in the church in Mobile at Morning Star Baptist Church. She leaves a mother, Estelle Aaron; one sister, my wife, Alfredia; two brothers, James and Hank Aaron. Our family are deeply in remorse. I thank the Speaker for giving me this opportunity. And of course for Gloria, she indeed fought that good fight. She kept the faith. She finished her course, and I am sure that there is a crown of righteousness in heaven for Gloria Aaron.

I thank the gentleman from Texas for yielding, and I thank the Congress.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, I am pleased to join the gentleman from Texas (Mr. SESSIONS) today in support of H.R. 4275, legislation to make the expanded 10 percent tax bracket permanent. In my district in north Texas and across America, scores of families work hard every day to make ends meet. By passing this bill, we will provide some much-needed tax relief to these hard-working Americans.

But I must admit, Mr. Speaker, I find it very odd that some Members of this House would champion the tax relief bill before us today when they have also at nearly every opportunity voted against other measures that would have provided significant economic benefits to a great many middle-class taxpayers. I am talking about measures like providing additional tax relief by reinstating the State sales tax deduction and ensuring overtime pay for America's police and firefighters.

I think it is important to consider these sorts of measures now, Mr. Speaker, because many of our constituents are suffering from the recent recession and the outsourcing of good American jobs overseas.

Do not get me wrong, Mr. Speaker, we all want to provide tax relief to our constituents. I voted last week in favor of the bill to provide relief from the Alternative Minimum Tax. I voted the week before to permanently eliminate the marriage tax penalty, and I will vote today to make the expanded tax bracket permanent. The bill on the floor today is a good bill and it is the very least we can do to help families in the country, but I think the American people deserve better than our least effort.

Others may be happy to limit our efforts to help American families to this bill, but I am not, Mr. Speaker. We can improve this bill by amending the rule to allow for the consideration of H.R. 720, a bill introduced by the gentleman from Texas (Mr. BRADY). His bill will reinstate the sales tax deduction so that citizens of States without income taxes may deduct their sales taxes from their Federal tax bill. This is a very important issue for many Americans, including my constituents in North Texas who do not pay a State income tax but have been plagued by high sales taxes which may rise even higher if some in the Texas legislature have their way.

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Our State comptroller has estimated that the average Texas family would save about $300 a year on their Federal taxes under the bill offered by the gentleman from Texas (Mr. BRADY).

Last week, I attempted to bring a similar measure up for consideration, but that effort was defeated on a straight party-line vote.

This is a bipartisan issue, Mr. Speaker, and I want to give the entire House an opportunity to vote on a bipartisan bill. H.R. 720 has 78 cosponsors, 47 Republicans and 31 Democrats. I have cosponsored the bill, the gentleman from Texas who is managing today's rule on the other side of the aisle has cosponsored the bill, and dozens of other well-respected Members from both parties have cosponsored the bill. As a matter of fact, Mr. Speaker, the Republican leadership indicated last week that they too support this bill.

So why do we not vote on it? Is this about politics, or is it about tax relief? Last week, Republicans defeated my amendment and said it was about politics. Well, here is a Republican bill that has strong bipartisan support and will provide millions of families with $300 a year in tax relief.

The American people deserve to find out today whether the majority party will put partisan politics aside for just a minute to pass this badly needed tax relief. I bet our constituents just cannot wait to see how their elected Representatives will vote on this issue.

In the coming weeks, I hope we will have more opportunities to help more families. But in the meantime, if Members are serious about helping their constituents, they will not only vote to extend the 10 percent tax bracket permanently, they will also vote today to defeat the previous question and allow us to consider H.R. 720, to reinstate the sales tax deduction. It is a Republican bill with Democratic support. As my colleagues realize, a no vote will be a vote against tax cuts.

Mr. Speaker, at this point I would like to insert several things in the RECORD. I am inserting a special report from Carole Keeton Rylander, the Texas Comptroller of Public Accounts. In this report she says, ''Restoration of the IRS sales tax deduction should be one of Texas' main priorities in Congress. The current discriminatory treatment of Texas taxpayers is taking $701 million out of Texas pockets and costing our State more than 16,000 jobs.''

I would also at this point, Mr. Speaker, insert in the record a statement by my colleague, the gentleman from Texas (Mr. BRADY), that he presented when he introduced this legislation. ''Washington should treat all States equally,'' Mr. BRADY says. ''A broad bipartisan group pushes Congress to end bias against sales tax States.''

[Special Report, March 2002]

RESTORATION OF THE IRS SALES TAX DEDUCTION SHOULD BE ONE OF TEXAS' MAIN PRIORITIES IN CONGRESS

(By Carole Keeton Rylander)

Currently, the citizens of Texas and eight other states are discriminated against because they cannot take any tax deduction comparable to the state and local income tax deductions enjoyed by the citizens of 41 other states and the District of Columbia. In an attempt to alleviate this disparity, Comptroller Rylander proposes to restore much of the federal sales and motor vehicle sales tax deductions that citizens of Texas were last able to itemize on their federal income tax returns for the 1986 tax year.

The Comptroller's plan would grant taxpayers in all states the option of deducting either their state and local sales and motor vehicle sales taxes or their state and local individual income taxes on their Form 1040. While such an option would not fully restore the original deduction, which allowed deductions for sales as well as income taxes, it would go a long way to restoring fundamental equity for taxpayers in those states that no not impose income taxes on their residents, and at minimal cost to the federal budget.

There is already legislation before Congress that closely tracks the Comptroller's plan. Last year, Representative Brian Baird (D–Washington) introduced H.R. 322, and Sen. Fred Thompson (R–Tennessee) introduced a similar bill, S. 291, in the Senate. Both bills would grant taxpayers in all states the option of itemizing a deduction for either their sales (including motor vehicle sales) taxes or income taxes paid, but not for both. Both bills would limit the deduction to a specific amount prescribed in a table (individualized for each state) providing deductible amounts by family size and income group. Taxpayers, however, would not have the option of deducting actual taxes paid, as they had in 1986 and before. The main difference between the bills is that H.R. 322 refers to state sales taxes, while S. 291 refers to state and local sales taxes. The Senate version also would allow the deduction against the Alternative Minimum Tax. H.R. 322 boasts among its 58 co-sponsors 18 Texans; S. 291 is co-sponsored by both Texas senators.

Texans lost their sales tax deductions in the last-minute deal-making behind the Tax Reform Act of 1986. Before passage of the Tax Reform Act of 1986 (TRA86), all individuals were allowed to take separate income tax deductions for their payments of state and local sales taxes and motor vehicle sales taxes. For the sales tax, they were allowed to deduct either the actual amount paid, or they could use an optional sales tax table that provided deductible amounts for each state (based on its rate and base) by income group and family size. For example, a family of four with an income of $33,000 was allowed to deduct $306 in state sales taxes in Texas, but $508 in Tennessee; and in both instances, taxpayers were allowed to include an additional amount for local taxes paid.

TRA86 was designed to simplify the federal income tax by eliminating many deductions, exemptions and credits while increasing personal exemptions and standard deductions and lowering and compressing tax rates. The deduction of state and local sales taxes was one of the last (and most contentious) items considered by the Senate, but the final efforts to restore at least some vestige of the deduction, led in part by Sen. Phil Gramm, ultimately failed. The argument put forth by members from the states that retained their state and local income tax deduction was that the losses attributable to the repeal of the sales tax deduction would be more than made up for by the increased personal exemption, and that the sales tax deduction only benefited the rich, because lower-income groups are less likely to itemize.

The Comptroller's plan could be put in place for less than 1 percent of the costs of existing state and local tax deductions. The March 26, 2001 cost estimate provided by the Joint Committee on Taxation estimated that H.R. 322 would decrease federal receipts by $23.1 billion over the 10-year period 2002–2011. The annual costs were expected to average $2.0 billion for the first three years, rising incrementally thereafter. Putting the federal cost in perspective, the 1999 cost for the current deduction for state and local income and property taxes was $268.9 billion. As such, reinstatement would produce an increased cost to the federal government of 0.8 percent.

The Comptroller's plan could be put in place with virtually no increase in complexity. Although the sales tax deductions were eliminated in part for reasons of tax simplification, the proposed legislation before Congress would add only one more line to Schedule A, for those taxpayers electing to itemize on their Form 1040. Even if actual taxes paid were allowed to be deducted there would be an addition of only two lines: one for general sales taxes paid, and one for motor vehicle sales taxes paid.

Equity and fairness demand that tax discrimination against Texans be eliminated. Reinstatement of the deduction for sales taxes would eliminate the fundamental disparity created by TRA86, when citizens in states with a personal income tax were permitted to deduct such taxes, but citizens in states without an income tax had no corresponding deduction. The net effect of this disparity is that Texans, as well as the citizens of the eight other states without a general individual income tax pay a greater percentage of taxes to the federal government than do citizens living in their neighboring states with income taxes. In other words, the federal tax law currently treats the same individual differently solely on the basis of residence. Providing individuals in all states the choice to deduct one or the other of their sales or income taxes would restore equity and fairness for all U.S. citizens at minimal cost.

The Comptroller's plan would put more money in Texans' pockets. As with everything else in the IRS Code, the devil is in the details, and even subtle differences in proposed legislation can have major revenue implications, making any revenue estimates of the ultimate legislation difficult. Assuming that the federal legislation fairly and accurately portrayed Texans' sales tax and motor vehicle sales tax payments, restoration of the sales tax deduction could be expected to save Texans—in the aggregate—on the order of $568.7 million (if only state sales taxes were exempted) to $701.3 million (if state and local sales taxes were exempted) in the 2002 Tax Year. The corresponding average savings per itemizing Texas household would be $231 and $284.

While the deduction only would go to taxpayers who itemized their deductions, more Texans at lower income levels would find it to their benefit to itemize. Right now, only one in five tax returns filed by Texans itemizes deductions, compared to almost one in three nationwide. The chief reason for this is that citizens of 41 states and the District of Columbia enjoy a deduction that is not available to Texans. Restoration of the deduction for sales taxes paid would go a long way towards bringing Texas closer to the national average. In other words, the availability of the deduction would benefit not only those who currently itemize, but an additional number of slightly lower-income households that would find it to their benefit to itemize.

The Comptroller's plan would create more jobs, economic growth, and state tax receipts with absolutely no state tax or spending increase. Keeping as much as $701.3 million in the hands of Texas taxpayers would provide a significant boost to the state economy. Assuming that the legislation passed this year and that the deduction could be taken on income taxes filed in 2003 for the 2002 Tax Year, the tax savings could be expected to generate 16,180 new Texas jobs, $590 million in new Texas investment, and $874 million in increased Texas Gross State Product in 2003. The increased economic activity in turn could be expected to boost general revenue by $66.5 million in the three-year period 2003–05. Most of this revenue would come from increased sales and motor vehicle sales tax collections.

The Comptroller's plan promises a win-win situation for all Texans, even those who do not itemize. To the extent that keeping more Texas income in Texas, where it belongs, instead of sending it off to Washington, all Texans would benefit from the increased employment opportunities and investment. In fact, it is difficult to find a downside for Texas to the reinstatement of the sales tax deduction.

The Comptroller's plan would be a straight-up win for the state, a victory for tax equity among the states, and it would provide a desirable, welcome boost to restoring statewide economic and revenue growth.

SALIENT FEATURES

Legislation tracking the Comptroller's plan would cost the federal government somewhere between $2.0 to $2.5 billion per year—less than 1 percent of the $268.9 billion 1999 deduction for state and local income and property taxes.

Texans would save as much as $701 million, or $284 per itemizing household on their 2002 taxes.

The estimated tax savings would be expected to generate 16,180 new Texas jobs, $590 million in new Texas investment, and $874 million in increased Gross State Product in 2003.

The increased economic activity could be expected to boost 2003–04 general revenue-related state tax receipts for the three-year period 2003–05 by $66.5 million.

Assuming that the federal legislation fairly and accurately portrayed Texans' sales tax and motor vehicle sales tax payments, a family of four with an income of $60,000 would be able to deduct an additional $1,015 to calculate taxable income, and a single mother of one with a total income of $35,000 could deduct an additional $641.

The current system discriminates against Texans and the citizens of other states that have opted to finance their budgets without personal income taxes. The Comptroller's plan is necessary to restore fairness and equity in the treatment of those state taxpayers who currently do not benefit from the tax deductions enjoyed by the citizens of the other 41 states and the District of Columbia.

[February 12, 2003]

''WASHINGTON: TREAT ALL STATES EQUALLY''

(Press Release by Congressman Kevin Brady)

BROAD BIPARTISAN GROUP PUSHES CONGRESS TO END BIAS AGAINST SALES TAX STATES

WASHINGTON, D.C.—U.S. Representative Kevin Brady (R–TX), a member of the tax writing Ways and Means Committee in the U.S. House of Representatives, introduced legislation, The Sales Tax Equity Act, in Congress today that would treat Texans the same way others in America are treated when it comes to paying federal income tax.

Brady's bill jointly introduced with a bipartisan group of congressional legislators, restores the sales tax deduction Congress repealed in 1986. Specifically, the act would allow taxpayers to deduct either their state and local sales tax from their federal tax return.

''When tax time comes around each April, taxpayers in Texas and seven other states are discriminated against merely because we live in a state that wisely chooses not to burden families with a state income tax,'' notes Bardy. ''Taxpayers in 42 states are allowed to deduct a portion of their state income taxes. But states like ours that rely upon sales taxes are discriminated against.''

''Americans should not be punished merely because of where they live. States should be free to choose how to fund their government without pressure from Washington. Uncle Sam's bias toward the income tax is unfair and needs to end.''

Texas Comptroller Carol Keeton Strayhorn estimates the average Texas family would save just under $300 a year on their federal taxes. Supported also by Governor Rick Perry, The Sales Tax Equity Act would provide an economic boost by creating over 16,000 new jobs, $590 million in new investments, and $874 million in increased gross state product in Texas.

So that families don't need to keep a shoe box of sales receipts, under Brady's bill the Internal Revenue Service would establish average deduction tables based on filing status, number of dependents, adjusted gross income and rates of state, and local general sales taxes. The tables, which taxpayers could opt for, are indexed for inflation.

The bipartisan delegation announcing the legislation at a news conference today in Washington include: Barbara Cubin (R–Wyoming), Brian Baird (D–WA), Zach Wamp (R–TN), Mark Foley (R–FL), Jim Cooper (D–TN) and Marsha Blackburn (R–TN). The group is pushing to include the measure in President Bush's Jobs & Growth tax relief package, noting that the measure will help stimulate consumer spending, restores fairness and helps low and middle-income taxpayers.

''Sales taxes add up for a family over the year,'' says Brady. ''This is an issue of fairness and of reducing the federal tax burden.''

''Another merit is this benefit taxpayers in every state because it gives them the option of deducting whichever state tax is higher, sales or income. That is a welcome tax relief option'', says Brady.

Other members of the Texas delegation supporting The Sales Tax Equity Act include: Sam Johnson (R) Gene Green (D) Michael Burgess (R); Eddie Bernice Johnson (D); John Carter (R); Max Sandlin (D); Ron Paul (R); Ralph Hall (D); Martin Frost (D); Henry Bonilla (R) and Silvestre Reyes (D).

States without a state income tax include: Texas, Florida, Tennessee, South Dakota, Nevada, Washington, Wyoming, and Alaska. The bipartisan Joint Committee on Taxation estimates the measure will provide $29 billion of tax relief over the next decade.

Mr. Speaker, it is clear that the legislation being offered today by the majority is good legislation, and I support the legislation. It is also clear that there is bipartisan support for the bill offered by the gentleman from Texas (Mr. BRADY) to permit a deduction of State sales taxes in those States that do not have an income tax. It is a wrong that should be righted, and I hope this House will make in order a vote on the bill offered by the gentleman from Texas (Mr. BRADY) at the same time we take up the bill offered by the gentleman from Texas (Mr. SESSIONS).

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have great respect for what the gentleman was arguing here about this sales tax bill. It is something where the gentleman from Texas (Mr. BRADY) has been joined with by the gentleman from Washington (Mr. BAIRD), as they have worked for a long, long time. I recall probably a full year ago where I was approached by both these gentleman about being a cosponsor of this important legislation.

The fact of the matter is today we are here to consider this 10 percent bill. Last week we considered other tax bills. Next week we will consider more tax bills. These are being done in such a way that would allow us a chance to talk about the importance of these, not only to taxpayers, but to the middle class of this country. It is my attempt and desire, just as it is with the gentleman from Washington (Mr. BAIRD) and the gentleman from Texas (Mr. BRADY), to continue working with the chairman of the Committee on Ways and Means, the gentleman from California (Mr. THOMAS), on the correct bill, the bill that he will support, the bill that will come to the floor, that bill that will pass, the bill that will provide this opportunity for all the taxpayers of these States. I believe it is some 17 States that currently have this problem as it relates to sales tax as a result of those States not having an income tax.

Today we are here for H.R. 4275 because it does the right thing for middle-class wage earners on this 10 percent tax bracket, and I am proud of what we are doing. I think anytime we can join in talking about on the floor of the House a bipartisan approach to lowering taxes, increasing the opportunity for people to have more money, more take-home pay, more opportunity, it is always good.

I have been an advocate of this for a long time. I do not think we should tax savings or investment in this country. That is not a part of what this is about today. We are talking about lowering the tax bracket, making it permanent, doing the right thing. I applaud those people that come to the floor and support this, because it is a great idea that we ought to make permanent.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is interesting, my colleague from Texas talks about the legislation and, well, we will do that in all due time and all due course, in terms of the righting of the wrong that was committed 18 years ago. The sales tax deduction for my State and for six other States, it is not 17, it is 7, was eliminated by this Congress in 1986, 18 years ago.

Only a few bills come out of the Committee on Ways and Means, only a few favored bills, so we have to take the opportunity to present this very important piece of legislation on the floor today and to give the House an opportunity to vote to right this wrong on the question of the deductibility of State sales tax. There are no other opportunities to present this to the House. That is why we are presenting it today. I hope that the House will give us the opportunity to right that wrong.

Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Speaker, I would like to thank my colleague from the great State of Texas for his leadership on this. The gentleman from Texas (Mr. FROST) has been a steadfast advocate of correcting this injustice for many years, and I appreciate working with him.

Mr. Speaker, I also respect also my colleague on the other side of the aisle because I know he cares about this. But at the end of the day today, we will have had an opportunity to vote to at least restore fairness to our citizens.

When we go back home, we cannot very well say to them ''it is a procedural matter,'' because it is also a procedural matter that every year when they fill out their taxes and they itemize their deductions, they have to put a zero; they have to say because our State chooses sales tax over income tax, as is their right, we are not able to deduct our sales taxes the way the States with income taxes can.

It is a procedural matter that costs our taxpayers hundreds of dollars every single year that they could use for their families. It is a procedural matter that costs my State $500 million every year.

The gentleman from Texas (Mr. SESSIONS) was right: We have passed a number of tax bills over the last few years in this Congress. We have had multiple opportunities, had the majority Members chosen to put their people over their partisanship. But they have declined.

Here is another opportunity. There was one last week. How many weeks are we going to say to our constituents that you go to the back of the line again? We have lowered the tax rates on millionaires in this country. We have refused to fight for tax fairness by insisting that the people of our States be allowed their deductions. So millionaires, not just millionaires, but people earning $1 million a year in income, were put at the front of the line. Our States have been told again and again, you go to the back of the line.

It is going to happen again today, I fear, and it does not have to. To my good friends on the other side of the aisle, we have worked and we should work in a bipartisan way, because the Tax Code does not say Republicans or Democrats or Independents get to deduct or do not get to deduct their sales tax. It just says all of you who have a sales tax do not get to deduct it.

But at the end of the day, on a procedural vote, we are going to bypass yet another opportunity, and bypassing that opportunity over the last several years has cost our taxpayers thousands of dollars.

When I ask my friends, when are you going to say to your leadership, we insist at long, long last that our constituents be treated fairly in the Tax Code? When are you going to say that? Because we have said it to our leadership.

It is going to be in the Democratic bill. It has been in prior Democratic bills. We have brought it up before the Committee on Rules, with almost unanimous no votes on the other side, with few exceptions. We cannot get the help on the other side.

My colleague, the gentleman from Texas (Mr. FROST), has been a steadfast advocate. He brought this issue up last week, and I am grateful he did. We didn't get a single yes vote from the other side. We did not get a single vote. Here it is again, and I wager we will not get a single vote yet again.

At some point, the citizens of our States are going to catch on and they are going to say, for all this talk about tax cuts, why do you keep leaving us out? Because your leadership is putting you in a position that says, time and time and time and time again, you must vote with us and not with your constituents. And it is not your leadership who elected you, it is your constituents.

The gentleman from Texas (Mr. FROST) has been responsive to his constituents. He has said we need to bring this up now, and we have the opportunity to do that now.

I would just ask my colleagues, you know as well as I do the only way we get this to happen is to make this part of a larger bill. We do need to provide relief for low and mid-income families in the Tax Code, but we also need to provide relief for the families in our States who have suffered too long under this injustice.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman not only for his articulation of the wonderful merits of fairness in our Tax Code, fairness for all the people in all the States. I accept the opportunity for my colleague, the gentleman from Texas (Mr. FROST) to reiterate there are 7 States that this impacts, and I appreciate his bringing that to light and respect that.

I would tell you that today, this is about the 10 percent bracket. This is a very specific request that we are making to the House of Representatives today that will be with the other requests that we are making on the parts of the Bush tax plan to make them permanent.

It makes me proud to know that we in the House of Representatives are together on these issues, about their importance of people who are back home, people who are struggling, people who are trying to make ends meet, people who are trying to make sure they provide for their families and do those things which are necessary to their own dreams. It makes me happy, and I am very proud.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have a good piece of legislation before us today that I intend to support. I think most Members of the House will support it. My only request is that, at the same time, we provide equity and justice to the residents of seven States who were denied that equity and justice in 1986.

Now, I know my colleague is a relatively junior Member and was not here in 1986 when that legislation was voted on, but I was here, and I voted against the legislation that denied the residents of my State the opportunity to deduct their sales tax, when residents of New York and California and other States could deduct their State income tax.

I feel very strongly about this issue, Mr. Speaker. As Members of this House, we can do so much to lend a helping hand to our constituents. Today we have a chance to do something good for millions of American families. We can pass the bill to make the extended 10 percent tax bracket permanent, and then we can also immediately consider the Brady legislation, H.R. 720, to restore the sales tax deduction for citizens of Texas, Florida and other States lacking a State income tax.

Now, as I mentioned earlier, last week I attempted to bring to the floor a similar bill to reinstate the sales tax deduction, but the Republican leadership indicated a preference for the Brady bill. So now we have a chance to consider the legislation that Republicans preferred. It does not matter to me which bill we consider. This is a bipartisan issue, with wide support on both sides of the aisle.

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I just want to get it done.

So today, Mr. Speaker, to get it done, I urge a ''no'' vote on the previous question. If the previous question is defeated, I will offer an amendment to the rule that will allow the House to vote on H.R. 720.

Let me be clear, Mr. Speaker. Voting ''no'' on the previous question will not prevent this House from voting on the underlying bill. It will simply allow for the consideration of H.R. 720. A ''yes'' vote, however, will deny the House the chance to even consider the issue of reinstating the sales tax deduction.

The American people deserve to know where their elected representatives stand on the issue of restoring the sales tax deduction. This is not a partisan issue, and this is not a political issue. This is about whether the citizens of Texas and other States should have to pay for the privilege of living there. I hope Members realize it today, and I hope their votes reflect this as well.

I urge a ''no'' vote on the previous question and ask unanimous consent that the text of the amendment be printed in the CONGRESSIONAL RECORD immediately before the vote.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. FROST. Mr. Speaker, I yield back the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

We have graciously provided Members this wonderful opportunity to hear about the debate of H.R. 4275, providing each other, both parties, an opportunity for Members to hear about an agreement that we believe that this initiative that was begun by President Bush of this 10 percent tax bracket, one that has now become available, one which we need to make permanent, is the question that is before us today on the floor. We have vetted this process. We have done those right things. We have gone through the committees. We have done this with numerous tax bills, and we will wish to continue doing that also.

We have an abiding faith in the taxpayer, that special interest group of the Republican Party, the people who get up and go to work, people who make their lives work, people who care about their kids, people who create jobs and opportunity, people who do things because they love their country and they want America to be the strongest, with opportunity and bettering people's lives.

That is part of what this H.R. 4275 is about. It is about bettering people's lives. It is a political consideration that our President, George W. Bush, floated to us years ago. It is about us as Members of Congress hearing that call, seeing people back home who relish this opportunity not to have it taken away. That is the importance of this body. This body is able to debate the issues, is able to bring them forth, is able to talk about them. And that is what is so evident about this great Nation, a majority rule.

Mr. Speaker, I would say to my colleagues, I too wish we had lots of other things that would be a part of this bill for tax relief. Today is a day when we will stand up and say we are going to make sure that this 10 percent bracket will be permanent for all taxpayers. I am proud of what we are doing. I ask each of my colleagues to support this rule, this underlying legislation, and the opportunity which I believe will be tomorrow to debate this fully on the

floor of the House of Representatives and, once again, give a victory to the taxpayers of this country.

The material previously referred to by Mr. FROST is as follows:

PREVIOUS QUESTION FOR H. RES. 637; RULE ON H.R. 4275—MAKING THE 2003 CHANGES TO THE 10% TAX BRACKET PERMANENT

In the resolution strike ''and (3)'' and insert the following:

''(3) the amendment printed in Sec. 2 of this resolution if offered by Representative Brady of Texas or a designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall separately debatable for 60 minutes equally divided and controlled by the proponent and an opponent; and (4)''

Sec. 2. The amendment referred to in (3) follows:

At the end of the bill add the following new section:

SEC. 2. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

''(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

''(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes,

''(II) as if State and local general sales taxes were referred to in a paragraph thereof, and

''(III) without regard to the last sentence.

''(B) DEFINITION OF GENERAL SALES TAX.—The term 'general sales tax' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

''(C) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

''(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

''(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

''(D) ITEMS TAXED AT DIFFERENT RATES.—Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

''(E) COMPENSATING USE TAXES.—A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term 'compensating use tax' means, with respect to any item, a tax which—

''(i) is imposed on the use, storage, or consumption of such item, and

''(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

''(F) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

''(G) SEPARATELY STATED GENERAL SALES TAXES.—If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

''(H) AMOUNT OF DEDUCTION TO BE DETERMINED UNDER TABLES.—

''(i) IN GENERAL.—The amount of the deduction allowed under this paragraph shall be determined under tables prescribed by the Secretary.

''(ii) REQUIREMENTS FOR TABLES.—The tables prescribed under clause (i)—

''(I) shall reflect the provisions of this paragraph,

''(II) shall be based on the average consumption by taxpayers on a State-by-State basis, as determined by the Secretary, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

''(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

Mr. SESSIONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ''ayes'' appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on ordering the previous question on House Resolution 637 will be followed by 5-minute votes, if ordered, on adopting House Resolution 637, ordering the previous question on House Resolution 638, and adopting House Resolution 638.

The vote was taken by electronic device, and there were—yeas 221, nays 203, not voting 9, as follows:

[Roll No. 156]

YEAS—221

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—203

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Duncan
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz

Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—9

Burton (IN)
Davis (FL)
DeFazio
DeMint
Gallegly
John
McNulty
Reyes
Tauzin

□ 1230

Messrs. WYNN, JENKINS, DOGGETT and RUSH changed their vote from ''yea'' to ''nay.''

Mr. SOUDER changed his vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LAHOOD). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 4279, PROVIDING FOR DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS; H.R. 4280, HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2004; AND H.R. 4281, SMALL BUSINESS HEALTH FAIRNESS ACT OF 2004

The SPEAKER pro tempore. The pending business is the question of ordering the previous question on House Resolution 638 on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 222, nays 202, not voting 9, as follows:

[Roll No. 157]

YEAS—222

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—202

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Conyers
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—9

Cooper
Davis (FL)
DeMint
Emerson
Gallegly
McNulty
Reyes
Tauzin
Tiahrt

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). There are 2 minutes remaining in this vote.

□ 1238

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ''ayes'' appeared to have it.

RECORDED VOTE

Ms. SLAUGHTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 224, noes 203, not voting 6, as follows:

[Roll No. 158]

AYES—224

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss

Granger
Graves
Green (WI)
Greenwood
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—203

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—6

DeMint
Dunn
Gutknecht
McNulty
Reyes
Tauzin

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1245

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. GEORGE MILLER of California. Mr. Speaker, I offer a privileged motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. GEORGE MILLER of California moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 2660 be instructed to insist on reporting an amendment to prohibit the Department of Labor from using funds under the Act to implement any portion of a regulation that would make any employee ineligible for overtime pay who would otherwise qualify for overtime pay under regulations under section 13 of the Fair Labor Standards Act in effect September 3, 2003, except that nothing in the amendment shall affect the increased salary requirements provided in such regulations as specified in section 541 of title 29 of the Code of Federal Regulations, as promulgated on April 23, 2004.

□ 1245

MOTION TO TABLE OFFERED BY MR. DELAY

Mr. DELAY. Mr. Speaker, I offer a preferential motion.

The SPEAKER pro tempore (Mr. LAHOOD). The Clerk will report the motion.

The Clerk read as follows:

Mr. DELAY moves that the motion to instruct be laid on the table.

PARLIAMENTARY INQUIRY

Mr. GEORGE MILLER of California. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from California (Mr. GEORGE MILLER) will state it.

Mr. GEORGE MILLER of California. Mr. Speaker, if a motion to table this motion on overtime pay prevails, will it have the effect of prohibiting the House Members from even discussing the administration's overtime pay rules at this time?

The SPEAKER pro tempore. The motion will not be before the House if the motion is tabled.

Mr. GEORGE MILLER of California. Further parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state it.

Mr. GEORGE MILLER of California. Mr. Speaker, so to be clear, that means that the body will not be debating overtime pay today; is that the impact of the motion to table, to deny us a vote on the overtime pay?

The SPEAKER pro tempore. If the motion to table were adopted, the motion of the gentleman from California (Mr. GEORGE MILLER) would not be before the House.

The question is on the motion offered by the gentleman from Texas (Mr. DELAY).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEORGE MILLER of California. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on the motion to table the motion to instruct, if the motion to table is adopted, will be followed by a 5-minute vote on suspending the rules and adopting H. Res. 608.

The vote was taken by electronic device, and there were—ayes 222, noes 205, not voting 6, as follows:

[Roll No. 159]

AYES—222

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly

Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—205

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—6

DeMint
English
McNulty
Reyes
Ross
Tauzin

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1307

Mr. DEUTSCH changed his vote from ''aye'' to ''no.''

Mr. GILLMOR changed his vote from ''no'' to ''aye.''

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

SENSE OF HOUSE THAT DEPARTMENT OF DEFENSE SHOULD RECTIFY MILITARY POSTAL SYSTEM DEFICIENCIES

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the resolution, H. Res. 608.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. FORBES) that the House suspend the rules and agree to the resolution, H. Res. 608, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 421, nays 0, not voting 12, as follows:

[Roll No. 160]

YEAS—421

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gephardt
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Rehberg
Renzi
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas

Thompson (CA)	Velázquez	Weller
Thompson (MS)	Visclosky	Wexler
Thornberry	Vitter	Whitfield
Tiberi	Walden (OR)	Wicker
Tierney	Walsh	Wilson (NM)
Toomey	Wamp	Wilson (SC)
Towns	Waters	Wolf
Turner (OH)	Watson	Woolsey
Turner (TX)	Watt	Wu
Udall (CO)	Waxman	Wynn
Udall (NM)	Weiner	Young (AK)
Upton	Weldon (FL)	Young (FL)
Van Hollen	Weldon (PA)	

NOT VOTING—12

DeMint	Lipinski	Reyes
Gutierrez	McNulty	Sessions
Issa	Oberstar	Tauzin
Larson (CT)	Regula	Tiahrt

□ 1315

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. ISSA. Mr. Speaker, on rollcall No. 160 I was unavoidably detained. Had I been present, I would have voted "yea."

PROVIDING FOR DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS

Mr. MCCRERY. Mr. Speaker, pursuant to House Resolution 638, I call up the bill (H.R. 4279) to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. BONILLA). Pursuant to House Resolution 638, the bill is considered read for amendment.

The text of H.R. 4279 is as follows:

H.R. 4279

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in order to consider the amendment printed in part A of House Report 108–484, if offered by the gentleman from New York (Mr. RANGEL) or his designee, which shall be considered read, and shall be debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Louisiana (Mr. MCCRERY) and the gentleman from California (Mr. STARK) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Louisiana (Mr. MCCRERY).

Mr. MCCRERY. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 4279, a bill that would update flexible spending arrangements, known as FSAs, to allow up to $500 of unused health benefits to be carried forward to next year's FSA or transferred to a health savings account. Flexible spending arrangements allow employees to set aside money in an employer-established benefit plan that can be used on a tax-free basis to meet their out-of-pocket health care expenses during the year. However, under current law, any money remaining in the FSA at the end of the year must be returned to the employer.

Nearly 37 million private sector employees have access to an FSA. However, only 18 percent of eligible employees take advantage of the pretax health care spending provided by flexible spending arrangements. Many employees cite the fear of forfeiting unused funds as the primary reason why they elect not to participate in an FSA. Those employees who do participate in an FSA often underfund their account rather than risk losing the funds at the end of the year.

Let me expound on that for just a minute because what happens in most flexible spending arrangements is that the employee chooses to take part of his monthly income, set it aside into one of these flexible spending arrangements, and that income that he removes from his paycheck is basically tax-free income, and that is a good thing. The employee likes that. However, it is still his income. And if he is afraid that he will lose some of that income at the end of the year because he has not used it for the specified purpose in the account, then of course that employee is going to be very reluctant to set aside that money.

This use-it-or-lose-it rule does more, though, than discourage widespread participation. It can also lead to perverse incentives such as encouraging people to spend money on health care products and services that they do not necessarily need. In other words, at the end of the year, if there is money left in the account, the employee's incentive is to go out and get an extra pair of sunglasses or whatever it is and spend that money, and that in turn drives up demand, drives up the price of health care for everybody.

H.R. 4279 provides greater flexibility and consumer choice. The bill would allow up to $500 of unused funds at the end of the year to be carried forward in that flexible spending arrangement for use in the next year, or that employee could begin a new HSA, a health savings account, and put up to $500 into that health savings account.

I believe this bill will encourage greater participation in flexible spending arrangements and, to a lesser extent, participation in health savings account benefit plans because people will not be afraid of losing their hard-earned money. The Joint Committee on Taxation estimates that approximately 76 percent of current FSA participants will take advantage of the rollover option each year.

Through this legislation, we can expand access to health care for millions of Americans by making it easier for them to save for their health care costs. This bill would also reduce end-of-the-year excess spending and overuse of health care services, allowing FSA participants to benefit from the prudent use of their health care resources.

Mr. Speaker, I should point out that a nearly identical FSA rollover option was approved by the Committee on Ways and Means as part of H.R. 2351 on June 19, 2003. The provision passed this House last year as part of the Medicare Modernization Act.

Reducing health costs and increasing access to health care are worthy goals that every Member of Congress should support. H.R. 4279 takes an important step in that direction; so I encourage my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

I stand here in just abject wonder at having 2 hours and 10 minutes to debate this bill over which there is very little controversy, a few dollars here and there; and I was going to ask the gentleman from Louisiana if he might accept a unanimous consent request that we cut the time in half, spend the first hour on this bill and spend the second hour debating whether or not Rumsfeld ordered the torture of prisoners in Iraq, and then we might have some more fun at least in the 2 hours we have got.

Does the gentleman agree?

Mr. MCCRERY. I object, Mr. Speaker.

Mr. STARK. Mr. Speaker, it is kind of sad that this bill was not worked out in committee because the differences, which I will describe shortly, are simple and there could have been a compromise, it appears to me, and certainly we have a substitute which will come up and we, I think, have to discuss both.

Let us start out by suggesting that I would like to agree with the distinguished gentleman from Louisiana that it is probably a good idea to not encourage people to spend foolishly, to buy two extra pair of eyeglasses or go out for an extra shot of Botox or something at the end of the year just to use up the money in their flexible spending account.

The problem, and where we would disagree, is that the gentleman's bill is not paid for, and this does push us further into debt; and our bill and the differences, and we have some, is paid for. If the gentleman wanted to say let us compromise right now and pay for half of it, we could get this done in 15 minutes. I am easy. But that is basically our difference. The Republican bill creates more of a deficit, and it does discourage people from spending foolishly at the end of the year and it costs, what, 8 billion bucks over 10.

Therein is the major difference. I would like to discuss one minor difference which is complex and which our substitute drops. The gentleman from Louisiana, the Republican bill, allows members of a flexible spending account to transfer money into a health savings account. The only problem with that is that, insofar as the regulations appear now, one cannot have a flexible spending account and a health savings account at the same time, so that to transfer the money from the flexible spending account into the health savings account, they have to drop their flexible spending account, and then the next year they would not have 500 bucks to transfer.

I mean, it is a way to encourage, or perhaps force, people into dropping a flexible spending account and move into a health savings account. I am not sure that was his intention, but that is the reality. And there is almost no one who would qualify to transfer money, the $500, say, from the flexible spending account into a health savings account. As a matter of fact, it is scored at 20 million bucks over 10 years; so if it is $20 at maybe 1 million people who would use it, and if our purpose is to encourage health savings accounts, I would suggest to the gentleman that that is a separate debate and perhaps not really pertinent to the question of whether we should allow people this carryover and repeal the use-it-or-lose-it provision. Had we had a chance to mark this up in committee and work it out in some detail, I think we could have worked out a system, perhaps brought two bills to the floor.

The bill, I know, and I hate to be critical, but I know it is introduced as a centerpiece of the week for the uninsured, and I am afraid that this bill does nothing for the uninsured. We cannot have a flexible spending account and not have access to insurance. So we really are not dealing with the uninsured here. People who have flexible spending accounts, as a matter of fact, probably have very generous and good health insurance coverage. So it is somewhat disingenuous, and that is the harshest thing I can think of, to suggest that this is going to have any effect or impact in Cover the Uninsured Week.

So if I could summarize just for a moment, there is a part of the bill which would help people and prevent them from frivolous spending from their flexible spending accounts. We concur in that, and our substitute includes that. Our major difference is, and we could have a vote, is it worth increasing the deficit by $8.5 billion. We have some simple ways to pay for that. For instance, not letting corporations reincorporate offshore and avoid Federal income tax on their corporate income, a theory that has some bipartisan support.

There are some egregious loopholes that were dreamed up mostly by the Enron Corporation, which we also closed. I do not think anybody would suggest that those loopholes ought to continue. So in a minimal way, we changed the Tax Code to make this, and it is a principle, we ought to pay for things that we are providing, and that is it. We would leave the health savings account portion out. We would allow people to transfer the $500 and carry it forward so they would not have a use-it-or-lose-it, and we would pay for it. Other than that I do not know what we could find to disagree about for the next 2 hours, but in my inimitable way I will be just as disagreeable as the gentleman from Louisiana would like me to be.

Mr. Speaker, I reserve the balance of my time.

Mr. MCCRERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman for his complimentary remarks about expanding, making more versatile the flexible spending arrangements. And I would not disagree with him on his comments about HSAs to the extent that I would agree that this legislation is not designed to encourage HSAs. That is not the intent of this legislation, at least not my intent as the author. My intent is, though, to make it convenient for employees who just may be in a firm that decides to create HSAs, give them kind of a head start on funding their HSA. I agree with the gentleman there will not be many instances of that in the near future; but in those few instances that there may be and an employee has $500 left over in his account, I see no reason why he should not be able to take advantage of using that money, transferring it to the employer's new choice of health insurance for his employees, an HSA.

Mr. STARK. Mr. Speaker, will the gentleman yield?

Mr. MCCRERY. I yield to the gentleman from California.

Mr. STARK. Mr. Speaker, if I were to stipulate to the gentleman from Louisiana that we keep the HSA portion, would the gentleman agree to pay for it or some of it here, and we will have a compromise right now?

Mr. MCCRERY. Mr. Speaker, I believe we will state our objections to the substitute during the appropriate debate time on the substitute. So I would regretfully reject the gentleman's kind offer at this time.

Mr. STARK. Mr. Speaker, I thank the gentleman.

Mr. MCCRERY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Speaker, I thank the gentleman for yielding me this time.

I have been trying for some years now to push this concept, a bill that I introduced a number of years ago. With the knowledge that we have got, I do not know, maybe 37 million Americans who do have access to these flexible spending accounts, and I think many of us here probably know someone who does, maybe a spouse, if he or she is employed in the private sector, but the problem is that over half of these individuals do not utilize their access to FSAs because of this use-it-or-lose-it provision that we are trying to eliminate through this measure here today. And as we know, currently, the employer and the employee can set aside money before taxes into this flexible spending account and then that money can be used just like cash to pay for out-of-pocket medical expenses and insurance copayments and doctors' visits and even child care. The downside is that if they do not spend their money at the end of the year, they lose it, and it goes back to their employer.

I originally introduced this bill as a consequence of a conversation I had 4 years ago with my wife, who came home with yet another pair of glasses, and Marie said she purchased them not because she needed them necessarily. She liked them, but she said she did not want to lose the money in her FSA and her employer said that if she does not spend it, this money will revert back to the company.

□ 1330

So the rules governing FSAs force workers who have put in money to match the money put in by their employer to scurry around at the end of the year and wastefully spend their health care dollars, just so they do not have to forfeit it.

I do not know how many of you have seen the TV ads that run each December talking up medical procedures, reminding people to spend their unused FSA dollars. Now, that is a wasteful procedure. What is worse here is over half of the employees who are eligible do not sign up in the first place because they do not want to lose their

money. So this use-it-or-lose-it is the worst type of economic incentive. It discourages savings and, instead, encourages frivolous, needless spending.

So this initiative that I have introduced and has been picked up by the committee will allow workers to roll over up to $500 of their own money back into their FSA at the end of the year, or, as mentioned, put it into a recently created Health Savings Account. I think it is a commonsense solution that will give peace of mind and let employees save for future expenses.

I encourage the Senate to take immediate action on this important legislation. We have pushed this for some years. We need to get it through the process, because FSAs are a commonsense, free market approach that allows people to take more control over their health care dollars. The use-it-or-lose-it provision must go.

Mr. STARK. Mr. Speaker, I am pleased to yield 6 minutes to the distinguished gentleman from California (Mr. BECERRA).

Mr. BECERRA. Mr. Speaker, I thank my colleague and friend from California for yielding me time.

Mr. Speaker, let us make sure that we do not confuse our colleagues or anyone who might be watching this on what we are talking about.

First, flexible spending accounts, most people who have insurance, health insurance through an employer, are eligible to, pretax, ahead of time, declare how much they think they are going to spend out of pocket that will not be reimbursed by their employer's health plan. That way, you are using money that has not yet been taxed to pay for some of these services, a copayment that you may have for a service that you receive, or vision or dental benefits that are not covered completely under your health care plan where you pay out of pocket.

Those out-of-pocket costs, if you have a flexible spending account and you bank money in that account at the beginning, you can then use that money, you can bring down the account, and use that money, pre-tax, to pay for your out-of-pocket costs for your health services that are not covered by your employer's health care plan. A great idea, pretax dollars to pay for health care services. That is fine.

Then the notion under the current law, that if you have money in that account and you do not spend it down through your out-of-pocket expenditures to reimburse yourself for those out-of-pocket expenditures, by the end of the year anything left over you lose. So you have to calculate how much you think you are going to end up spending out of pocket beyond what your employer's health care plan would provide, and then hope you spend it all.

Some folks find themselves in a position where they still have money left over in this flexible spending account at the end of the year, and they lose that. That is a calculated risk.

This proposal to try to allow some flexibility in that use-it-or-lose-it rule says you could carry over a certain sum, I think it is about $500, into the next year. So let us say you used up all but $200 in your flexible spending account; rather than lose it at the end of this year, you would get to carry that over into next year's flexible spending account. So then you would be able to go ahead and budget based on what you think your needs will be next year.

A great idea. What is the problem? There are two.

First, you got to ask the question, why complicate such a simple, straightforward, and sensible idea to allow us to carry forward a portion of that flexible spending account money to the next year and to modify that use-it-or-lose-it rule? Why then complicate it by saying, by the way, which are going to let you send it over to what are called HSAs, these health savings accounts which are principally accounts which help wealthy folks or healthy folks when it comes to getting access to health care, because these HSAs give you money you can use later on to buy these catastrophic care plans for health care, which, for the most part, the only folks who can afford to do that, whether healthwise afford or monetarily afford, are people who are very wealthy or very healthy, because they do not have to worry about trying to find a health care plan, because they figure they are 25 years old, they are not going to die, or they have so much money they can pay for whatever services they need, or they have enough health care through other types of plans or insurance.

HSAs do not help the bulk of Americans. So why complicate this issue on a practical idea on giving us some flexibility on the spending accounts, the flexible spending accounts.

The second problem, there are 8.4 billion reasons in the second problem. $8.4 billion is the cost this bill. The reason those $8.4 billion are 8.4 billion reasons there is a problem with this is we are $400 billion-plus in deficit this year for the Federal budget.

So it is something different if you are talking about a Federal budget that is balanced and saying we are going to spend $8.4 billion more, because this bill does not tell us how we are going to pay for it.

So this is not a case where we are saying, well, the budget is balanced at the Federal level. We are taking care of all of our expenses. We are taking care of the needs of the soldiers in Iraq, which, by the way, the President just told us he needs another $25 billion as a down payment. That is not saying that is going to cover the cost. That is a down payment.

We are being told in the education committees they are cutting the amounts of money we are spending for our kids in schools.

We are told the that the President's budget proposes cuts in veterans services, for people who have served in our Armed Forces and are now veterans.

We are told in health care, believe it or not, the proposal in the House is to cut Medicaid spending for aged, blind, and disabled individuals in this country more than $2 billion.

So were we talking about a balanced Federal budget, a proposal that costs $8.4 billion and does not tell us how it is going to pay for itself, you may want to think about whether we should do that or not. But when you are $400 billion in debt, the largest Federal deficit we have ever seen in the history of this country, to talk about not paying for this is crazy. Especially when it comes to education, veterans services, other health care programs, this Congress is requiring that there be a pay-for for any proposal that costs money.

One more time: If I want to increase health care services to aged individuals, poor seniors in this country, I have to find a way to pay for that proposal before it can get through this House. If I want to increase spending for our schools and all the children that go to our schools today, I have to find something to pay for that proposal before it can get through this House. But this proposal, as sensible as it might sound, does not need that. Especially when you add the part about sending money off to these HSAs, to these health savings accounts, which help wealthy and healthy individuals, it makes very little sense.

So a good idea, complicated by bad ideas within it, makes it very tough. That has sort of marked this whole session of Congress, and I hope we find a way to be more sensible about moving forward with ideas. The Democratic substitute addresses this, and I hope that we can vote for the Democratic substitute.

Mr. MCCRERY. Mr. Speaker, I yield 4 minutes to the gentleman from Minnesota (Mr. RAMSTAD), a distinguished member of the Committee on Ways and Means.

Mr. RAMSTAD. Mr. Speaker, I thank the chairman for yielding me time, and I rise as a strong supporter and cosponsor of this important legislation.

Mr. Speaker, it only makes common sense to allow workers to carry forward unspent funds in their flexible spending accounts to the following year or to allow workers to roll the funds into a new health savings account.

This change is really long overdue. Flexible spending accounts are an important vehicle to help workers and their families save pretax dollars for medical expenses. Because of the tax savings, families can actually save up to 30 percent of the cost of out-of-pocket health care expenses by setting aside a portion of their income in a flexible spending account.

American families, families back home in Minnesota, know only too well that out-of-pocket expenses for health care have been rising at an astonishing rate. In fact, the cost for the average worker and their family has spiked over 100 percent since 1998, with no end in sight.

In spite of the skyrocketing health care costs and the significant tax savings associated with the FSAs, relatively few workers choose to take advantage of this vehicle to save for health care costs. The reason for that is simple: This stupid, arcane, absurd use-it-or-lose-it rule. This rule, this use-it-or-lose-it rule, makes absolutely no sense at all.

As absurd as it is, Mr. Speaker, workers are required to forfeit all unspent funds remaining in their FSA accounts at the end of the plan year. This use-it-or-lose-it rule is totally counterproductive, and it is a huge gamble to families, especially low- and middle-income families who can least afford to guess wrong and lose the unspent funds.

So what is happening is rather than facing that loss, many families with these FSAs rush to spend money at the end of the year, as my colleague previously expressed, often on high-cost medical items. How can we tolerate such a bizarre rule that actually discourages prudent spending on health care? It is time to end the use-it-or-lose-it rule.

Mr. Speaker, Ceridian Corporation, which is the leading administrator of FSAs for employers and is based in my district in Bloomington, Minnesota, estimates that while some 25 million, listen to this, 25 million American workers and their families are eligible to participate in health care FSAs, fewer than 20 percent actually choose to participate. It is obvious why. People do not want to take this gamble, and they are not impressed; in fact, they are discouraged by the use-it-or-lose-it rule.

This bill, which I applaud the gentleman from Louisiana (Chairman MCCRERY) for bringing to the floor today, is very similar to legislation I introduced over 3 years ago, and thanks to the leadership of the gentleman from Louisiana (Mr. MCCRERY), it is finally here today.

So it is high time, Mr. Speaker, that we address this important, unfinished business. It is time to help millions of workers and their families better afford rising medical costs. It is also time to prevent the wasteful end-of-year spending the use-it-or-lose-it rule now promotes.

I urge my colleagues to support this sensible and balanced reform. We have got to pass this legislation here today, and encourage the other body to follow suit.

Again, I thank the gentleman from Louisiana (Chairman MCCRERY).

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to inquire of the gentleman from Louisiana, it is my understanding that you could use a flexible savings account to, for example, pay for abortion if your employer's health care plan did not provide that benefit. Is that not true?

Mr. MCCRERY. Mr. Speaker, will the gentleman yield?

Mr. STARK. I yield to the gentleman from Louisiana.

Mr. MCCRERY. Mr. Speaker, a flexible spending account, health flexible spending accounts can be used for any health care expenses incurred by the employee.

Mr. STARK. Mr. Speaker, reclaiming my time, there is nothing in this bill that would prohibit a woman from using the benefits of the flexible savings account for an abortion; is that correct?

Mr. MCCRERY. Yes, sir.

Mr. STARK. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman for yielding me time and for a very thoughtful substitute. But I might associate myself with his earlier remarks.

There are such important issues of the moment that are confronting us today, the abuse of prisoners in Iraq, the tragic loss of life of Mr. Berg, and the need to be able to provide for safe passage and safe conditions of our United States military.

I almost feel somewhat shortchanged by discussing this legislation, as important as it is, because I think there is necessary leadership that is needed on crucial issues facing America, the peace and security of Iraq and the peace and security of our military.

But even though this bill has good intentions, let me argue that this bill is only an added burden on America's financial pocketbook. It costs $8 billion. It is unpaid for with the bill on the floor.

The substitute is paid for, but when we add what I have heard in many of our metaphors, we add insult to injury by costing $21 million extra. We, frankly, have veterans who are not able to get in veterans hospitals, and this bill, which serves really no purpose, it will actually undermine the health insurance benefits received by millions of Americans. It is confusing and complex. It makes a mess of a system that needs to be fine-tuned, not destroyed.

□ 1345

The majority of Americans already receive health care through employers, though 44 million are uninsured. That is what I would like to be doing here, is finding a way to provide insurance for the uninsured. I would like to be able to find a guaranteed prescription drug benefit for seniors and not have them use something that is confusing.

This one will offer a tax break, another tax break when we are needing monies to ensure the peace in Iraq, monies to keep veterans hospitals open, monies to get a guaranteed prescription drug benefit.

It sounds good. This coverage has a deductible of over $1,000, and it sounds good; but think about it. The bill will serve to encourage businesses to cut your health insurance programs or raise deductibles for their employees. Low- to moderate-income employees and those who are uninsured pay all kinds of taxes, payroll taxes, sales taxes, property taxes. However, they tend not to pay enough income taxes to take advantage of this new Republican give-to-the-rich scheme or get-what-you-can, or give-to-those-who-already-have.

Mr. Speaker, I would simply ask that we support the substitute, a paid-for program, and we do not give an extra gift of $21 million that is unpaid for. Maybe after we do this, we can get to the floor of the House and find out how we can provide peace and security in Iraq, how we can stop the abuse that is going on, bring our soldiers not in harm's way, but away from harm's way, provide for seniors and those who are uninsured. I believe that is the right way to go.

Because, Mr. Speaker, let me say this. In my very district, there is a veterans hospital where I have to meet veterans every day who are asking why they are denied services at the hospital. And just as a note that we should bring to the attention of our colleagues, it is because we have a means test for allowing you to go to the veterans hospital and get your medical needs taken care of. If you make a certain amount, the door is closed.

My belief is, this Congress's obligation to veterans and those who enter the United States military is that we should continue our promise, and that is the promise that services will always be there. How can we do so if this legislation not only costs money and not be paid for, but adds an extra $21 million for the health savings account? It would be far preferable to support the substitute which clearly pays for it, does not extend it to a health savings account, provides for creativity and flexibility, which I support, but focuses our attention on paying for those needs that are necessary to take care of those who cannot take care of themselves.

Mr. Speaker, I ask my colleagues to oppose H.R. 4279 and vote for the substitute.

It used to be that the most challenging part of my job here was finding meaningful ways of improving quality of life for the people in my district. Now it seems the most challenging part is trying to figure out how the Republican leadership will next try to deny those same people the lives they and their families deserve. Today's bill is one of the more creative approaches I have seen by the Republicans to advance their goals of giving their rich political donors big tax cuts, and denying the poor and middle classes healthcare and the services they need.

This bill serves no one that really needs it, and will actually undermine the health insurance benefits received by millions of Americans now. It is confusing and complex, and makes a mess of a system that needs to be fine-tuned, not destroyed. The majority of Americans now receive health insurance through employers. This bill will offer a tax break to people who do not have health insurance coverage, and those whose coverage

has a deductible of over $1,000. It sounds good, until you think about it. This bill will serve to encourage businesses to cut their health insurance programs, or raise deductibles on their employees. Low- to moderate-income employees and those who are uninsured pay all kinds of taxes: payroll taxes, sales taxes, property taxes. However, they tend to not pay enough income taxes to take advantage of this new Republican-give-to-the-rich scheme. So the exact people who are now being left out of our healthcare system, and who need relief, are being left out of this bill.

The underlying goal of this bill is to dismantle the employer-based health insurance system that the chairman of the Ways and Means Committee hates. He has stated that he does not like employer-based health insurance because it shields people from the cost of healthcare and thus enables people to use health care too much. I don't see that Americans have made themselves too healthy. I want to increase access to care not decrease it, so I will vote against this bill.

Not only is this a bad bill, it is an expensive one. It will cost $71 billion over the next 10 years—all money borrowed from our children and granchildren. In the later years of the budget window, this bill will cost in excess of $10 billion per year, and will accelerate just at the time when the baby boom generation retires, denying resources to meet our commitments to the Social Security and Medicare systems.

Again, it seems this bill was crafted to specifically target and destroy the elements of our healthcare system that people know and trust—Medicare and employer-sponsored coverage—and use the savings to give to CEOs, the healthy, and the wealthy. It is not surprising to find that due to the structure of this bill, the same people whose children were denied the benefits of a child tax credit will also not receive any benefits from this bill.

Of course they will be allowed to help pay the interest on the booming debt that it adds to.

I will oppose this bill and encourage my colleagues to do the same.

Mr. MCCRERY. Mr. Speaker, I would inform the gentleman from California that I now have two speakers that request time on my side, in addition to my closing. So I just wanted to let him know.

Mr. STARK. Mr. Speaker, if the gentleman will yield, I will then reserve my time and precede his closing and try and warm up the audience for what I know will be eloquent remarks.

Mr. MCCRERY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I rise in support of the flexible spending arrangements. I am often baffled in this House when I have the opportunity to listen to the debate. We are talking about policy that will be far-reaching. Flexible spending accounts, flexible arrangements, medical savings accounts, health savings accounts are all plans that give flexibility and discretion to employers and employees. They give power, economic power, to employers and employees.

This is a much larger issue than how much this may cost this year because, ultimately, it will save the government money. Ultimately, it will save individuals money. And, ultimately, it will save employers money which, in the long run, will mean that more people will be likely to access health care through their employer. That will, by the way, save the government some money.

One of the first things I heard about as a candidate for Congress was from one of the employers in one of the communities I represent. And he said to me, I want you to pay close attention to the law around medical savings accounts, flexible spending arrangements, the kinds of things that are supposed to be flexible for benefits for employees to give them economic power, but are not, because there are too many limits on them.

Today's bill removes one of those limits, or at least significantly reduces it, and that is this perverse incentive to quickly spend any of the unused money in the flexible spending arrangement, the use-it-or-lose-it rule. We change that today; and we say to the employee, if you do not need to use that health care right now, you do not need to. You do not need to waste the money. You can roll that over to next year; and if something happens next year that you need it, you can use it. And if you do not need it next year, you can roll it over. Does that not just make sense? Should we not in Congress be the ones who are providing the flexibility and the options to the employee, not putting crazy limits on them?

This is a great bill, and we should go even farther than this and allow employers and employees to work together to provide more options for them to provide health care for their families, not fewer. Fewer limits, more options and, ultimately, more opportunity for employers to provide health care. Ultimately, it will provide opportunity for us to put downward pressure on the costs of health care, also downward pressure on the costs of health insurance, because there will be more competition, more flexibility, more opportunity, and more coverage. More coverage is ultimately what we want, and this bill will help us get there.

Mr. Speaker, I commend the gentleman from Louisiana (Chairman MCCRERY); I commend the members of the Committee on Ways and Means for moving this forward. Because that employer back home, he is not by himself. He wants to continue to provide good and flexible health benefits for his employees. They are like family to him. Most of the employers in my district are small employers. They want to provide health care. It has become so expensive in what people traditionally thought of, they cannot afford it. With flexible arrangements they can, and they can continue to provide it into the future.

Mr. STARK. Mr. Speaker, I reserve the balance of my time.

Mr. MCCRERY. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Speaker, I thank the gentleman for yielding me this time. I appreciate the opportunity to say a few words about this issue of H.R. 4279.

I am a former employer. I started a business in 1975; and I met payroll for 28 years, 1,400-and-some consecutive weeks. I was one of the first employers in my industry to provide health insurance for my employees. It was a difficult thing to do because of all of the Federal constraints that made it difficult for a small business to compete with large business. This is rooted back in World War II when there were wage and price controls, and employers that tried to find a way to offer additional benefits or wages to their employees were able to deduct health insurance benefits for them as an expense and then offer that as a quasi-raise or in the form of a benefit, an increase in compensation for their employees.

The legacy of that remains today in Federal law. We have legislation that continually makes it difficult to have the flexibility necessary for businesses to work with their employees so that they can have a legitimate health care plan. We have had to find ways around Federal regulation to do that. H.R. 4279 helps us so that we do not have to jump around that one or find another way to get things done.

I remember a Congressman coming into my district in the early 1980s making a pitch for a national health care act. And I remember in that room of about 80 people, in the end I was the only one of the employers in the room that provided health insurance for my employees, and I remember fighting off that effort of going for a national health care because we need more individual responsibility so that we have more individual decisions made, in the vision of Adam Smith and the invisible hand.

We have today evolved into a health care system that has more and more HMOs, fewer and fewer entities making decisions about more and more people, to the point where the patients now have gotten the mindset more of sheep of submitting themselves to the process rather than making decisions on their health insurance and on their health care. H.R. 4279, again, short-circuits some of that, gives us a little more freedom and puts flexibility into the process.

I remember when the previous President was elected in 1992 and the First Lady came out with a plan that many of us have described as the Hillary Care Plan. I have that flow chart on my wall in my office in Iowa that scares me half to death as an employer looking at a national health care act versus individual flexibility. We have two choices here, and the people that are against this bill are the ones that are preserving what they can of the opportunity to build a Federal health care Canadian-style plan.

Mr. Speaker, H.R. 4279 helps us get more decisions in the hands of more

people so that they make their individual decisions in an efficient fashion, the way that the gentlewoman from Pennsylvania (Ms. HART) described. It gets rid of that perverse incentive of spending the money at the end of the year because you cannot roll those dollars over.

So I applaud the authors of this bill, the people who worked so hard on it. I appreciate the opportunity to speak in favor of H.R. 4279.

Mr. STARK. Mr. Speaker, I yield 6 minutes to the gentleman from Washington (Mr. MCDERMOTT), as we are blessed with his late arrival.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, it is always good to come out here and talk about an important issue. We have had a wartime President who has wanted to talk about war: I am a wartime President, I am doing this, I am doing that. I wish we had a domestic President who would occasionally think about what needs to be done on the domestic scene.

This particular little bill is what they are going to hold out for their evidence that they care about domestic health problems in this country.

Now, I do not know; it would be laughable if it was not so sad that this is the only bill that they can come up with. I know my good friend, the gentleman from Louisiana, knows, he and I share the desire for everyone to be covered in this country, and the only thing that separates us is how to do it. And for this to be offered as one of the ways that we are going to make it easier is simply, well, they will have to say they have passed something. I think it is called the flexible savings and health savings account rollover. That will be a title that will certainly sound like they did something.

The idea of health savings accounts goes against the basic issue here in how we ought to be dealing with health care. We do not have any problem in thinking that we should do fire departments collectively. We do not call them socialistic or whatever. They do not look to Canada for how to run a fire department. We started that in 1754, and police departments and roads and schools, all of those issues we deal with together. But in health care we say, hey, baby, you are on your own. You and you and you and you and you, you are on your own.

Now, if you have a job that takes care of you, oh, well, you are lucky; you have the plastic, you are in good shape in the lottery. I have a piece of plastic in my pocket. Everybody has one in their pocket or in their purse, and that plastic keeps you in the game. But God forbid that you do not have a piece of plastic.

Now, the answer for those 40 million people in this country who do not have plastic is, well, why do you not have a health savings account? Yes, that is a good idea. You can take your money, and you can put it in that health savings account and buy yourself a $10,000 deductible program and everything that comes up you can use the money out of the health savings account to pay for it, and it will work wonderfully.

The problem with this whole thing is the idea that people have $4,500, or whatever the number is, to put into their health savings account is nonsense, and it puts people on their own.

The idea of putting people on their own works very well for some people in this society, people who are rich. I mean, golly, if you are the head of Enron, you have a few extra dollars, you can just throw it into a health savings account; and if you happen to have a little problem that takes your life in some direction that costs a lot of money, well, you can take it out of your pocket. But all of those employees that were working for Enron that suddenly got dumped out in the street because crooks were running the business, they do not have anything. They could have their health savings account. Maybe it would cover, maybe it would not, but where are they going after that? Enron is not coming back, so after the first year, okay, where are you going to go?

□ 1400

How do you cover yourself in a situation when you are out there alone? The individual market in this country is a mess. No one can afford it because they can look at each one of you and say, well, you look to me like you have the possibility of X, Y and Z and we are going to charge you $1,000 a month.

The average person has trouble taking that kind of insurance. So having this savings account, I put that $4,500 in I did not have, I put that in there and then I get sick.

I had a friend who went in the hospital with a heart attack. He was in the hospital 2 days, and the hospital bill alone was $10,000. So it could happen to anybody. Any Member of the Congress, anybody on the street can end up in the hospital and spend that deductible just like that. Where do they have the money to pay for it? I do not know how they are going to get some of it out of this health savings account.

Now, this bill is predicated on the idea that they will never get sick and that at the end of the year they are going to have some money left. The idea is at the end of the year you have not been sick so you have got this money laying in your account so you can roll it over into the next year. Well, that is a nice idea. It would probably help maybe 15, 20 people in this country, maybe even 1,000, but it does absolutely nothing for 40 million people out there with no health insurance, and this is why this is a joke.

We will pass it, of course. Nobody is going to vote against it. Well, I do not know, some might, but the fact is that it is not dealing with the problem that faces us, and if our war President would pay a little more attention to the domestic and not cut taxes everywhere in sight, we would have some money.

Part of the problem is what is happening at the State now, because even Medicaid is going away, lots of States do not even put senior citizens into their Medicaid program. Only 34 States have a Medicaid spend-down for seniors.

This country is in a mess, and this bill does not do anything.

Mr. MCCRERY. Mr. Speaker, I yield myself such time as I may consume.

I want to commend the last speaker, the gentleman from Washington, for his efforts year after year in trying to solve the problems in our health care system. I disagree with him occasionally on how we should do that, but I think he is well-intentioned and certainly deserves credit for his efforts.

However, his comments about the Enron employees, I cannot help but stand up and point out to him that had those employees had HSAs, instead of Enron providing first-dollar coverage insurance, they would still have insurance today. They would have their HSAs because they are fully portable and an employee can take an HSA from job to job. If he loses his job, he can use what is in his HSA to pay premiums on a new health insurance policy. So I just wanted to point out to the gentleman that those employees would have been a lot better off if they had HSAs rather than the Enron-provided health insurance.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume. I thank the gentleman for his comments and I would close just briefly.

I believe that the Enron employee would not have insurance. He would have some money in that health savings account, but when Enron folded up, the insurance went along with Enron. He could go into the private market and try and buy something.

I would just like to repeat, if I may, that this really does nothing to cover the uninsured. So, if this is Cover the Uninsured Week, we are burning up a couple of valuable hours that we could be discussing how to cover the uninsured with this bill.

The principal disagreement that we had with the bill is that it is not paid for, and we will offer, subsequently to closing this debate, a substitute where we pay for it in very patriotic and simple ways. It is not a lot of money but it is a principle that we Democrats have long adhered to, and that is, that we ought to pay for the wonderful things that are available to us in this country and not put the burden on our children and grandchildren.

So, having said that, and without fear of contradiction that I probably have more children and grandchildren than the combined audience here, I can qualify, if the Speaker will allow me,

as an expert in that area. And maybe I am a little touchy about it, but will conclude our debate on this and I appreciate the gentleman from Louisiana. Next time I hope we can resolve these differences in our committee and come to the floor, as we did in the good old days, with a unified approach to Medicare and health insurance problems.

Mr. Speaker, I yield back the balance of my time.

Mr. MCCRERY. Mr. Speaker, I yield myself such time as I may consume.

The bill before us today is a very simple bill. It will provide employees, whose employers give them the opportunity to participate in flexible spending arrangements, more flexibility to utilize those arrangements and, indeed, encourage employees to do just that, and if they have money left in their account at the end of the year, under the bill, up to $500 can be rolled over into their next year's flexible spending arrangements or rolled into a new health savings account, thereby avoiding the discouraging factor in the law today of use it or lose it.

Right now, today, if there is money left over at the end of the year, the money goes back to the employer. That is why employees do not want to participate because they do not want to lose part of their income, and that is understandable. It is kind of silly that Federal law would dictate that.

We are trying to correct that today. It is very simple. I urge the Members to vote in favor of this good bill today.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. QUINN). All time for debate on the bill has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STARK

Mr. STARK. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. Is the gentleman the designee of the gentleman from New York (Mr. RANGEL)?

Mr. STARK. I am.

The SPEAKER pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Part A amendment in the nature of a substitute printed in House Report No. 108–484 offered by Mr. STARK:

Strike all after the enacting clause and insert the following:

TITLE I—DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS

SEC. 101. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be carried forward to the succeeding plan year of such health flexible spending arrangement.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

TITLE II—ENRON-RELATED TAX SHELTER PROVISIONS

SEC. 201. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 of the Internal Revenue Code of 1986 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) of such Code (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after the date of the enactment of this Act.

(2) LIQUIDATIONS.—The amendment made by subsection (b) shall apply to liquidations after the date of the enactment of this Act.

SEC. 202. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 203. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) of the Internal Revenue Code of 1986 is amended by inserting ''or equity held by the issuer (or any related party) in any other person'' after ''or a related party''.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) of such Code is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.''.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l) of such Code, as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

''(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(d) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) of such Code is amended—

(1) by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person'', and

(2) by striking ''or interest'' each place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

SEC. 204. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 of the Internal Revenue Code of 1986 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after the date of the enactment of this Act.

SEC. 205. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) of the Internal Revenue Code of 1986 (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

TITLE III—PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX

SEC. 301. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) of the Internal Revenue Code of 1986 (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership or related foreign partnerships (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).

''(III) RELATED FOREIGN PARTNERSHIP.—A foreign partnership is related to a domestic partnership if they are under common control (within the meaning of section 482), or they shared the same trademark or tradename.''

(b) EFFECTIVE DATES.—The amendment made by this section shall apply to taxable years beginning after the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to House Resolution 638, the gentleman from California (Mr. STARK) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. STARK).

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Our Democratic substitute addresses a real issue of concern with respect to flexible spending accounts in the use-it-or-lose-it rule.

We agree with the author of this legislation that it is unwise to create an incentive for people to spend foolishly or frivolously for a benefit that they might lose, and we have the Washington Business Group and 50 major corporate members are clear on the issue. They want the changes and they want the money carried over into FSAs. The position is shared by their employees. There is some question, and nobody really has raised it previously, as to putting this money into health savings accounts, but because that is such a minor issue it could be overlooked.

The real question here is whether we should pay for this. And it will be expensive. It is $8 billion. That is money that could be used in many programs, education programs, environmental programs, health programs, and it is a principle to which we are dedicated, and that is that we would like to expand health care in this country, but we have never offered a plan that we

will not pay for. And I find it sometimes difficult when my opponents across the aisle will not even give us a plan that costs nothing.

My Republican friends are opposed to expanding COBRA benefits. They are very expensive for people, but some 40 million people have used them since we wrote that bill on a bipartisan basis to expand COBRA benefits until a person gets another job or until they mature into Medicare. Costs zip, nothing, nada. It costs the employer nothing. Why do we object to expanding COBRA benefits? Just because it is a government plan and obviously people on the other side of the aisle do not like the government helping people unless they are very rich, of course.

So here we have just another example of not a bad piece of legislation. It could use some improvement, but it is a freebie and will predominantly benefit people in good jobs, with good health insurance and expand another tax loophole.

It is a modest one, but it is a principle. Left unchecked, we would soon have almost no tax revenue in this country at all, a position which the Club For Growth would applaud, but I am sure that those of us who are on the Federal salary or those people who are defending us now in Iraq would object to.

So I hope that we could reverse this disastrous rush to the bottom of debt and begin to be responsible in how we legislate by paying for these provisions. We will hear more later from my colleagues on the really very useful ways that it will help our economy if, in fact, we did pay for this bill under the provisions of our Democratic substitute.

Mr. Speaker, I reserve the balance of my time.

Mr. MCCRERY. Mr. Speaker, I rise to claim the time in opposition, and I yield myself such time as I may consume.

Before I get into the specifics of objections to the ''pay fors'' on the Democratic substitute, I would point out to the gentleman from California that it was under the leadership of this committee and on a bipartisan basis 2 years ago to, in fact, expand COBRA in the Trade Adjustment Assistance Act whereby we, the government, now will pay up to I believe 65 percent of the premium for someone's COBRA benefits when they are unemployed due to trade adjustments. So, in fact, I agree with the gentleman that we should indeed encourage people to continue their health insurance when they become unemployed, and we have endeavored to do that with taxpayer dollars.

With respect to the bill at hand and the substitute offered by the gentleman from California, it is true that most of the cost of the bill is paid for; not all the cost of the bill, but most of the cost of the bill is paid for by the minority's substitute, but the manner they choose to pay for this health care benefit I think is quite objectionable.

About half, in fact, maybe a little over half, of the revenue that would be produced by the Democratic substitute is produced by a retroactive application of a change in the law which would affect companies that made a determination which was legal 30 or 40 years ago. And I do not know of anyone who thinks that that is a fair result, to impose suddenly a penalty on a company that in good faith operated under a law 30 or 40 years ago and have been operating that way ever since. So I would hope that this body would not suddenly choose to use a punitive, retroactive change in the law to penalize companies operating in good faith for decades under the United States Tax Code.

So that is the most objectionable part of their ''pay for.'' The other parts simply amount to a tax increase on business in this country. Those changes, in fact, could result, and it has been estimated by Treasury and testified to by Treasury officials, that these changes in the Democratic substitute would actually encourage foreign takeover of United States companies, and I do not think that is the result we want in this body for the American people or for American companies.

So, Mr. Speaker, while I may have some sympathy for the minority's desire to pay for legislation, I think the manner they have chosen to pay for this particular bill is ill-advised, and I would hope that this House would reject the substitute and pass the underlying bill.

Mr. Speaker, I reserve the balance of my time.

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Mr. STARK. Mr. Speaker, I yield myself such time as I may consume, before I recognize the distinguished gentleman from Massachusetts, to remind my good friend from Louisiana that the tax provisions in our substitute were recommended by the bipartisan, bicameral Joint Committee on Taxation; and these provisions have already passed on a bipartisan basis in the other body.

Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Massachusetts (Mr. NEAL) 2 minutes for economic logic and 2 minutes for righteous indignation, for a total of 4 minutes.

(Mr. NEAL of Massachusetts asked and was given permission to revise and extend his remarks.)

Mr. NEAL of Massachusetts. Mr. Speaker, I thank the gentleman from California (Mr. STARK) for yielding me this time.

One of the problems here in having a dialogue is that sometimes the facts do not square with the dialogue. Now, the gentleman from Louisiana (Mr. MCCRERY) is one of the better people in this House; a good Member of the Congress and a very nice guy to work with. But where is the sympathy for those companies that stayed here? What about those companies that pay their taxes every day? What about those who did not attempt to escape in the dark of night to Bermuda for the purpose of avoiding American corporate taxes? Where is the sympathy for them? Their competitors can go offshore with a phony post office box for $27,000 a year, and then they avoid any share of the burden that the rest of the American taxpayers face for financing small things like Social Security and Medicare and paying for this war in Iraq and Afghanistan.

I would like to put this issue in front of those 134,000 troops in Iraq for a vote and see where we go on that issue. We hear about these companies that have been gone for 30 or 40 years. Let us get something straight, Tyco has been gone since 1997, Ma and Pa Tyco, that avoid paying $400 million a year in corporate taxes. Tell that to the parents of those men and women and wives and husbands of those men and women in Iraq and Afghanistan.

We make it sound as though these companies are under great duress when they avoid paying corporate taxes. I would ask this for the listening audience today as well. What do you think the IRS would do to you on Monday if you got up and said as an individual that you were going to Bermuda for the purpose of denying American citizenship, but only for the real purpose of avoiding your share of taxes in America? That is what we are asking today.

This is a decent proposal that is before us. All we are saying on our side is let us discuss how you pay for it. That is the important reminder for all of us.

The Rangel substitute with flexible spending accounts is not only a popular employee benefit because it allows pretax dollars to be used for dependent care expenses or medical expenditures not covered by insurance, but in fact, except for the staff of this Republican-run House, most of the employees of the Federal Government have had the opportunity to indeed utilize FSAs.

But today we could be debating whether FSAs might even be more flexible, allowing employees to roll over unused funds from one year to the next. But the leadership has decided that once again we are going to come to the aid of their favorite constituency, the healthy and the wealthy. We never have time in this institution to take up anything that might be of benefit to middle-income taxpayers, to the working poor of this country every day who do not have any health benefits; but we find plenty of time for the purpose of cutting taxes for the wealthiest Americans.

And let me just go back to this subject again, and I hope people are paying attention in this sense: we are now fighting two wars, and the answer of this Congress to two wars: three tax cuts. We are going to come in with a $25 billion request now because we all know what the real cost of that incursion into Iraq is going to be, not only in terms of human life but, just as importantly, in terms of the financial

burden it will be to the American people. So we roll it out in small increments.

We should begin to pay for some of these initiatives that come through this House. By the way, that used to be the historic position the Republican Party adopted. Today, it is borrow and spend.

The Rangel substitute would allow workers to roll over their FSA money from one year to the next without any budget impact that is negative. But because this benefit costs money, the Rangel substitute would pay for it by closing down a loophole.

All I ask is this, Mr. Speaker. If the position that I have adopted on these companies that go to Bermuda is so bad, why is it that almost 2½ years later the majority will not give me an up-or-down vote in this institution? Put this in front of the body here. Square it with those men and women in Iraq. Close down this Bermuda loophole, and let everybody pay what they are supposed to pay.

Mr. Speaker, I rise today in support of the Rangel substitute. Flexible Spending Accounts have proven to be a popular employee benefit, allowing pre-tax collars to be used for dependent care expenses or medical expenditures not covered by insurance. In fact, except for the staff of this Republican-run House, most of the employees of the federal government have had the opportunity to utilize FSA's. Today, we could have been debating whether FSA's should be even more flexible—allowing employees to roll-over unused funds from one year to the next. However, the leadership has decided to instead to once again prop-up its favorite tax shelter for healthy workers.

The Rangel substitute would allow workers to roll over FSA money from one year to the next and would do so without any negative budget impact.

Because this tax benefit costs money, the Rangel substitute would pay for this worker benefit by closing the loophole allowing former American companies to move their headquarters offshore for tax avoidance.

Corporate expatriation accounts for $5 billion in lost taxpayer revenue over the next decade. Today, we debate a substitute that shows us exactly what we could be doing with that money: providing greater employee benefits. Why should the workers of America be supporting corporate tax dodgers? Consider that in 1997, Tyco renounced its corporate citizenship and changed its mailing address to Bermuda to avoid paying nearly $400 million a year in U.S. taxes.

While many in the House have expressed outrage since this loophole was first exposed two years ago, the Leadership has done nothing but cement the loophole with legislation protecting Tyco and those that have already left.

Since I first filed the bipartisan Corporate Patriot Enforcement Act to end this tax subsidy, these corporate expatriates have enjoyed almost one billion dollars in U.S. federal government contracts annually, 70 percent of which are defense or homeland security related. Our colleagues in the Senate have passed as recently as yesterday legislation to close this loophole affecting those that are considering the island tax havens and those that are already exploiting this loophole. But in this Congress, we wait.

For those that profess to care about the exploding budget deficit, for those that claim to hear Chairman Greenspan's warning about the harm this historical budget deficit is doing to our economy, you must at some point decide that bills that pile on more federal debt are wrong. I urge my colleagues to support the fiscally responsible Rangel substitute, which makes the corporate tax cheats and those that forsake America in a time of war pay for improving benefits for American workers.

Mr. MCCRERY. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania (Mr. ENGLISH), a member of the Committee on Ways and Means.

Mr. ENGLISH. Mr. Speaker, it has been fascinating to appear several times on the floor during recent weeks to hear the debate on tax bills that seem to lurch in the direction of Iraq and wander all over the public policy landscape. I would like to bring the debate today back to the core issue of the bill that is before us and whether the substitute is actually an improvement on it, and I would argue that it is not.

Mr. Speaker, the underlying bill that we have before us today would provide increased medical security, not as my friend, the gentleman from Massachusetts, has suggested, for the wealthiest Americans, but for many American workers. When flexible spending accounts are offered by an employer, their tax-preferred nature offers a powerful incentive for workers to contribute to and grow these accounts. Unfortunately, current law perversely influences these incentives by pushing workers who have built up an FSA to spend the money in the account if they have not used it by the end of the year.

This use-it-or-lose-it policy defeats the positive benefits of an FSA, which is why many eligible workers have chosen not to open FSAs. When workers use the hard-earned dollars they have contributed themselves or earned from their employers, they will ask more questions, further inform themselves, and become better consumers, for example, of health care products. If they lose these dollars at the end of the year by simply not having the necessity for them instead of becoming better health care consumers, they become, in a sense, over-users of health care.

Through allocating $500 of unused FSA funds to be carried forward or rolled over into a health savings account, FSAs and HSAs can thrive and become the practical vehicles they were intended to be for working families who want to manage their own health care.

It is important to point out that the substitute, unlike the underlying bill, does not allow the unused funds to be transferred to the new HSAs. This is an essential component of the legislation because it encourages the HSAs, which embody similar pro-consumer and pro-worker principles as the FSAs.

Employers are just beginning to offer HSAs, so now is not the time to discourage a health savings account, but to promote it. Let us not take a step backwards by passing the substitute. It is bad policy, it is poorly thought through, and I think that we ought to be looking at how we can provide workers with more opportunities to have these kinds of accounts, not fewer.

These are not the wealthiest people in America. These are people who want the opportunity to manage their own health care, to manage their own resources; and we are giving them an opportunity to accumulate more of those resources in this bill.

Mr. STARK. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Speaker, I visited with a group of small business people from Texas this morning who came to discuss, among other things, their concerns about being able to provide health coverage for themselves and for their employees. Their stories were very similar to ones I have heard while visiting with small retailers in Phaw and in Mission, Texas, and in talking with musicians in Austin, Texas—that we have a growing crisis in this country in trying to ensure that working Americans can get the health protection and the health insurance access that they need.

As I talked with them, one of the concerns that I raised was this need versus another one that is also the tragic result of the misleadership of this administration and this Republican Congress. They are driving our country into an economic ditch with the largest deficit in the history of America last year, to be surpassed this year, and to be exceeded in the future under a broken economic scheme.

In fact, the deficits are rising at such a rate that our Republican colleagues are continually coming to ask for an increase in the debt ceiling. They will have to do it again in the very near future. I think they probably need to keep an extension ladder in this House so that they can continue raising the ceiling upward, up to what will become $10 trillion or $11 trillion. That is trillion with a ''T'' that they will be raising the debt ceiling to as a result of their misguided economic policies and their willingness to give tax break after tax break to those at the top of the economic ladder without paying for it. They get it for free.

Today, we have another example of that. We have an example of an unwillingness to consider the cost and the burden on future generations of Americans and the adverse effect on our economy of continuing to incur more and more debt, as has been true in the past, by adding more and more tax breaks.

So we have come forward with a substitute and said that if you are going to make these changes—even though this is probably not the most efficient way to deliver health care and there are much preferable approaches—but if you are going to do this, at least pay

for it. Do not add more and more to the national debt.

And we have done it in very reasonable ways. One is to deal with something that Republicans in this House would like to forget about as just ancient history: the scandal called Enron, the scandal that led to so much trouble for our economy and to a reduction in the public's confidence in our economic marketplace.

Enron manipulated our tax laws. In fact, as The Washington Post reported last year, Enron was turning its tax department into a profit center. Its senior executives, along with leading accounting, banking, and legal advisers were seeking to manipulate tax laws through complex concealed transactions. These were transactions that involved things like synthetic leases. These were transactions that, as one of their people reported, were so intentionally complicated it would take a year or more to construct a single deal.

Well, we have adopted in this substitute very modest proposals, recommended by the Joint Committee on Taxation and approved overwhelmingly in the United States Senate, to do something about those Enron tax abuses. What has the House of Representatives done in the two years since these abuses were disclosed? Absolutely nothing. The Senate was willing to look at the tax returns of Enron to see how these manipulations occurred, but the House Committee on Ways and Means was afraid to look under that rock because it knew the scandal it would find. They have been unwilling to address this problem.

The same is true of the unpatriotic corporations that retreat to Bermuda or Barbados, who basically say that they do not want to pay their fair share of our homeland security and defense. Oh, yes, they are proud of our flag when they want our fighting men and women defending their position. They are so proud of our flag when they are being defended by our Armed Forces. They are so proud of our flag when they want to do business with the United States Government.

Some of these same unpatriotic corporations come and ask for hundreds of millions of tax dollars in government contracts. In fact, one contracts with the Internal Revenue Service. Another one contracts with the Department of Homeland Security. On the one hand they will not pay their fair share of taxes, but they sure want all the tax money they can get in contracts with the government.

We have a proposal to pay for health care through reforms to prevent another Enron scandal and through reforms that simply ask for a level playing field. Those corporations that want the protection of the American flag ought to be willing to pay their fair share.

The Committee on Ways and Means and the Republican leadership in the House will never make these needed changes unless they are forced to do it through proposals just like this. They feel so comfortable with the Enron philosophy that a tax department is a profit center that they will continue to defend these abuses.

I ask your support for the substitute.

□ 1430

Mr. STARK. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. LEVIN).

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, there was a story in yesterday's Detroit News, Michigan's uninsureds swells by 100,000 last year to 1.2 million people. I do not see how this bill will reduce that amount at all. This is supposed to be the week where we pay attention to the uninsured, but this bill really does not do that. It really turns away from them. I think we very much need to keep that in mind. That is the first point.

Secondly, it allows the transfer to savings accounts which really can become a dodge to escape taxation altogether. Even though it is a small amount of this, it is a serious mistake. We do not need more tax shelters in our Tax Code. We should not be feeding any moneys whatsoever into those shelters. This is what this bill in part does.

My third point, the gentleman from Louisiana (Mr. MCCRERY) works very hard on tax issues and knows the Tax Code well. I think this is a good pay-for. I think it is really irresponsible to bring another bill forth to this floor and not pay one dime. It is going to add $8 billion plus to our deficit.

And the last aspect of this is the following: If they do not like this pay-for, come up with their own, but do not come here without anything to say as to how it will be paid for except by our children and our grandchildren. I support the substitute.

Mr. MCCRERY. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. RYAN), a distinguished member of the Committee on Ways and Means.

Mr. RYAN of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me this time and for bringing attention to this issue.

I want to make three points. Number one, we are hearing all of this hue and cry against allowing people to roll their flexible spending accounts $500 a year over into the next year. There is a reason why it is important to allow a person to roll their money over from one year to the next: We are not getting the kind of consumer activity and consumer reforms we want in health care when we deny an employee the ability to keep the money in their account from one year to the next. What ends up happening with the flexible spending account is when there is a balance at the end of the year, the employee goes and buys a couple pairs of eyeglasses, gets their teeth cleaned a couple of times, more money is spent and it props up health care inflation.

What this reform does, it lets the employee know this is their money. More importantly, what this bill does and what the Rangel substitute denies is the ability to roll over $500 from their flexible spending account into a health savings account. They say this health savings account is a new tax shelter.

Mr. Speaker, what a health savings account does is it lets people spend money on health care tax free. We can deduct the cost of health insurance on corporate tax rates when corporations pay for health care for their employees; why cannot employees and individuals deduct the cost of their health care expenditures on their income taxes? That is what HSAs do.

Take a look at what health savings accounts have already produced, only having been in law since January 1; 37 percent of all health savings accounts sold went to people who previously were uninsured; 18 percent of those people had preexisting conditions, people who had sicker risk profiles. And 47 years old was the median age of a person who bought health savings accounts.

So to the critics that said only wealthy, only young, only insured people would be buying HSAs, all of that is being proven untrue with the results that are taking place today in the marketplace. But more importantly is the fact that the Mercer Study just did a survey and they noted that 73 percent of all firms in America who offer their employees health insurance are considering giving an additional option of health insurance through a health savings account by 2006. By denying your employees the ability to take the money that is in their flexible spending account, which is controlled by the employer, and put it in their own account, which goes to the employee, is simply saying you are not going to let the employers give this money to the employee and be part of the employee's property.

It is very important that we allow the employees to keep this money and use this money for their own health insurance and to do so tax free so we end the bias in the Tax Code right now that is against giving people the ability to spend money on health care on a tax-free basis. This is how we get the employee and the consumer back into the business of buying health care.

I urge rejection of the Rangel substitute and adoption of the base bill.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to suggest to the gentleman from Wisconsin (Mr. RYAN) that we do not on this side have any objection to the rollover. We think it is a good idea, and all we would suggest is that we have to pay for it. That is the only difference.

Mr. RYAN of Wisconsin. Mr. Speaker, will the gentleman yield?

Mr. STARK. I yield to the gentleman from Wisconsin.

Mr. RYAN of Wisconsin. Is the gentleman opposed to rolling over the FSA money into an HSA?

Mr. STARK. Actually, I am opposed to it in general, but I offer to the gentleman from Louisiana (Mr. MCCRERY) that we would accept that if he would pay for half of the bill. That is compromise.

Mr. RYAN of Wisconsin. The vote we are faced with, the Rangel substitute, is denying people the ability to keep this money. It denies people the ability to put their FSA money into an HSA.

Mr. STARK. It only denies the HSA, which they think is going to be a small number. There is still time to negotiate.

Mr. Speaker, I yield 4 minutes to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, I rise in support of the Rangel substitute. Like the underlying bill, the substitute permits up to $500 of unused benefits in the employee's health flexible spending arrangement to be carried forward to the employee's FSA account for the next plan year. However, this substitute does not permit unused benefits to be contributed to an employee's health savings account, which in fact we know to be a tax shelter for the healthy and for the wealthy.

This substitute is paid for, which is the principal reason why we have this substitute and why we are opposed to the underlying amendment, not by driving us deeper into debt. How do we pay for it? We eliminate the tax benefits that corporations receive when they reincorporate overseas for the express purposes of avoiding U.S. income taxes. They do not want to pay taxes to the United States of America. These so-called corporate expatriates, they enjoy all of the benefits of corporate citizenship in America. They look like U.S. companies, their stock is principally traded in the United States, and their physical assets are protected by our Armed Forces. They just refuse to pay for the benefits as every other American citizen or other companies do.

Countless companies engage in this practice: PriceWaterhouse Coopers Consulting, Accenture, Tyco, Foster Wheeler, the list goes on and on. These companies go to Bermuda, Barbados, the Cayman Islands. These are great vacation spots, particularly for companies who want to live tax free.

Many of us have worked for years to end this practice only to be turned back again and again by the Republican leadership which has time and again given their approval to corporations who continue to avoid living up to their obligations as citizens. Two years ago, this House voted overwhelmingly, 318 to 110, to pass an amendment that I offered to the Homeland Security Act that would have prohibited corporate expatriates from receiving Federal contracts from the Department of Homeland Security. The other body followed suit; unanimously, I may add. Even the President spoke out in favor of ending this practice. But in the dark of night, this Republican leadership gutted the amendment, a bipartisan amendment, defying the will of the President and both Chambers of the Congress. Now that contracting ban is, for all intents and purposes, meaningless.

What happens is we have a company that goes offshore, pays no taxes, takes jobs and technology with them, and then what they want to do is to be considered for millions and billions of dollars in taxpayer dollars from the Department of Energy, the Department of Defense, the Department of Homeland Security; that is what is happening, but they pay no taxes in the United States of America.

With this substitute we say, no more. At a time when we have brave men and women putting their lives on the line across the world, we will put patriotism before profit. And some of those companies that we are talking about are reaping the benefits today in Iraq while our young men and women are dying in Iraq. At a time when we have seen the greatest fiscal reversal in this country, a $5.6 trillion surplus has become a $3 trillion deficit, we are saying with this amendment that we have a moral obligation to pay our bills and not pass them on to our children and our children's children.

Mr. Speaker, I support this substitute. It is the right thing to do. It is the responsible thing to do. Support the Rangel substitute.

Mr. MCCRERY. Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to close the debate on our side for our substitute. My belief is these two tax provisions, modest as they are, regardless of the underlying bill, are good tax policy and ought to be considered if for no other reason than that they correct some serious inequities in our Tax Code which have been described by previous speakers.

We are very close to a compromise with our friends on the other side of the aisle. Our substitute would eliminate the health savings account issue. But as I said, it is possible to reinstate that in conference, and if the gentleman would like to support our substitute, we could do the patriotic thing, we could provide good tax policy, we could pay for a very good idea, and we could walk out, arm in arm, saying we have helped a few people, we have paid for it, and we have brought patriotism and corporate responsibility to some of our recalcitrant corporate friends who are not doing their share.

I would urge that this substitute does no harm to the underlying philosophy of the bill of the gentleman from Louisiana (Mr. MCCRERY). It does add to the coffers of our Nation when it is so desperately needed. This money is contributed by those corporations whose actions are I believe indefensible, and particularly at this time of grave national emergency.

I would not want to suggest that anybody who votes against our substitute is unpatriotic, but I would suggest that it certainly is helpful for our troops and the American economy to support the Rangel substitute.

Mr. Speaker, I yield back the balance of my time.

Mr. MCCRERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, while I would relish the opportunity to walk out of the Chamber arm in arm with the gentleman from California (Mr. STARK) in complete agreement on a compromise on this legislation, I am afraid that the ill-advised tax changes contained in the gentleman's substitute would likely result in increased takeover of American corporations by foreign companies, so I will not be able to do that; but perhaps another day.

This substitute admits that the underlying policy in the bill under consideration is appropriate, that is allowing employees to roll over up to $500 at the end of the year into next year's flexible spending arrangement. They do object to rolling money over into a health savings account, but the other part of the substitute which makes dramatic changes in tax policy in this country I think are indeed ill-advised, and I would urge this House to reject that.

I just want to go over a couple of things that have been mentioned by previous speakers, one of whom said we are now experiencing the largest deficit in the history of the country. Of course, he is speaking in nominal terms, not in real terms. In fact, the appropriate measurement of a deficit is against the national income; what percent of our national income is the deficit. And the deficit we are running now is not even close to the largest deficit in history measured in those terms.

□ 1445

He also said the economy is in the ditch, or something like that. No, the economy was in the ditch in 2000, but we have succeeded in dragging the economy out of the ditch thanks to the three tax cuts that another gentleman mentioned earlier. We now have a very vibrant, growing economy. We now see jobs being created at a remarkable clip for the last 2 months, so I would disagree with the gentleman's characterization of the economy being in the ditch. In fact, it is very much alive, and we hope it will continue that way.

The subject of American companies moving offshore is indeed a delicate one and one that we would like to address. In fact, we do address that unfortunate phenomenon in a bill that passed the Committee on Ways and Means back in 2002 and a different version was just passed yesterday by the Senate, and we will have another opportunity to address it here in the House. Since we introduced that bill

and passed it through the Committee on Ways and Means in 2002, there has not been a single company that has gone offshore. So the remedy that we prescribed for this deplorable action by some American companies we believe to be the correct remedy, the good tax policy remedy, and it is already working even though we have not even passed it. We just passed it through the Committee on Ways and Means. I would urge this House to reject the ill-advised course of action in the substitute and instead look forward to voting on a much more progressive treatment of that problem which will not encourage foreign takeover of American companies.

Mr. Speaker, while again I commend the minority on supporting the major provision of the underlying bill, I am afraid we must ask for a rejection of their substitute.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. QUINN). All time for debate has expired.

Pursuant to House Resolution 638, the previous question is ordered on the bill and on the amendment in the nature of a substitute offered by the gentleman from California (Mr. STARK).

The question is on the amendment in the nature of a substitute offered by the gentleman from California (Mr. STARK).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. STARK. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 197, noes 230, not voting 6, as follows:

[Roll No. 161]

AYES—197

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Chandler
Clay
Clyburn
Conyers
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—230

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

DeMint
Kolbe
Regula
Reyes
Simmons
Tauzin

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN) (during the vote). Members are advised there are 2 minutes remaining.

□ 1515

Messrs. WELLER, CARSON of Oklahoma, FEENEY, KINGSTON, and LUCAS of Kentucky changed their vote from ''aye'' to ''no.''

Messrs. TANNER, PASTOR, and LARSON of Connecticut changed their vote from ''no'' to ''aye.''

So the amendment in the nature of substitute was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. STARK

Mr. STARK. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore (Mr. QUINN). Is the gentleman opposed to the bill?

Mr. STARK. I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Stark moves to recommit the bill H.R. 4279 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:

At the end of the bill, add the following new section:

SEC. 2. SOCIAL SECURITY AND MEDICARE TRUST FUNDS HELD HARMLESS.

Nothing in this Act shall be construed as affecting the amount of transfers to any trust fund established by title II or XVIII of the Social Security Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. STARK) is recognized for 5 minutes in support of his motion to recommit.

Mr. STARK. Mr. Speaker, during the past several hours we have had a good debate on this bill, and I think we have agreed to some of the basic principles that the flexible savings accounts should allow a reduction of the use-it-or-lose-it rule. We had attempted to offer a compromise to get our Republican colleagues to just pay for half of the bill, which was turned down. And the bill has, indeed, many supporters.

But what we have seen during the course of this current administration is indirectly a complete raid on the Social Security and Medicare Trust

Funds. Basically, the Republicans have spent all of the surplus in Social Security and Medicare, and that, in my opinion, is indefensible. Whether we agree about flexible savings accounts or medical savings accounts is not the issue. This bill directly, specifically, transfers out of the trust funds $3.4 billion. The Republicans are raiding the Social Security and Medicare Trust Funds.

Now, that may not sound like a lot to my colleagues across the aisle, but to the people who depend on Social Security and Medicare, the idea that they are stealing money out of the Medicare and Social Security Trust Funds blatantly, I think they will find offensive.

This reduction in receipts should not be permitted to occur. It will not harm this bill. The bill will go forward exactly as the distinguished gentleman from Louisiana has outlined it and has prevailed. The only difference is our motion to recommit asks us all to stand up and take the pledge to protect Social Security and Medicare and its trust funds for all of those who depend on their benefits in this country.

This bill takes care of well-employed, well-insured individuals. This does not help any uninsured people at all. It gives an additional benefit to people with first-class medical insurance. Why then should we spoil an otherwise decent bill by taking the first step to destroy Medicare and Social Security for people who are unable to get health insurance? That is wrong.

We have all committed to protect Social Security and Medicare. You cannot oppose this motion to recommit and say you are protecting it. You are stealing almost $3.5 billion over the next 10 years out of these trust funds.

To support our motion to recommit would merely say find it someplace else; take it out of general revenues, take it out of trade, take it out of anything, but do not take it out of the hard-earned benefits that our senior citizens are entitled to. This could be the first step toward destroying the financial viability of Medicare and Social Security.

If you vote for our motion to recommit, you are standing up and suggesting that you will protect the trust funds that underlie Social Security and Medicare. If you vote against it, you are saying, ''We don't care. Take the seniors' money. What the heck. We can spend it. We have spent everybody else's money. We have spent our grandkids' money.''

I ask you, out of compassion, those of us who are seniors might not be able to get a job anyplace else if I am not reelected. My Social Security, please do not steal it. Do not make my little children go out and get an extra paper route to take care of me in my dotage. We need this. Our parents need it. We must protect our children.

So, to repeat, the bill will go through exactly as the Republicans have crafted it; but if you vote for our motion to recommit, you get the added benefit of saying to every senior in your district, I stood up and protected your Social Security and Medicare benefits by protecting the trust funds to which this money would go.

Mr. Speaker, I urge support for the motion to recommit.

Mr. THOMAS. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from California is recognized for 5 minutes.

Mr. THOMAS. Mr. Speaker, I hope you all enjoyed that ride through very dark woods. Now let me explain what is really going on.

Return with me to 1945. We were in the middle of a war and a decision was made which affects us profoundly today. There was a choice of increasing wages or there was an idea that we can snooker workers not to ask for more wages if we create a procedure in which employers offer fringe benefits for which they will get a tax break.

Today, a dollar in wages competes against a dollar in fringe benefits. A dollar in wages is taxed 100 percent. A dollar in fringe benefits does not affect the worker or the employer. We created a system that puts a premium on going for fringe benefits over wages.

The argument the gentleman from California just made is based on that concept. He has a letter from Joint Tax that says if you create this fringe benefit, flexible spending accounts, in which up to $500 of the employee's tax deferred structure is allowed to roll over in the employee-controlled structure as an incentive to keep down the fringe benefit costs, there is a possibility that these will be successful.

What happens if they are successful? The dollar in wages is not paid, the dollar in fringe benefits is paid, and the payroll tax, which otherwise would have gone into the Social Security Trust Fund from the wages foregone, is what he is talking about; not enough to modify the trust fund one iota over the year in terms of true impact on the Social Security Trust Fund.

It happens with every decision we make in here in choosing either wages or fringe benefits. This is worse than a red herring. What it does is commit you to say that any change that would save dollars in the larger picture, for example incorporating individuals' own decision-making in health care where they actually have an investment, rather than having $5,000 worth of fringe benefits in which they are taking care of themselves, do not get any benefit out of it, and at the end of the year they go get eyeglass frames because they are trying to get money back out of the fringe benefits; the system we have constructed today, that if in fact this is successful and you save total money because somebody decides they want to make a prudent decision and a couple of hundred dollars roll over into the flexible savings account, Joint Tax has said that couple of hundred dollars that is in the flexible spending account may have been paid out in wages, which means you then lose the payroll taxes in terms of the difference between the two.

The overall cost to the economy, the society, and the taxpayers is less. It is a minor accounting procedure which you can not even see. And that is the black wood he took you through to buy the concept that anytime you want to make an improvement in the overall structure of society, taxes and Social Security, you have taken the pledge not to have anything happen.

Do not take this pledge. Understand what they are trying to do to you. Reject this gimmick and simply say, look at the larger overall society benefit, and do not put on the green eyeshade and do not let them tell you that somehow this is going to impact the Social Security Trust Fund. In the long run, people helping make their own decisions saves money, it does not cost money.

Vote no on the motion to recommit.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. STARK. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes, if ordered, on passage of H.R. 4279 and adoption of H. Con. Res. 352.

The vote was taken by electronic device, and there were—ayes 202, noes 224, not voting 7, as follows:

[Roll No. 162]

AYES—202

Abercrombie	Costello	Grijalva
Ackerman	Cramer	Gutierrez
Alexander	Crowley	Harman
Allen	Cummings	Hastings (FL)
Andrews	Davis (AL)	Hill
Baca	Davis (CA)	Hinchey
Baird	Davis (FL)	Hinojosa
Baldwin	Davis (IL)	Hoeffel
Ballance	Davis (TN)	Holden
Becerra	DeFazio	Holt
Bell	DeGette	Honda
Berkley	Delahunt	Hooley (OR)
Berman	DeLauro	Hoyer
Berry	Deutsch	Inslee
Bishop (GA)	Dicks	Israel
Bishop (NY)	Dingell	Jackson (IL)
Blumenauer	Doggett	Jackson-Lee (TX)
Boswell	Dooley (CA)	Jefferson
Boucher	Doyle	John
Boyd	Edwards	Johnson, E. B.
Brady (PA)	Emanuel	Jones (OH)
Brown (OH)	Engel	Kanjorski
Brown, Corrine	Eshoo	Kaptur
Capps	Etheridge	Kennedy (RI)
Capuano	Evans	Kildee
Cardin	Farr	Kilpatrick
Cardoza	Fattah	Kind
Carson (IN)	Filner	Kleczka
Carson (OK)	Ford	Kucinich
Case	Frank (MA)	Lampson
Chandler	Frost	Langevin
Clay	Gephardt	Lantos
Clyburn	Gonzalez	Larsen (WA)
Conyers	Gordon	Larson (CT)
Cooper	Green (TX)	

Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wu
Wynn

NOES—224

Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—7

Aderholt
DeMint
Owens
Reyes
Scott (GA)
Tauzin
Woolsey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1547

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

□ 1545

The SPEAKER pro tempore (Mr. LATHAM). The question is on passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCCRERY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 273, nays 152, not voting 8, as follows:

[Roll No. 163]

YEAS—273

Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berkley
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hinojosa
Hobson
Hoekstra
Holden
Honda
Hooley (OR)
Hostettler
Houghton
Hulshof
Hunter
Hyde
Inslee
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Majette
Maloney
Manzullo
Matheson
McCarthy (NY)
McCotter
McCrery
McHugh
McInnis
McKeon
Meeks (NY)
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Strickland
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Udall (CO)
Upton
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NAYS—152

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berman
Berry
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Clay
Clyburn
Conyers
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gephardt
Green (TX)
Grijalva
Gutierrez
Hastings (FL)
Hill
Hinchey
Hoeffel
Holt
Hoyer
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lynch
Markey
Marshall
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Smith (WA)
Solis
Spratt
Stark
Stenholm
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (NM)

Van Hollen
Velázquez
Waters
Watson
Watt
Waxman
Weiner
Woolsey

NOT VOTING—8

Aderholt
DeMint
Obey
Radanovich
Reyes
Scott (GA)
Tauzin
Wexler

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1555

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RECOGNIZING CONTRIBUTIONS OF PEOPLE OF INDIAN ORIGIN TO UNITED STATES AND BENEFITS OF WORKING TOGETHER WITH INDIA

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 352.

The clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. BEREUTER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 352, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 415, nays 2, answered ''present'' 2, not voting 14, as follows:

[Roll No. 164]

YEAS—415

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gephardt
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—2

Johnson, Sam
Paul

ANSWERED ''PRESENT''—2

DeFazio
Sanders

NOT VOTING—14

Buyer
Cubin
DeMint
Duncan
Feeney
Istook
Kennedy (RI)
Miller, George
Rangel
Reyes
Roybal-Allard
Scott (GA)
Tauzin
Weller

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1606

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MCCRERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the subject matter of H.R. 4279.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from Louisiana?

There was no objection.

HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 638, I call up the bill (H.R. 4280) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of H.R. 4280 is as follows:

H.R. 4280

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 ''Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2004''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting

interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this Act to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

The time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of manifestation of injury unless tolled for any of the following—

(1) upon proof of fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

Actions by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that actions by a minor under the full age of 6 years shall be commenced within 3 years of manifestation of injury or prior to the minor's 8th birthday, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care organization have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

SEC. 4. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this Act shall limit a claimant's recovery of the full amount of the available economic damages, notwithstanding the limitation in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages, if available, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—For purposes of applying the limitation in subsection (b), future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the maximum award for noneconomic damages. An award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. Whenever a judgment of liability is rendered as to any party, a separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 5. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

(1) 40 percent of the first $50,000 recovered by the claimant(s).

(2) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(3) 25 percent of the next $500,000 recovered by the claimant(s).

(4) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—The limitations in this section shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section. The requirement for court supervision in the first two sentences of subsection (a) applies only in civil actions.

SEC. 6. ADDITIONAL HEALTH BENEFITS.

In any health care lawsuit involving injury or wrongful death, any party may introduce evidence of collateral source benefits. If a party elects to introduce such evidence, any opposing party may introduce evidence of any amount paid or contributed or reasonably likely to be paid or contributed in the future by or on behalf of the opposing party to secure the right to such collateral source benefits. No provider of collateral source benefits shall recover any amount against the claimant or receive any lien or credit against the claimant's recovery or be equitably or legally subrogated to the right of the claimant in a health care lawsuit involving injury or wrongful death. This section shall apply to any health care lawsuit that is settled as well as a health care lawsuit that is resolved by a fact finder. This section shall not apply to section 1862(b) (42 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social Security Act.

SEC. 7. PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may, if otherwise permitted by applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer. In any health care lawsuit where no judgment for compensatory damages is rendered against such person, no punitive damages may be awarded with respect to the claim in such lawsuit. No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages. At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(1) whether punitive damages are to be awarded and the amount of such award; and

(2) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages, if awarded, in a health care lawsuit, the trier of fact shall consider only the following—

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages, if awarded, in a health care lawsuit may be as much as $250,000 or as much as two times the amount of economic damages awarded, whichever is greater. The jury shall not be informed of this limitation.

(c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT COMPLY WITH FDA STANDARDS.—

(1) IN GENERAL.—

(A) No punitive damages may be awarded against the manufacturer or distributor of a medical product, or a supplier of any component or raw material of such medical product, based on a claim that such product caused the claimant's harm where—

(i)(I) such medical product was subject to premarket approval, clearance, or licensure by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such medical product which caused the claimant's harm or the adequacy of the packaging or labeling of such medical product; and

(II) such medical product was so approved, cleared, or licensed; or

(ii) such medical product is generally recognized among qualified experts as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable Food and Drug Administration regulations, including without limitation those related to packaging and labeling, unless the Food and Drug Administration has determined that such medical product was not manufactured or distributed in substantial compliance with applicable Food and Drug Administration statutes and regulations.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as establishing the obligation of the Food and Drug Administration to demonstrate affirmatively that a manufacturer, distributor, or supplier referred to in such subparagraph meets any of the conditions described in such subparagraph.

(2) LIABILITY OF HEALTH CARE PROVIDERS.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a medical product approved, licensed, or cleared by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such product and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or seller of such product. Nothing in this paragraph prevents a court from consolidating cases involving health care providers and cases involving products liability claims against the manufacturer, distributor, or product seller of such medical product.

(3) PACKAGING.—In a health care lawsuit for harm which is alleged to relate to the adequacy of the packaging or labeling of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer or product seller of the drug shall not be held liable for punitive damages unless such packaging or labeling is found by the trier of fact by clear and convincing evidence to be substantially out of compliance with such regulations.

(4) EXCEPTION.—Paragraph (1) shall not apply in any health care lawsuit in which—

(A) a person, before or after premarket approval, clearance, or licensure of such medical product, knowingly misrepresented to or withheld from the Food and Drug Administration information that is required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and is causally related to the harm which the claimant allegedly suffered; or

(B) a person made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval, clearance, or licensure of such medical product.

SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments. In any health care lawsuit, the court may be guided by the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions that have not been first set for trial or retrial before the effective date of this Act.

SEC. 9. DEFINITIONS.

In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. The term ''compensatory damages'' includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services or any medical product affecting interstate commerce, or any health care liability action concerning the provision of health care goods or services or any medical product affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim. Such term does not include a claim or action which is based on criminal liability; which seeks civil fines or penalties paid to Federal, State, or local government; or which is grounded in antitrust.

(8) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, including, but not limited to, third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) HEALTH CARE ORGANIZATION.—The term ''health care organization'' means any person or entity which is obligated to provide or pay for health benefits under any health plan, including any person or entity acting under a contract or arrangement with a health care organization to provide or administer any health benefit.

(11) HEALTH CARE PROVIDER.—The term ''health care provider'' means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(12) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care organization, provider, or by any individual working under the supervision of a

health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment or care of the health of human beings.

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) MEDICAL PRODUCT.—The term ''medical product'' means a drug, device, or biological product intended for humans, and the terms ''drug'', ''device'', and ''biological product'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321) and section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), respectively, including any component or raw material used therein, but excluding health care services.

(15) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider, health care organization, or a manufacturer, distributor, or supplier of a medical product. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 10. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

(1) To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act does not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

(2) If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this Act preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

(b) PROTECTION OF STATES' RIGHTS AND OTHER LAWS.—(1) Any issue that is not governed by any provision of law established by or under this Act (including State standards of negligence) shall be governed by otherwise applicable State or Federal law.

(2) This Act shall not preempt or supersede any State or Federal law that imposes greater procedural or substantive protections for health care providers and health care organizations from liability, loss, or damages than those provided by this Act or create a cause of action.

(c) STATE FLEXIBILITY.—No provision of this Act shall be construed to preempt—

(1) any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 4(a); or

(2) any defense available to a party in a health care lawsuit under any other provision of State or Federal law.

SEC. 12. APPLICABILITY; EFFECTIVE DATE.

This Act shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of the enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SEC. 13. SENSE OF CONGRESS.

It is the sense of Congress that a health insurer should be liable for damages for harm caused when it makes a decision as to what care is medically necessary and appropriate.

The SPEAKER pro tempore. Pursuant to House Resolution 638, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes; and the gentleman from Texas (Mr. BARTON) and the gentleman from Ohio (Mr. BROWN) each will control 10 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 4280, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the national medical insurance crisis, driven by unlimited lawsuits, is devastating our Nation's health care system to the detriment of patients everywhere. Medical professional liability insurance rates have soared, causing major insurers to either drop coverage or raise premiums to unaffordable levels. Doctors are being forced to abandon patients and practices or to retire early, particularly in high-risk specialties, such as emergency medicine, brain surgery, and obstetrics and gynecology. Women are particularly hard hit, as are low-income and rural neighborhoods.

H.R. 4280, the HEALTH Act, is modeled after California's highly successful health care litigation reforms enacted in 1975 and known under the acronym MICRA. California's reforms, which are included in the HEALTH Act, include reasonable limits on unquantifiable damages, limits on the contingency fees lawyers can charge, and authorization for defendants to introduce evidence to prevent double recoveries. The HEALTH Act also includes provisions creating a fair share rule, by which damages are allocated fairly in direct proportion to fault; reasonable guidelines on the award of punitive damages; and a safe harbor from punitive damages for products that meet applicable FDA safety requirements.

Information provided by the National Association of Insurance Commissioners shows that since 1975, premiums paid outside of California increased at five times the rate they increased in California. The Congressional Budget Office has concluded ''under the HEALTH Act, premiums for medical malpractice insurance ultimately would be an average of 25 percent to 35 percent below what they would be under current law.'' If California's legal reforms were implemented nationwide, we could spend billions of dollars more annually on patient care, meaning helping sick people get better.

We all recognize that injured victims should be adequately compensated for their injuries, but too often in this debate we lose sight of the larger health care picture. This country is blessed with the finest health care technology in the world. It is blessed with the finest doctors in the world. People are smuggled into this country for a chance at life and healing, the best chance that they have in the world. The Department of Health and Human Services issued a report recently that includes the following amazing statistics: during the past half century, death rates among children and adults up to age 24 were cut in half, and the infant mortality rate plummeted 75 percent. Mortality among adults between the ages of 25 and 64 fell nearly as much, and dropped among those 65 years and older by a third. In 2000, Americans enjoyed the longest life expectancy in our history, almost 77 years.

These amazing statistics just did not happen. There are faces behind the statistics, and they are our doctors. These statistics happen because America produces the best health care technology and the best doctors to use it. But now there are fewer and fewer doctors to use that miraculous technology or to use that technology where their patients are. We have the best brain scanning and best brain operation devices in history and fewer and fewer neurosurgeons to use them.

Unlimited lawsuits are driving doctors out of the healing profession. They are making us all less safe, all in the name of unlimited lawsuits and the personal injury lawyers' lust for their cut of unlimited awards for unquantifiable damages. But when someone gets sick or is bringing a child into the world, and we cannot call the doctor, who will we call? When you pick up the phone and call the hospital because someone you love has suffered a brain injury, and you are told, sorry, lawsuits made it too expensive for brain surgeons to practice here, who will save your loved one? You cannot call a lawyer. A lawyer cannot perform brain surgery.

We all need doctors. And we, as our Nation's representatives, have to choose, right here and today. Do we want the abstract ability to sue a doctor for unlimited, unquantifiable jackpot damage awards when doing so means that there will be no doctors to treat ourselves and our loved ones in the first place? Of course not. So on behalf of all 287 million Americans, all of whom are patients, let us pass this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

My colleagues, it is slightly incredible that with all the pressing legislative challenges facing us today, we have nothing better to do than redebate and revote the same tired medical malpractice proposals that have been brought forward by a conservative Congress over the last decade. This is the fifth time in 14 months that we have had this bill before the House of Representatives. Sooner or later somebody is going to get it, that this bill is not likely ever to go anywhere because it insults the commonsense health care needs of the American people.

Now, how can you put so many bad things in one bill? Let me explain how devious this thing can get. The bill before us would first supersede the law in every State in the Union, and these are states-righters over here, to cap noneconomic damages, to cap punitive damages, to cap attorneys' fees for those lawyers that would represent the poor, to reduce the statute of limitations, to eliminate joint and several liability and eliminate the collateral source rule. All in one bill. Six incredible things.

Embarrassed? No, I do not think they are. Rather than helping, when this Nation faces a national health care system crisis of growing proportions, instead of helping Americans that seek health care remedies and remedies for bad medical practice, and to help the medical profession itself, the bill before us does none of that; but it does enrich the insurance companies of America, the HMOs of this country, and the manufacturers and distributors of medical products, which sometimes are defective, as well as the pharmaceuticals that might be involved, too.

In other words, all the bad, unpleasant negative parts of our health care system are being protected. And who do we do it at the expense of? The innocent victims of medical malpractice, particularly women and children and the elderly poor.

I am embarrassed that this measure is on the floor for the sixth time in 14 months.

It's amazing to me that with all of the pressing problems facing us today, the Majority has nothing better to do than redebate and revote the same tired old medical malpractice proposals they have been pushing for the last ten years. In fact, this is the fifth time the Congress has voted on this bill in the past 14 months.

The bill before us today would supersede the law in all 50 states to cap non-economic damages, cap and limit punitive damages, cap attorney's fees for poor victims, shorten the statute of limitations, eliminate joint and several liability, and eliminate collateral source.

Rather than helping doctors and victims, the bill before us pads the pockets of insurance companies, HMOs, and the manufacturers and distributors of defective medical products and pharmaceuticals. And it does so at the expense of innocent victims, particularly women, children, the elderly and the poor.

We need to cut the charades and get to the heart of the problem. The insurance industry is a good place to start. We have seen in the past that the insurance industry goes through boom and bust cycles, with premiums ebbing and flowing as companies enter and exit the market and investment income rises and falls. We also know from past experience that the insurance industry—which is exempt from the antitrust laws—is not immune from collusion, price fixing and other anticompetitive problems.

It is also clear that the legislative solution largely focused on limiting victims rights available under our state tort system will do little other than increase the incidence of medical malpractice—already the third leading cause of preventable death in our nation. In other words, by limiting liability, we will increase incentives for misconduct.

Under this proposal, Congress would be saying to the American people that we don't care if you lose your ability to bear children, we don't care if you are forced to live in excruciating pain for the remainder of your life, and we don't care if you are permanently disfigured or crippled. The majority in this bill would limit recovery in tens of thousands of these cases, regardless of their merits.

The proposed new statue of limitations takes absolutely no account of the fact that many injuries caused by malpractice or faulty drugs take years or even decades to manifest themselves. Under the proposal, a patient who is negligently inflicted with HIV-infected blood and develops AIDS six years later would be forever barred from filing a liability claim.

The so-called periodic payment provisions are nothing less than a federal installment plan for HMO's. The bill would allow insurance companies teetering on the verge of bankruptcy to delay and then completely avoid future financial obligations. And they would have no obligation to pay interest on amounts they owe their victims.

And guess who else gets a sweetheart deal under this legislation? The drug companies. The producers of killer devices like the Dalkon Shield, the Cooper-7 IUD, high absorbency tampons linked to toxic shock syndrome, and silicone gel implants all would have completely avoided billions of dollars in damages had this bill been law.

Nearly 100,000 people die in this country each and every year from medical malpractice. At a time when 5 percent of the health care professionals cause 54 percent of all medical malpractice injuries, the last thing we need to do is exacerbate this problem while ignoring the true causes of the medical malpractice crisis in America. I urge my colleagues to reject this anti-patient, anti-victim legislation.

Mr. Speaker, I reserve the balance of my time.

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Mr. BARTON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me say before I give my prepared statement that I too am embarrassed that this issue is on the floor for the sixth time in so many months because the other body is yet to do anything about it. It is past time that we should have passed this and the other body should have passed it, and we should have all attended a signing ceremony with the President of the United States so we can bring some medical malpractice reform to the health care providers of our country.

We are facing a crisis in this country, and I do not use that term lightly, that dramatically affects our efforts to improve access to high-quality, affordable health care. Doctors in at least 19 States are facing astronomical increases in their medical malpractice insurance premiums. They have had their premiums doubled, and in some cases tripled. A hostile liability environment has forced doctors to stop performing certain procedures. In my own congressional district, I know of doctors who have retired because they cannot afford the medical malpractice insurance to continue their practices.

This means as there are fewer doctors to provide health care, patients are going to be left with fewer treatment options. Fewer OB-GYNs means less preventive health care for women. It means less regular screenings for reproductive cancers, high blood pressure, infections and other health risks, and less preventive care means higher health care costs down the road.

As insurance premiums continue to skyrocket, doctors will look to cut back on or eliminate care for higher-risk patients such as the uninsured.

This will also affect how we recruit new doctors. Our country already has a difficult time providing access to high-quality health care in many underserved areas. We already lack a true health care marketplace where patients can shop freely for health care services and have a direct say about which doctor they will see. We do not need to make these problems worse, we need to fix them.

The bill before us would begin the effort to fix them. The medical liability crisis is driving doctors out of the practice of medicine. Even if you have health insurance, what is it worth if there is no doctor available to treat you? It is not right that our courts have become a legal lotto system rather than a fair system that judges meritorious claims.

We all agree if a patient is injured through malpractice or negligence, that patient should be compensated fairly for his injuries; but that is not happening today. Injured patients have to wait on average 5 years before a medical injury case is complete. Adding insult to injury, patients lose on average almost 60 percent of their compensation to attorneys and the courts.

Even though 60 percent of medical malpractice claims against doctors are dropped or dismissed, we all pay the price. According to HHS, the direct cost of malpractice insurance and the indirect cost from defensive medicine raises the Federal Government's health care share of the cost by at least $28 billion a year.

H.R. 4280 will help all Americans. It speeds recovery for injured patients who truly deserve compensation. It removes the perverse incentives in our current medical liability system that force doctors to look at patients as potential lawsuits. It will encourage employers to increase the scope of their health insurance benefits, and it will allow for greater investment in life-saving technologies which help make America's health care system the best in the world.

This legislation encompasses the best policy that can actually fix the medical malpractice crisis. It is high time for this legislation to become law.

Again, I share the concerns of the gentleman from Michigan (Mr. CONYERS) that we have had to vote on this a number of times on the House floor. The problem is not that the House is continuing to vote on it, the problem is that the other body will not bring it up for a vote. I hope that we can pass it today and get the other body to bring it up and we can go to a signing ceremony with the President of the United States.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I ask unanimous consent to yield the balance of my time to the gentleman from Virginia (Mr. SCOTT) from the Committee on the Judiciary, and that he may control that time.

The SPEAKER pro tempore (Mr. SWEENEY). Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 30 seconds to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Speaker, I appreciate the comments of the gentleman from Texas (Mr. BARTON), the chairman of the Committee on Energy and Commerce, who explains to us why this keeps coming up, and he refers charitably to the other body.

The other body for the last 10 years has been controlled by the gentleman's party. The last 10 years. The present head of the Senate is not only a Member of the gentleman's party, but he is a medical doctor.

I ask the gentleman, what could he and I do together to help the other body get the message here?

Mr. BARTON of Texas. Mr. Speaker, how much time remains for each side?

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 15 minutes remaining, the gentleman from Virginia (Mr. SCOTT) has 16 minutes remaining; the gentleman from Texas (Mr. BARTON) has 6 minutes remaining, and the gentleman from Ohio (Mr. BROWN) has 10 minutes remaining.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. CONYERS) to engage in a colloquy.

Mr. CONYERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, I share the frustration that the gentleman has with the other body. If we could work together to get Members from the other body on both sides of the aisle to vote for cloture, and as the gentleman well knows, regardless of who controls the other body, it takes 60 votes to agree to limit debate, and a fair number of Members of the gentleman's party in the other body have failed to vote for cloture on this issue. I would be happy to work with the gentleman to work for cloture to bring the bill up.

Mr. CONYERS. I would be interested; and is the gentleman interested in the six points that I just raised that make this bill problematic? We cannot work together on two different bills.

Mr. BARTON of Texas. Mr. Speaker, if the gentleman would continue to yield, if we can at least let some bill come up for a vote, we can solve this in conference. The policy difference can be worked out in conference, but unless there is a conference with the other body, there is not going to be anything to work out.

Mr. CONYERS. Mr. Speaker, it is my experience in conferences the lights frequently go out and measures get substituted and all kinds of weird things go on. Let us do this in broad daylight, with everybody looking and listening. Conferences have not been the way the democratic process has been enhanced in my career in Congress, sir.

Mr. BARTON of Texas. Mr. Speaker, if the gentleman would continue to yield, the conference mechanism may not be as perfect as it should be, but it is a mechanism where policy differences can be worked on.

Mr. CONYERS. Mr. Speaker, could I recommend that the gentleman and I and my chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), perhaps we can enter into an informal colloquy with some of the leaders in the other body and see if we can end this constant repetition of what is going on here in the House today.

Mr. BARTON of Texas. Mr. Speaker, I am interested in doing that.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind Members to confine their remarks to factual references to the other body and avoid characterizations of Senate action or inaction, remarks urging Senate action or inaction, or references to particular Senators.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I share the consternation of the gentleman from Michigan (Mr. CONYERS). In this country we are facing problems in Iraq, yet this House does nothing. We are listening to seniors say please fix the Medicare discount card program bill; this House does nothing. We are hearing from people in my State of Ohio that we have lost 200 jobs every day in the Bush administration; we are doing nothing about that. We will not extend unemployment benefits or anything else. We are hearing people talk about drug prices being one-half and one-third in Canada what they are here; we are not doing anything about that. We have lost so much manufacturing in this country, 1 out of 7 manufacturing jobs has simply disappeared since George Bush took office.

Yet for the fifth time in 14 months, as the gentleman from Michigan said, we are debating a medical malpractice bill that does not do anything about medical malpractice. I support malpractice reform, as most Members of this body do, but I oppose this bill.

The Republicans lay the blame for rising medical malpractice premiums on the victims of medical malpractice. The bill does not have one provision acknowledging the insurance industry's accountability for skyrocketing premiums, not one provision to keep the insurance industry accountable.

Insurers have tripled their investment in the stock market over the past 10 years, now they are trying to recoup their losses from doctors and premiums from hospitals and other medical providers, and from patients. Insurers low-

balled their rates to attract new customers, and then they went overboard and depleted their reserves. That is not our fault, that is not the patients' fault or doctors' fault. Rates have to exceed costs to stabilize those reserves, and the recklessness on the part of insurers is clearly a factor in the recent rate spikes.

Democrats have repeatedly tried to negotiate with the Republican majority on this issue. We asked the majority to consider insurance reforms; they absolutely refused even to talk about it. We asked the majority to subpoena insurance company records so we really could understand and get to the bottom of the rate spikes and so we could be sure we were solving the real problems; the Republicans refused to even talk about it.

There were avenues we could take to stabilize medical malpractice premiums: reinsurance pools, rate bands, loss ratio requirements, reserve requirements, and improved transparency, but the insurance industry opposes these changes. The insurance industry gives a lot of money to President Bush and the Republican leadership, so the Republican leadership does not even consider these insurance company issues. This bill assumes the insurance industry's business decisions play no role in setting premiums. It is always the patient's fault.

In the Committee on Energy and Commerce and in the Subcommittee on Health, I had an amendment that said whatever money we save from the caps has to go towards lower premiums for doctors and hospitals. Because the insurance industry gives a lot of money to Republicans, it was voted down on behalf of the insurance industry on a party-line vote.

This bill is doomed to fail, even if it would become law, and the proof is in California. California has had damage caps since the 1970s. It now has the most stringent caps in the country; but caps alone did nothing. They were a colossal failure in California. Premiums for medical malpractice were higher than the national average. They were growing faster than the national average.

□ 1630

Eventually, California recognized its mistake and implemented a set of malpractice insurance reforms. Since then, premiums have moderated. But this bill does not emulate California's successes. It only imitates California's mistakes.

It is bad enough the bill ignores the failure of a cap-only approach. It takes another swipe at patients with a cap system that says the same injury causes more harm in dollar terms if it happens to a CEO than it does if it happens to his gardener. Like its predecessor, this bill contains provisions wholly unrelated to the medical malpractice issue. It says HMOs that deny patients needed medical care cannot be held accountable, yet HMOs continue to post robust profits, earning $6 billion in the first 9 months of 2003, a 52 percent increase over last year.

This bill says drug companies who sell medicine with toxic side effects are not responsible. Yet they are protecting the drug industry which has been the most profitable industry in America for 20 years running. And the bill says manufacturers of defective medical equipment get a free pass. They are doing all right, too.

In this bill, businesses are never at fault, patients are greedy, the U.S. Congress knows better than a jury of your peers in your community, and State laws are just cast aside without a second thought. If my friends in this body really wanted malpractice reform, if they really wanted to help doctors deal with these outrageous premiums they are paying, they would not use this bill to help their drug company contributors, they would not use this bill to help their insurance company contributors, they would not use this bill to help their HMO contributors. That is what this bill is all about.

At a time when the public is calling for greater corporate accountability, this bill turns on the public itself and says injured patients, not the system that is designed to protect them, are at fault. This is not reform. It is callous injustice.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1½ minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Speaker, America's health care system is facing a malpractice abuse crisis. This single issue has driven up costs, it has increased the number of uninsured, and it has forced health providers out of our rural areas. Doctors are facing mounting costs. The sky-high noneconomic damage awards, which end up lining the pockets of the powerful trial lawyer lobby, are responsible for many of the elements that are plaguing this system.

Most of our medical liability claims, up to 70 percent, do not result in any payments to the patients. The lawyers' fees account for 40 percent or more of these multimillion-dollar payouts. The effect is clear. The lawsuits and the trial lawyers force this situation with enormous insurance rates. They then charge you and me and businesses across the country higher prices.

Employers can attest to what the high cost of health care is doing to them. They hurt when they cannot afford to offer coverage to their workers. Our rural communities understand this issue. The family doctor who grew up with them there in the town is disappearing. They are being squeezed out by this vicious cycle. This should be an easy vote. It is common sense, and it is going to help save rural health care and save lives.

Mr. BARTON of Texas. Mr. Speaker, I ask unanimous consent that the gentleman from Pennsylvania (Mr. GREENWOOD) control the balance of my time.

The SPEAKER pro tempore (Mr. SWEENEY). Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. WEXLER).

Mr. WEXLER. Mr. Speaker, once again Republicans are attempting to pass ineffective anticonsumer legislation that caps medical malpractice awards at $250,000. The habitual Republican response to the malpractice crisis, punish the victims. This bill fails to reduce medical malpractice costs. In States that recently capped medical malpractice awards, the rates have not gone down as promised. In Florida, which capped rates last year, one insurer requested an inconceivable 45 percent increase in rates.

Mr. Speaker, why not look at the root cause of this health care emergency and adopt desperately needed insurance reform? I urge my colleagues to vote against this shortsighted measure and support real insurance reform which protects victims and provides relief to doctors and health care providers.

Mr. GREENWOOD. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. COX), the coauthor of this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. COX).

The SPEAKER pro tempore. The gentleman from California (Mr. COX) is recognized for 2 minutes.

Mr. COX. Mr. Speaker, this is Cover the Uninsured Week, organized by patients, physicians and hospitals to promote access to care to all Americans. They are calling on Congress to act. We are here to answer that call. We are here today because patients are losing. They are losing their access to care. Many have already lost it. The General Accounting Office has confirmed it. In at least 10 percent of these United States, sky-high medical liability costs are preventing patients from getting emergency surgery. They are preventing expectant mothers from having access to doctors to deliver their babies.

It has been 10 years since I first wrote this legislation that is now the Greenwood-Cox bill before us today. In that time, the number of medical lawsuits has risen 25 percent. The median damage award for medical lawsuits against hospitals, physicians and nurses right now is rising 43 percent per year. In some States, liability insurance premiums are rising 100 percent or more for so-called high-risk specialties, high risk because of the lawsuits, not because of the medical procedures involved, such as general surgery, 130 percent; internal medicine 130 percent; and obstetrics, OB–GYN, 165 percent. The money for these lawsuits comes directly from our health care system. Doctors and hospitals now

spend more on liability insurance than they do on medical equipment.

The bill before the House today will ensure that patients have access to the medical care that they need. It is based on our law in California where I come from that was enacted by a Democratic legislature and signed by a Democratic Governor, and it works.

In our State since these reforms have taken place, California's health liability insurance premiums in constant dollars have fallen by 40 percent. This while we are having crises in other States. Injured patients in California receive more compensation and receive it more quickly than in the United States as a whole. They receive a greater share of the recoveries in these lawsuits. California does not suffer from the flight of doctors or the closure of emergency rooms because we have the reforms in this bill. This bill balances the interests of billionaire lawyers and middle-class patients. It is time that patients have access to the care that they need.

Mr. BROWN of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I rise today in opposition to not only this bill but the package of bills. In all honesty, in this bill people do not get sued for malpractice in Federal court typically. It is in State court. Like the State of California, the States can deal with that issue.

I rise in opposition to these bills simply because we have more important pressing needs of our health care system, the fact that 44 million Americans are without health insurance. This week is National Cover the Uninsured Week; and coming from the great State of Texas, I find it alarming that over 30 percent of Texans are without health insurance.

My hometown, Houston, is the home of the world-class Texas Medical Center. Yet without health insurance, too many Texans do not have access to lifesaving medical research and treatments performed at the medical center. Tackling this country's health care problems does not call for the unsuccessful piecemeal approach that we are considering this week. Passing these three bills would just be like rearranging the deck chairs on the Titanic. Our focus needs to be on providing all Americans with health insurance so that they will get the preventive care needed to keep them healthy and out of the emergency rooms. That is the way to keep health care costs down.

Unfortunately, policies enacted by this Congress and the States have taken health care in the wrong direction. Our fiscal policies have starved the States of crucial health care funding. State cuts in the CHIP program in Texas have dropped almost 170,000 children, and there is no way to ensure that our children get health care. To get our country's health care system out of this ditch, we have to stop digging. Let us give our children a healthy start and re-enroll them in CHIP. Let us also make sure that their parents can have access to the same care. In other words, pass legislation here to create a CHIP for parents. In my home State of Texas, that policy option alone would provide 67 percent of these parents with health insurance.

The uninsured in this country too often fall through the cracks of our health care system. For the health of our Nation, we must provide Americans with health insurance, not last year's ideas that these bills give them.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1½ minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. I thank the gentleman for yielding me this time.

Mr. Speaker, not too long ago I got on an airplane ride. Across the aisle from me was a young woman holding her 7- or 8-month-old daughter. This young woman was also an OB-GYN. She began to talk to me about the practice that she has invested in had a 600 percent increase in the premiums in one single year. That is the worst I have heard of, but there are many out there that run 200, 300, 400 percent increases in premiums.

I represent a part of the State of Iowa. Iowa is last in the Nation in Medicare reimbursement rates. Now we are seeing an increase in medical malpractice premiums. Good things do come out of California. This is a good idea. It is a good model, and it is a good pattern. I am happy to follow the lead of the gentleman from California (Mr. COX) on this issue. We are losing access to health care in Iowa because of the cost of premiums, because Medicare reimbursement rates are the last in the Nation. Our issue is access to health care. We must reform this practice. Three percent of the gross domestic product of the United States of America is being consumed by litigation. Here is a place to start. I would like to do very much more.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, this bill does nothing to improve the system. It does nothing to deal with the insurance rates and the increases in premiums, but it does deny victims compensation when they are victims of malpractice. I think it may be helpful to go a little section by section to see what is actually in the bill to see how it actually does what some of the people are talking about.

Section 3, for example, is entitled ''Encouraging Speedy Resolution of Claims.'' Mr. Speaker, injured parties do not need encouragement to get a speedy resolution of the claim. This section only invalidates bona fide claims that are filed after a set deadline. It also creates a confusing matrix because some State deadlines are preempted. Others are not. And so you have that confusing matrix of deadlines and may even miss the deadline by mistake.

Section 4 is called ''Compensating Patient Injury.'' Actually, that is the section which limits compensation to innocent victims. It also has what is called the ''fair share rule.'' I think most States, but at least Virginia and many States, allow a victim to collect all of the damages from one defendant. That defendant can then seek contribution from others involved. In practice, that contribution is worked out in advance by who pays for what insurance.

This so-called fair share requires the victim not only to prove a separate case against each and every defendant who may be involved but it also requires the plaintiff to decide and prove what percentage each one owes. Often the plaintiff does not know what happened. All they know is they are a victim of malpractice. This provision will require the plaintiff to have a separate case and pay for the expenses of separate cases against each and every person. Otherwise they may be afflicted with the ''empty chair defense'' where everybody in the courtroom starts pointing to an empty chair and says somebody else had 10 percent or 20 percent.

Section 5 is ''Maximizing Patient Recovery.'' Actually, that is a provision that limits attorneys' fees making it likely that a plaintiff will not even be able to hire a lawyer. You do not hear any victims groups clamoring for limitation on attorneys' fees. The defendants are not affected by the plaintiff attorneys' fees. They do not pay the plaintiff attorneys' fees. If the award is $100,000 and the plaintiff's attorney charges 50 percent, the defendant pays $100,000. If the lawyer charges 25 percent, still $100,000. If the lawyer does not charge anything at all, just the same, $100,000. The only way that this will help malpractice premiums is if the plaintiff cannot bring the bona fide case at all, cannot bring the case because they cannot hire a lawyer with the fees. That is not fair. It is even more likely when you have this fair share thing where the lawyer has to have five and six cases in the same case.

There is another provision called ''Additional Health Benefits.'' That is a provision that says if the victim has health insurance, the benefit of that health insurance goes to the one who committed the malpractice. In Virginia and many other States, if you have health insurance, you benefit. In other States, the health insurance company can get its money back after the case is settled because the malpractice recovery will pay the health expenses. Presumably under that case, the premiums will be lower. But in this bill, the benefit goes to the one who committed the malpractice. This bill is so bizarre that if you are working for a self-insured employer who is obligated to pay the health expenses of an employee and that employee is a victim of malpractice and runs up a $50,000 hospital bill, the business has to pay that $50,000 bill even though the one committing the malpractice is fully insured and could have paid. I cannot

wait for some small businesses to come to us and ask why they had to pay the bill as a result of malpractice.

Mr. Speaker, there is another provision under ''Punitive Damages.'' This bill provides that if a jury finds by the preponderance of the evidence that the doctor acted with malicious intent to intentionally injure a patient, not just recklessly negligent, acted with malicious intent to injure, that is not enough under the bill, because the evidence does not have to be just by the preponderance of the evidence; it has to be by clear and convincing evidence.

Mr. Speaker, this bill will not help injured victims of malpractice, and it is unlikely to reduce premiums. A chart of States in order of the costs of malpractice premiums shows some States at the top with caps, some with caps at the bottom, some with caps in the middle. There is no pattern to the chart. They are all over the place. The caps apparently did not make any difference at all.

We have heard a lot about the doctor shortage. This is not limited to doctors. This tort reform bill affects the health care provider, a health care organization, an HMO, manufacturer, distributor, supplier, marketer, promoter, a seller of a medical product regardless of the theory of liability on which the claim is based. This does not help victims. It probably will not even reduce premiums.

Mr. Speaker, I would hope that we would defeat the bill so that it will not be enacted. That has been the judgment of the United States Congress for the last 14 months. I hope it is still the judgment of the United States Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. GREENWOOD. Mr. Speaker, I yield myself 2 minutes.

This bill is on the floor for one reason and one reason alone. That reason is that across this country there is a crisis. The crisis is that the cost of medical malpractice insurance is so expensive that trauma centers have to close, that obstetricians cannot deliver babies anymore, that neurosurgeons cannot preserve lives, that orthopedic surgeons cannot do what they are supposed to do. It is a crisis. It also so happens that if this bill is passed, it will, according to the CBO, reduce the cost of medical malpractice insurance by 25 percent which will go a long way to solving that crisis.

It also has some side benefits. By making the cost of medical malpractice insurance less expensive, it makes the cost of health care less expensive which means that more employers can offer more of their employees insurance.

□ 1645

In fact, according to the CBO, 3.9 million Americans who do not have health care today would get health care just because we passed this bill. We ought to do it. Another side benefit, according to the CBO, is that because these costs are built into the costs of Medicaid and Medicare, we would save $15 million in those programs over the next 10 years, which we could apply to real important health care needs.

The gentleman from Michigan (Mr. CONYERS) has said we are passing this bill on the floor, it is never going to pass in the Senate. This bill went to the Senate and Majority Leader FRIST made a motion to consider the bill, and the Democrats objected to the consideration of the bill, to even having the debate. And then when it came time to vote on whether to have that debate, the Democrats voted no, we do not want to even debate this bill. So one can debate the fine points. One can say I have a better way to solve this problem or another Senator can say I do not like the cap here or I do not like this aspect of it. The most deliberative body on the face of the Earth is supposed to come to the floor of the Senate with their ideas, with their amendments, and engage in a debate. Instead, all that they have done is obstruct.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SWEENEY). The Chair will once again remind Members to confine their remarks to factual references to the other body and avoid characterizations of Senate action or inaction, remarks urging Senate action or inaction, or references to particular Senators.

Mr. BROWN of Ohio. Mr. Speaker, I yield the balance of my time to the gentlewoman from Colorado (Ms. DEGETTE).

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1 minute to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, every so often in this body, I think it is important to talk about facts. Instead of legislating by an anecdote, I would like to actually look at some facts today.

Those on the other side would have us believe that limiting patients' access to the courts will relieve high malpractice insurance premiums. But the fact is there has been no increase in the rate of malpractice claims filed in recent years, and the fact is the average payout has remained steady for a decade. The fact is that California, the State that has been most successful in curbing malpractice costs, only did so after passing a voter initiative that also reformed the insurance system.

Despite this evidence, proponents of this bill continue to represent it as relief for physicians. In reality, it is a bald effort by the insurance industry to pass off their costs on already suffering patients. This bill will disproportionately affect women, low-income individuals, and children because the caps on noneconomic damages will affect them. Since they do not make a lot of money, they will not have a lot of economic damages to be awarded by the courts.

Real people will suffer a second injustice under this legislation, people like Heather Lewinski, who came before our committee and testified, a 17-year-old girl who suffered permanent facial disfigurement at the hands of a plastic surgeon who lied to her and her family. And this young woman came before us and said her greatest fear was she would never have a date. People like Linda McDougal. This is Linda McDougal in this poster right here. Linda McDougal's breasts were amputated after she had been misdiagnosed with cancer, and here she is today. She was completely fine. And the family of Jesica Santillan, a little girl who died because the hospital failed to ensure that the heart and lungs she was about to receive would be compatible with her blood type. Her family will be denied just compensation for her suffering.

If we really wanted to fix the crisis that is plaguing our Nation's doctors, we should take a good look at the insurance industries, as we heard from my colleague from Ohio. Instead, we are considering a bill that is akin to curing a headache by amputating an arm. Arbitrarily limiting patients' rights is not fair, and it will not solve the problem.

Let me talk for a minute about some of the anecdotes upon which we are basing this legislation. We heard that obstetrics wards were closing down because of liability insurance premiums. The example given by the AMA said that Pennsylvania's Jefferson Health System closed its obstetrics ward because of this reason, but 2 years later this obstetrics ward is still up and running and accepting new patients. In May, 2003, the AMA said that a group of 10 neurosurgeons in Washington State had been dropped by their malpractice insurer. As of 2004, the group is doing just fine and taking new patients. Finally, in January 2004, just a few months ago, President Bush said there was a doctor in Arkansas who stopped delivering babies because of rising insurance costs. That turned out to be completely untrue.

If there is a problem here, let us let the States fix it. Let us not put it on people like Linda McDougal.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, what the gentlewoman from Colorado did not tell us is what is not getting media attention, and that is that doctors are closing up their practices. When the Committee on the Judiciary heard testimony on this issue, the wife of a man named Tony Dyess came and spoke. Mr. Dyess was involved in an automobile accident. He had a spinal cord injury, and because there were no neurosurgeons left in southern Mississippi, it took 6 hours to airlift him to a hospital in Louisiana that has some better medical liability laws, and the golden hour for neurosurgery had passed; and as a result Tony Dyess is a quadriplegic simply because malpractice insurance costs chased the neurosurgeons out of southern Mississippi.

This is an issue of access to health care, and we cannot have liability insurance costs force doctors to close their practices and not have access to people who need doctors and need them desperately.

Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Mr. Speaker, I rise today in strong support of H.R. 4280. This country's health care system and its providers are currently faced with a crisis in regards to medical liability coverage; and, in fact, my home State of Pennsylvania unfortunately leads the way. Our doctors are leaving or retiring, and currently only 4 percent of physicians practicing in Pennsylvania are under the age of 35. Students graduating from our medical schools are choosing not to stay in Pennsylvania to practice medicine. The largest hospital in my district, the Altoona Hospital, their malpractice insurance has gone from in 2000 $1 million a year to $2.7 million in 2003; $1.7 million, and not a penny of it is going to improve care to the patients and the people of my district.

This real increasing threat to patients' access to quality care cannot be ignored. The medical liability system in this country is in desperate need of reform. So I urge my colleagues to vote ''yes'' on H.R. 4280.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

I will enter into the RECORD an article from the Morning Call newspaper in Pennsylvania, and I will just read the first sentence. April 23, 2004, ''The chairman of the Pennsylvania Medical Society acknowledged Thursday to State lawmakers that the doctors group lacks statistical evidence to support its 3-year claim that doctors are leaving the State in large numbers.''

The whole article will be introduced.

I have the GAO study that was cited June, 2003; and let me just read a couple of points out of it:

''Multiple factors have contributed to the recent increases in medical malpractice premiums in seven States we analyzed. First, since 1998 insurers' losses on medical malpractice claims have increased rapidly in some States,'' and they ''found that the increased losses appeared to be the greatest contributor to increased premium rates, but a lack of comprehensive data at the national and State levels on insurers' medical malpractice claims and the associated losses prevented us from fully analyzing the composition and causes of those losses.

''Second, from 1998 through 2001, medical malpractice insurers experienced decreases in their investment income as interest rates fell on the bonds that generally make up around 80 percent of these insurers' investment portfolios.

'' . . . a decrease in investment income meant that income from insurance premiums had to cover a larger share of insurers' costs. Third, during the 1990s, insurers competed vigorously for medical malpractice business, and several factors, including high investment returns, permitted them to offer prices that in hindsight, for some insurers, did not completely cover their ultimate losses on that business. As a result of this, some companies became insolvent or voluntarily left the market, reducing the downward competitive pressure on premium rates that had existed through the 1990s.''

I say that to say that there are a number of factors that have caused the premiums to go up that have nothing to do with the medical malpractice situation or the laws in medical malpractice and that this bill may or may not have anything to do with future premiums.

[From the Morning Call, April 23, 2004]

DOCTORS CAN'T PROVE THINNING RANKS

(By John M.R. Bull)

HARRISBURG.—The chairman of the Pennsylvania Medical Society acknowledged Thursday to state lawmakers that the doctors group lacks statistical evidence to support its three-year claim that doctors are leaving the state in large numbers.

''Some data sources show an 800-doctor gain,'' internist Daniel Glunk of Williamsport testified before the House Insurance Committee. ''The problem is no one has definitive numbers . . . and that there is conflicting data.''

That number includes 1,000 medical residents. If those aren't counted, he said, there would be a net loss of 200 doctors out of 35,500 since 2002.

''How can the medical society, if you can't agree on the numbers, continue to tout that doctors are leaving'' said Rep. Thomas Tangretti, D–Westmoreland, his voice rising in apparent anger. ''You've run ads saying will the last doctor please turn off the X-ray machine.''

''You've been frightening people, particularly senior citizens, and now we find it was all probably wrong-headed and disingenuous,'' Tangretti said, getting louder. ''Before you continue to frighten people about access to health care, you better get your numbers right. It's an outrage.''

Other lawmakers voiced irritation at his testimony, delivered four days after The Morning Call published new and previously undisclosed figures—some of them from the medical society itself—that make clear doctors are not leaving in large numbers.

For three years, the doctors lobby has insisted that doctors, particularly specialists who perform high-risk procedures, are leaving the state in droves, putting patient care in jeopardy.

Among other tactics, the medical society has promoted a list of 1,700 ''disappearing doctors'' as proof there are fewer physicians in Pennsylvania.

The Morning Call revealed Sunday that new state Insurance Department numbers show doctors have not left the state in waves. There were 35,474 doctors in 2002, as determined by the number who paid their state-mandated supplemental insurance. Now the figure is at least 34,997.

The newest number includes doctors who have applied to the Insurance Department for a piece of $230 million in state tax dollars recently appropriated to offset their rising malpractice premiums, along with a separate list of doctors who had primary insurance coverage at the end of last year but who haven't yet applied for state money.

That total doesn't include doctors who might have moved to Pennsylvania in the last year, might not be in Insurance Department records yet, and who might not know the state has money set aside for them.

In one of several criticisms of The Morning Call's work, the medical society has contended it might be misleading to compare 2002 figures to a list of individual doctors who recently applied for state money and others known to have malpractice insurance at the end of last year. But society officials have not publicly explained why that could be the case.

The new Insurance Department figures show no appreciable reduction in the number of high-risk specialists, a maximum reduction of 56 out of 4,700 since 2002. The medical society has admitted it has separate statistics that show a reduction of only 16 specialists—defined as neurosurgeons, general surgeons, orthopedic surgeons and ob-gyns—during that time frame.

''This a matter of credibility,'' Rep. Nick Micozzie, R-Delaware, chairman of the House Insurance Committee, said after the hearing. ''We've been hearing for three years now that doctors are leaving in large numbers and there is a shortage.''

''I go into my doctor's office and there's a sign that says ''Call Nick Micozzie to Save Our Doctors,'' he said. ''Well, saving our doctors is a different issue than claiming doctors are leaving in large numbers.''

In reference to the three-year campaign, Glunk told the committee that anecdotal evidence indicates there aren't enough of some kind of specialists in some parts of the state, and that not enough young doctors are choosing to move to Pennsylvania.

For three years, the medical society and its associated group, Politically Active Physicians Association, have waged an intensive public relations and lobbying campaign to convince legislators and their constituents that doctors are fleeing the state en masse.

The effort was triggered by medical malpractice premiums that started soaring in 2001 and continue to climb. Rather than pay prices that doubled seemingly overnight, some doctors did indeed depart, others altered their practices to avoid high-risk procedures.

As a result, lawmakers have enacted a series of court reforms sought by doctors as a way to drive down the rising premiums. A new cigarette tax raises roughly $230 million a year to help doctors afford malpractice premiums. Applications for that money are being processed now.

Doctors continue to demand a cap on jury awards on pain and suffering damages in malpractice lawsuits and have threatened to leave the state if they don't get them.

On Thursday, Glunk told the panel of lawmakers that the disappearing doctors list is not actually a list of doctors who disappeared. It is more of a list of doctors who might have been impacted by rising malpractice rates and who might have retired, moved, or curtailed their practices as a result, he explained.

The list makes no mention of doctors who have relocated to Pennsylvania since 2002, lawmakers noted.

''Naturally people leave their profession. You don't count doctors coming in,'' said Rep. Tony DeLuca, D–Pittsburgh told Glunk. ''If you don't have accurate statistics on the number of doctors, how can we tell? How can we make policy like that?''

Lawmakers from both parties say the list—created and maintained by Donna Rovito, the wife of an Allentown physician—has been used extensively as a lobbying tool to support doctor claims.

Democratic House leaders Thursday called for a moratorium on any more medical malpractice reforms until lawmakers ascertain

whether doctors are leaving the sate in large numbers, and whether the medical society deliberately misled lawmakers.

''The data they repeatedly cite, and which served as the basis for legislative action in the last two years, appears to be seriously inaccurate and part of a deceptive campaign,'' said Rep. Mike Veon, D-Beaver, the House Minority Whip. ''We want the real numbers and there should be no further action until the deficiencies of the data are corrected and we know the truth.''

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The Chair advises Members that the gentleman from Wisconsin (Mr. SENSENBRENNER) has 9 minutes remaining, the gentleman from Virginia (Mr. SCOTT) has 6 minutes remaining, and the gentleman from Pennsylvania (Mr. GREENWOOD) has 1 minute remaining.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. SHADEGG).

Mr. SHADEGG. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in strong support of the underlying legislation. I want to compliment both the chairman of the Committee on the Judiciary, and the Committee on the Judiciary itself, as well as the chairman of the Committee on Energy and Commerce, and the Committee on Energy and Commerce itself, for bringing this legislation forward. This is critically needed legislation.

We face a crisis in this country in health care because of a runaway tort system. But the specific point I want to make goes to the next step in this process. Under current law, a law called EMTALA, passed by this Congress in 1986, millions of dollars' worth of free health care is provided at our Nation's emergency rooms across the country. It is provided because we have decided that someone who presents himself to an emergency room should not be denied that care, and so they must be screened and they must be initially treated and they must be stabilized. And I think that is a fair and balanced social policy which says that we in this country do not want anyone to go without health care; and clearly that is an important, appropriate policy that we have adopted.

But I think there is an unintended consequence of that law. The law says that this care must be provided by doctors and hospitals for free of these emergency rooms, but it does not provide that they have to provide their own malpractice insurance to cover that, and yet the current law says if they are sued for malpractice in such circumstances, they must pay the damages.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself 30 seconds.

During the debate, we have talked about how much debate is going on. I just point out that this debate is on a closed rule so that we cannot offer amendments to the bill. We have to take it or leave it. There are a lot of improvements that could be made if we have a full and open debate. That is not happening today because the majority passed a closed rule prohibiting any amendments to the bill.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The Chair will advise Members that the order of closure will be the gentleman from Pennsylvania (Mr. GREENWOOD) followed by the gentleman from Virginia (Mr. SCOTT) followed by the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. CRANE).

Mr. CRANE. Mr. Speaker, I thank the gentleman for yielding me this time.

Health care providers in my district need relief. Doctors, nurses, and hospitals all are struggling to shoulder the burden of the escalating cost of medical malpractice insurance.

Many regions of the country have been hit especially hard by this medical liability crisis, and doctors are leaving my district in suburban Chicago and moving to Wisconsin or Indiana to practice where medical malpractice insurance costs significantly less.

I certainly do not want them to go, but I understand why they are leaving or why some are choosing to retire early. The price of medical malpractice insurance has made it cost prohibitive for physicians to practice. It is not just doctors either. Hospitals, many of which struggle every year to keep solvent, have been hit especially hard. I am confident that the House will pass H.R. 4280, and I encourage all of my colleagues to support it; but it is time for the other body to act and pass this bill. Congress's inaction to address the medical liability crisis is driving doctors out of all of our districts.

The time has come to address this problem and pass the HEALTH Act.

□ 1700

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. GREENWOOD).

Mr. SHADEGG. Mr. Speaker, will the gentleman yield?

Mr. GREENWOOD. I yield to the gentleman from Arizona.

Mr. SHADEGG. Mr. Speaker, I thank the gentleman for yielding. I apologize for the rather disjointed nature of this presentation.

Mr. Speaker, the point I wanted to make is we under EMTALA require doctors and hospitals to provide free health care in our emergency rooms. That may be appropriate as public policy, but the unfair context is that while forcing them to provide this free care, if they in fact are alleged to have committed malpractice, either the hospital or the doctor while providing free health care, they are on the hook for that alleged malpractice.

It seems to me only fair that if we are going to force doctors and hospitals to provide free health care to anyone who presents at an emergency room, then we should either cover the cost of their medical liability arising out of that, which I have proposed in an amendment and in separate legislation, providing that free EMTALA care would come under the Federal Torts Claims Act or we should grant immunity.

It seems to me to add insult to injury to say to a doctor at a hospital, you must provide free health care to anyone who presents at your emergency room and you must pay for the substantive cost of that health care, but that in addition to that, you must cover the medical liability that arises out of it.

That is in fact driving doctors away from emergency rooms and imposing unfair costs on both emergency rooms and emergency room doctors, and I hope the Congress will consider that legislation in the near future.

Mr. SCOTT of Virginia. Mr. Speaker, I yield the balance of my time to the gentlewoman from Texas (Ms. JACKSON-LEE).

The SPEAKER pro tempore (Mr. SWEENEY). The gentlewoman from Texas is recognized for 5½ minutes.

Ms. JACKSON-LEE of Texas. Mr. Speaker, to the distinguished gentleman from Virginia and to my ranking member and colleagues on the floor, this reminds me of deja vu and here we go again.

I am reminded that we were here on the floor of the House not very long ago dealing with the catastrophe of medical malpractice insurance and the desire to deny access to the courthouse. I am reminded as well that we had the good conscience, if you will, to have a vigorous debate.

Now we are on the floor of the House with exactly 1 hour, no opportunity for a substitute, it is my understanding, in combined time between the Committee on Energy and Commerce and the Committee on the Judiciary, two very important committees as it relates to dealing with the medical malpractice question.

We also seemingly are not confronted by the reality of life. More and more Americans are uninsured, some 44 million. Today we have spent time trying to address the question of whether or not we can insure those Americans. Yet we come today with an overall one-shoe-fits-all Federal legislative initiative rather than allowing, first of all, the possibility that each State address their own concerns.

This bill, in essence, is a bill that will take away the rights. For example, parents who lose a child due to a tragedy like the one in North Carolina recently, where the wrong heart and lung were placed in a young girl, they do not lose any money, they lose part of their souls. But now we are going to tell them that their child was only worth $250,000 in noneconomic damages for all of their pain and suffering. We are being told we are going to do this

to such devastated families in order to enable our doctors to keep treating patients.

Well, let me say this: I would rather stand on the side of those who access the courthouse.

H.R. 4280 calls for a protracted statute of limitations in which a plaintiff may file a claim. Such a restrictive statute of limitations cuts off legitimate claims. A reduced statute of limitations shortens the time that injured patients and their families have to file claims.

This provision is ultimately designed to eliminate claims for diseases with long incubation periods. That means, for example, that if a patient contracted HIV-AIDS from tainted blood but the symptoms of HIV did not present itself for at least 5 years, which is often the case, there would be no remedy that this Congress would allow because this enacted 2-year statute of limitations.

The gentleman from Michigan (Mr. CONYERS) and the gentleman from Michigan (Mr. DINGELL) had an alternative that speaks more to the accrual of a right of action. Therefore, a person who upon reasonable knowledge would not know that they had contracted a condition such as HIV, would still have a right to action.

The bill before us today also provides arbitrary and discriminatory caps on noneconomic damages that will hurt those patients with the most serious injuries. Proponents of medical malpractice reform want to limit noneconomic damages to $250,000 in the aggregate, regardless of the number of parties responsible for a patient's injury and regardless of the number of parties against whom an action is brought.

Noneconomic damages compensate injured patients for very real injuries such as the loss of a limb, loss of sight, permanent infertility or even the loss of a child. Damage caps have a tremendously negative impact on the permanently or catastrophically injured person who is more in need of financial protection, for only the most seriously injured receive damage awards greater than the cap. Even the AMA has testified that caps affect only those cases involving severe injury where the victim faces the greatest need for compensation.

I include those remarks in the RECORD so that I can speak to the physicians who are listening today, hopefully to understand that this is not a battle with you. This is not a battle between patients and physicians. This is not a battle between those of us who oppose caps on noneconomic damages and statutory limitations and what is a bad medical malpractice bill. This is not a battle.

What it is to say is, frankly, this. We all have a part in contributing to good health care. This medical malpractice legislation does not contribute to good health care. What it simply says is those who have the least will get the least, primarily when it comes to dealing with catastrophic illnesses which may ruin their life forever, which provide an economic burden on their caretakers forever, which in essence does not provide the necessary punitive measures for those who have done wrong.

We realize that there are good doctors, and we support that. My question is, let me have a full study again of all the insurance companies who can tell me that their premiums will go down because of this legislation.

We have passed a legislative initiative in Texas, and to defend themselves for such a horrible bill, we have had a number of editorials saying how things have gotten better. We still have uninsured children in Texas, we still have people injured in Texas without the proper benefits, and we have not seen a decrease in insurance premiums as well.

This is a bad medical initiative, if that is what it is supposed to be. To doctors, we promote all of the legislative initiatives to help you be good doctors. We are supportive of decreasing the insurance premiums that put you out of business, better Medicaid and Medicare regulations, but we are not supportive of a legislative initiative that does nothing but tear up the Constitution, undermine our values, and does not save lives.

I ask my colleagues to vote against this.

Mr. Speaker, I was enormously disappointed with the rule that was issued on this bill and call on my colleagues to defeat the underlying bill as well. We have a health care crisis on our hands. We need to work together in a democratic fashion to address it: to improve access to care, to protect patients, to ensure that good physicians can afford to continue treating those patients, and to decrease frivolous lawsuits. Last year in March we fought to defeat a bill, H.R. 5, which sought to reform tort law to the detriment of patients, physicians, patients, and injured plaintiffs. The underlying identical bill is before us today and it seeks to do the same thing. The Ranking Member of the House Judiciary Mr. CONYERS and Mr. DINGELL offered a substitute during the Rules Committee hearing that would have ensured that these concerns were addressed. Not a single one of those excellent ideas will be even considered today.

What in the name of God and Country is our Democracy coming to when on the Floor of the House of Representatives, there is not a single chance to debate and vote on one of many ideas that could save lives and rescue our floundering health care system?

I hate the idea of putting a price tag on human life, or a value on pain and suffering. However, we all know that malpractice premiums are outrageously high in some regions and for some specialties of medicine. I understand that some physicians are actually going out of business because the cost of practicing is too high and that we run the risk of decreasing access to healthcare if we do not find a way to decrease malpractice insurance premiums.

However, it would be doubly tragic if we did compromise the ability of patients suffering from medical negligence from seeking recourse in our courts, and did not achieve any meaningful decrease in malpractice premiums. Therefore, I considered offering three amendments yesterday that would require that all malpractice insurance companies make a reasonable estimate each year of the amount of money they save each year through the reduction in claims brought about by this Act. Then they would need to ensure that at least 50 percent of those savings be passed down in the form of decreased premiums for the doctors they serve.

I shared this concept with doctors and medical associations down in Texas, and they were very enthusiastic, because this amendment would ensure that we do what, I am being told, this bill is supposed to do—lower premiums for doctors.

Without my provision, this bill could easily end up being nothing more than heartbreak for those dealing with loss, and a giant gift to insurance companies. Parents who lose a child due to a tragedy like the one in North Carolina recently where the wrong heart and lung were placed in a young girl—they don't lose any money—they lose a part of their souls. We are going to tell them that their child was only worth $25,000 in non-economic damages for all of their pain and suffering. We are being told that we are going to do this to such devastated families, in order to enable our doctors to keep treating patients.

H.R. 4280 calls for a protracted statute of limitations in which a plaintiff may file a claim. Such a restrictive statute of limitations cuts off legitimate claims. A reduced statute of limitations shortens the time that injured patients and their families have to file claims. This provision is ultimately designed to eliminate claims for diseases with long incubation periods. That means, for example, that if a patient contracted HIV from tainted blood, but the symptoms of HIV did not present for at least five years—which often is the case—there would be no remedy if Congress enacted a two-year statute of limitations.

Mr. CONYERS and Mr. DINGELL had an alternative that speaks more to the accrual of a right of action. Therefore, a person who, upon reasonable knowledge, would not know that they had contracted a condition such as HIV, would still have a right of action.

The bill before us today also provides arbitrary and discriminatory caps on non-economic damages that will hurt those patients with the most serious injuries. Proponents of medical malpractice reform want to limit non-economic damages to $250,000 in the aggregate, regardless of the number of parties responsible for a patient's injury and regardless of the number of parties against whom an action is brought. Non-economic damages compensate injured patients for very real injuries—such as the loss of a limb, the loss of sight, permanent infertility or even the loss of a child. Damage caps have a tremendously negative impact on the permanently or catastrophically injured who are most in need of financial protection for only the most seriously injured receive damage awards greater than the cap. Even the AMA has testified that caps affect only those cases involving severe injury where the victim faces the greatest need for compensation. When damages caps leave such victims unable to meet the costs associated with their injuries, the government is often left footing the bill with taxpayer dollars.

Non-economic damage caps are unfair to women. Capping non-economic damages, while at the same time preserving full compensation for economic loss, such as lost wages and lost salary, shamefully devalues the worth of homemakers and stay-at-home moms. Moreover, by protecting medical device manufacturers specifically, the bill favors the makers of those very products—such as the Dalkon Shield and Copper 7 intrauterine devices—that have caused devastating harm to women.

Medical malpractice in the United States is a very real problem with devastating consequences. We hear about countless medical horror stories, whether involving a botched surgery, a mix-up in the medical records, an unnecessary amputation, or the discovery of medical objects inside patients.

I offer a few case studies to illustrate the terrible downward trend that we can expect with the passage of this ill-crafted bill:

Sandra Katada of McKinney, Texas: During the birth of Sandra's daughter Alexandra, the doctor contorted and stretched Alexandra's spine, destroying her nerves and leaving her partially paralyzed. The doctor applied so much force that, in addition to the spinal injury, which would prove fatal, the baby's elbow was broken and pulled from its socket. Some of the damaged spinal nerves were responsible for stimulating the growth of her rib cage. But because the nerves were damaged, her ribs did not expand, and when the rest of her body grew over the next several months she suffocated inside her small rib cage. Alexandra died on Valentine's Day, 1994, at age 8-months-old. The Katadas's settled the case against the doctor for the insurance company's policy limits, $1 million.

A Dallas Morning News investigation found that two other babies in this doctor's care had died in the 3 years before the Katada's and another died after their baby died. In one of those cases, by the time the parents found out that this doctor had caused their baby's injuries, it was too late to go to court because the 2-year statute of limitations had run out. All the families complained to the Texas Medical Board about this doctor but he is still practicing.

Dylan Malone of Everett, WA: Dylan's son Ian suffered severe brain damage at birth after a doctor used a drug to induce labor that the manufacturer explicitly warned should not be used for that purpose. Ian cannot hold his head up, suck, swallow or gag properly and requires 16 hours of nursing care per day. He eats through a feeding tube in his abdomen, breathes with a ventilator, takes medication daily to prevent seizures and needs a sedative to sleep. The family sued the doctor, who already had a number of medical malpractice cases filed against him. The Malone case is still pending.

I will not vote for H.R. 4280, because as it is, it does nothing to decrease the premiums our nation's physicians are burdened with. It does nothing to decrease the number of frivolous lawsuits. It does nothing to decrease the amount of malpractice being inflicted upon the American people, by bad doctors who are jeopardizing the lives of their patients, and driving up the insurance costs of their colleagues. And it does nothing to protect the rights of those suffering in the wake of an act of medical negligence. H.R. 4280 does nothing to respond to these problems of rampant medical malpractice. I reiterate that the substitute offered by Mr. CONYERS and Mr. DINGELL at the hearing before the Rules Committee was a more prudent alternative. Our colleagues on the other side of the aisle wish to shove this bill down the feeding tubes of the helpless and sickly patients who sit and suffer from a health care system that seeks to pad the pockets of insurance companies.

I strongly oppose H.R. 4280 and I urge my colleagues to join me.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, the gentlewoman from Texas is right. We did do a similar bill statewide in Texas and it passed last September, and it really has provided physicians in the State of Texas a significant amount of relief from the high cost of liability premiums.

My last year in active practice was 2002, and I paid $19,000 a year in obstetrics and gynecology for that privilege. If I had bought that insurance in 2003, it would have increased to $45,000. This year, had I purchased that same insurance policy, it would have been back down to $25,000, obviously a significant increase.

But we really are not talking about the cost of a liability premium for a doctor, we are talking about the embedded cost of an unfair medical justice system on our entire medical system, and we can no longer afford to pay that price.

A study done at Stanford University in 1996 showed that if you remove the cost of defensive medicine from Medicare, you would save $50 billion a year. That would pay for our prescription drug benefit, whether the CBO or the OMB does the figures.

Mr. GREENWOOD. Mr. Speaker, I yield myself the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania.

The SPEAKER pro tempore. The gentleman from Pennsylvania is recognized for 2 minutes.

Mr. GREENWOOD. Mr. Speaker, I would like to read from two letters. The first is from Engel, Smith & Associates, an obstetrics and gynecology practice, a letter written to their patients.

''It is with great sadness that we are writing to inform you of the plan to close in its present configuration the Engle, Smith & Associates obstetrics and gynecology practice. We have diligently tried over the past several months to find an alternative solution as we struggle with this decision. Unfortunately, the practice environment for physicians in our specialty has become so difficult that we have no choice but to dramatically change the way in which we provide care.

''We, like many of our colleagues in high-risk specialties such as obstetrics, have a crisis situation because our malpractice insurance premiums have more than doubled in the past 2 years. These increases are being driven primarily by skyrocketing jury awards in Pennsylvania, which have been forcing both insurance companies and physicians out of business.''

Here is the impact on patients, a letter to me.

''I am a Pennsylvania native. I was born and raised in the Philadelphia area, an area that used to be known for excellent medical care. Eight months ago, I again found a wonderful OB–GYN office. The doctors are wonderful, respectful and well-educated and overall just great. They delivered my beautiful baby girl for me, and I could not have been happier with their care. I referred my sister, who is currently pregnant and due in a few short weeks. She too, is satisfied with them.

''Two weeks ago we were outraged to discover that they were closing the doors at the end of May 2002. My sister, who has been going to their office for all her prenatal care visits, cannot even have her after-delivery exam by the doctor who delivers her first child. I will not be able to return to them for subsequent health care or even normal GYN care.

''This is an outrage. It is also the second physician's office I have been to in the last couple of years that has been forced to close due to medical liability costs. Another office that I was aware of closed as well for the same reason. I cannot even switch to see them, because they no longer exist within our State. I do not know who I can go to even now. No other OB–GYN physicians practice in my area anymore.''

Mr. Speaker, this is the face of the medical malpractice crisis. This is the bill that will resolve that crisis. We believe that this legislation will solve the crisis in the near term for malpractice insurers, for doctors and for patients, and, in the long run, for 3.9 million Americans, give them health care that they do not have today.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman from Wisconsin is recognized for 4 minutes.

Mr. SENSENBRENNER. Mr. Speaker, during the course of the debate we have heard a string of red herrings from people who do not wish this bill to pass. I would like to rebut those from the study that the General Accounting Office made on the whole topic of our medical liability crisis.

First, as the gentleman from Pennsylvania (Mr. GREENWOOD) has eloquently stated, patient access to care is being harmed. He recounted the case of a pregnant woman who went to at least two OB/GYN practices to get a doctor to deliver her baby and was told that as a result of the medical liability crisis, they were shutting down the doors to their practice.

The GAO confirmed instances in the five States selected for study where actions taken by physicians in response to malpractice pressures have reduced

access to services affecting emergency surgery and newborn deliveries. When the baby comes, you cannot wait. When someone has an accident and needs emergency surgery, you cannot wait. And if the malpractice insurance crisis closes down those practices, people are going to be harmed, and they will die, and this bill will stop that.

Secondly, doctors do practice defensive medicine. The GAO report found that in response to rising premiums, ''the fear of litigation research indicates that physicians practice defensive medicine in certain clinical situations, thereby contributing to health care costs.''

The gentleman from Texas (Mr. BURGESS) said that if unnecessary defensive medicine does not have to be practiced by reforming our liability laws, Medicare alone will save $50 billion a year, which is more than enough to pay for the prescription drug benefit, whether it is by the GAO study or the OMB study.

Third, insurers are not to blame for skyrocketing premiums. The gentleman from Ohio (Mr. BROWN) seemed to think they are.

□ 1715

But the GAO found that insurers are not to blame. The report states that insurer ''profits are not increasing, indicating that insurers are not charging and profiting from excessively high premium rates,'' and that ''in most States the insurance regulators have the authority to deny premium rate increases they deem excessive.''

Fourth, rising litigation awards are the problem, not insurer investments. What did the GAO say? The GAO found that losses on medical malpractice claims which make up the largest part of insurers' costs appear to be the primary driver of rate increases in the long run.

''Since 1998, insurers' losses on medical malpractice claims have increased rapidly in some States. However, none of the studied companies experienced a net loss on investments, at least through 2001, the most recent year such data were available. Additionally, almost no medical malpractice insurers overall experienced net investment losses from 1997 to 2001.'' So much for that red herring.

Finally, liability reform does have a real impact. The GAO concludes that data indicate that rates of growth in malpractice premiums and claims payments have been slower on average in States that enacted certain caps on damages for pain and suffering, referred to as noneconomic damage caps, than in States with more limited reforms and that average per capita payments for malpractice claims against all physicians tended to be lower on average in States with noneconomic damage caps than in States with limited reforms.

This bill is a good one, and it ought to be passed.

Ms. SCHAKOWSKY. Mr. Speaker, I rise today in opposition to out-of-control medical malpractice premiums but also in opposition to H.R. 4280. Once again, we are being asked to vote on a bill that claims to be a solution to a very real problem but which will simply not do the job of lowering premiums. Once again, we are being asked to vote on legislation that ignores the major component in the medical malpractice insurance crisis—insurance.

A study of the medical malpractice situation in my State of Illinois found last year that there was little, if any, correlation between medical sea -HMOOsmalpractice payments and medical malpractice premiums. The Americans for Insurance Reform report found that the amount of jury awards and settlements has actually declined since 1991, below the rate of medical inflation. In constant dollars, the amount of medical malpractice jury awards and settlements per doctor has decreased over the past decade in Illinois.

As providers in my State know all too well, their medical malpractice premiums are going in the opposite direction. Instead of tracking payouts, they are tracking economic conditions and insurance company investment decisions. Imposing arbitrary caps on non-economic damages—which would especially limit potential payments to injured infants and senior citizens—is not the answer when the problem is poor investment choices by insurance companies and economic conditions.

As a member of the Energy and Commerce Committee, I had the opportunity to participate in hearings on H.R. 5, last year's medical malpractice bill. We never heard a medical malpractice insurer testify that passage of that bill would lower premiums or that the Federal government should even be allowed to track the effects on medical malpractice premiums if H.R. 5 were to pass. That failure was no surprise given multiple statements made by medical malpractice insurance company officials before State legislatures around the country, that tort reform will not lower rates. Even Sherman Joyce, president of the American Tort Reform Association, has said that ''We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.'' Victor Schwartz, general counsel of ATRA, has said, ''(M)any tort reform advocates do not contend that restricting litigation will lower insurance rates, and ''I've never said that in 30 years.''

Caps won't make medical malpractice premiums affordable but there are other proposals that would make a real difference in providing affordable coverage. As a member of the House Medical Malpractice Crisis Task Force, I had hoped that we would take the opportunity to explore those opportunities instead of being presented with the same bill that we voted on last year, the same bill that the insurance industry itself says won't lower premiums.

Here are many ideas that I believe are worthy of consideration but that, unfortunately, are not included in H.R. 4280. We know that insurance reform in California requiring a premium rollback and improving review had a positive impact in lowering medical malpractice premiums—after tort reform did not. We could have created a Commission on Medical Malpractice Insurance to investigate the real causes for premium increases and consider solutions such as mandatory loss-ratio requirements, experience rating, and a Federal reinsurance mechanism. We could have established a certification mechanism to make sure that cases are meritorious, expand Rule 11 sanctions for anyone who falsifies information as part of that process, and encourage arbitration while requiring that savings are passed through by insurers in the form of lower premiums. We could have repealed the McCarran-Ferguson Act that shields medical malpractice insurers from Federal antitrust laws. We could have provided a tax deduction to help health care providers and professionals faced with sharp premium increases.

Instead of considering those initiatives, we are being asked to once again pass legislation that restricts the rights of injured patients and their families to seek legal remedies, not just against doctors, but against HMOs and other insurers, nursing homes, medical labs, drug companies, medical device manufacturers and others. For the first time, the Federal government would intrude on what has always been a State authority to take away consumer rights. Yet, the insurance industry itself refuses to say whether doing so will have the effect of lowering rates. It is the wrong answer to a very real problem.

In the future, I hope that we will be given the chance to look at ways to address insurances industry practices and reduce the incidences of medial malpractice by improving health care quality. In the meantime, we should reject this bill.

Mr. STARK. Mr. Speaker, I rise in strong opposition to H.R. 4280, legislation that would undermine the right of patients and their families to seek appropriate compensation and penalties when they, or a loved one, are harmed or even killed by an incompetent health care provider.

At best, this bill is a wrong-headed approach to the problem of rising malpractice health insurance costs. At worst, it is designed to protect bad doctors, HMOs, and other health care providers from being held accountable for their actions. Either way, this bill is harmful to consumers and should be defeated.

The most ludicrous aspect of this debate today is the fact that it is completely unnecessary. The House already passed this exact same legislation last March and there is no need for us to be here debating it again.

The only reason that Republicans are bringing up this bill today is that it is ''Cover the Uninsured Week'' and they have no real proposals to help cover the uninsured. So, they are trotting out medical malpractice reform so they can have another vote that doctors appreciate and they can again blame the Senate for not taking action on the legislation. It is political showmanship pure and simple—it has no other meaning.

This bill is identical to H.R. 5 which was passed last year, so if my comments look familiar, it is because I am raising the exact same points in opposition.

The Republican Leadership has once again brought forth a bill that favors their special interests at the expense of patients and quality health care. Doctors, hospitals, HMOs, health insurance companies, nursing homes, and other health care providers would all love to see their liability risk reduced. Unfortunately, this bill attempts to achieve that goal solely on the backs of America's patients. I said, ''attempts to achieve that goal'' intentionally.

Despite the rhetoric from the other side, there is absolutely nothing in H.R. 4280 that guarantees a reduction in medical malpractice premiums. There is not one line to require that

the medical malpractice insurance industry—in exchange for capping their liability—return those savings to doctors and other providers they insure through lower malpractice premiums. To quote one of many economists on this matter, Frank A. Sloan, an economics professor from Duke, recently said, ''If anyone thinks caps on pain and suffering are going to work miracles overnight, they're wrong.'' In fact, the outcome of this bill could have zero impact on lowering malpractice premiums and instead go into the pocketbooks of the for-profit medical malpractice industry. Of course, the bill's proponents avoid mentioning that very real possibility.

Proponents of this bill also like to say that they are taking California's successful medical malpractice laws and putting them into effect for the Nation. This is also hyperbole. California did not simply institute a $250,000 cap on medical malpractice awards. The much more important thing California did was to institute unprecedented regulation of the medical malpractice insurance industry. This regulation limits annual increases in premiums and provides the Insurance Commissioner with the power and the tools to disapprove increases proposed by the insurance industry. It is this insurance regulation that has maintained lower medical malpractice premiums. Yet, the bill before us does absolutely nothing to regulate the insurance industry at all.

Supporters of this bill would have you believe that medical malpractice lawsuits are driving health care costs through the roof. In fact, for every $100 spent on medical care in 2000, only 56 cents can be attributed to medical malpractice costs—that's one half of one percent. In addition, a recent report by the Congressional Budget Office highlights the same fact. Specifically the report states, ''Malpractice costs amounted to an estimated $24 billion in 2002, but that figure represents less than 2 percent of overall health care spending. Thus, even a reduction of 25 percent to 30 percent in malpractice costs would lower health care costs by only about 0.4 top 0.5 percent, and the likely effect on health insurance premiums would be comparably small.'' So, supporters are spreading false hope that capping medical malpractice awards will reduce the costs of health care in our country by any measurable amount. It won't.

What supporters of this bill really do not want you to understand is how bad this bill would be for consumers. The provisions of this bill would prohibit juries and courts from providing awards they believe reasonably compensate victims for the harm that has been done to them.

H.R. 4280 caps non-economic damages. By setting an arbitrary $250,000 cap on this portion of an award, the table is tilted against seniors, women, children, and people with disabilities. Medical malpractice awards break down into several categories. Economic damages are awarded based on how one's future income is impacted by the harm caused by medical malpractice. There are no caps on this part of the award. But, by capping non-economic damages, this bill would artificially and arbitrarily lower awards for those without tremendous earning potential. This means that a housewife or a senior would get less than a young, successful businessman for identical injuries. Is that fair? I don't think so.

The limits on punitive damages are severe. Punitive damages are seldom awarded in malpractice cases, but their threat is an important deterrent. And, in cases of reckless conduct that cause severe harm, it is irresponsible to forbid such awards.

The issue of rising malpractice insurance costs is a real concern. I support efforts by Congress to address that problem. That is why I would have voted for the Democratic alternative legislation that Reps. CONYERS and DINGELL brought to the Rules Committee last night. Unlike H.R. 4280, the Dingell/Conyers alternative would not benefit the malpractice insurance industry at the expense of America's patients. Instead, it addresses the need for medical malpractice insurance reform—learning from the experience of California—to rein in increasing medical malpractice premiums. Rather than enforcing an arbitrary $250,000 cap, the bill makes reasonable tort reforms that address the problems in the malpractice arena—penalties for frivolous lawsuits and enacting mandatory mediation to attempt to resolve cases before they go to court. It also requires the insurance industry to project the savings from these reforms and to dedicate these savings to reduced medical malpractice premiums for providers. The Dingell/Conyers bill (H.R. 1219) is a real medical malpractice reform bill that works for doctors and patients alike.

The Democratic alternative bill is such a good bill that the Republican leadership refused to let it be considered on the House floor today. They were afraid that if Members were given a choice between these two bills, they would have voted for the Democratic bill. Once again the House Republican leadership has used their power to control the rules to stymie democratic debate.

Medical malpractice costs are an easy target. My Republican colleagues like to simplify it as a fight between America's doctors and our Nation's trial lawyers. That is a false portrayal. Our medical malpractice system provides vital patient protection.

The bill before us drastically weakens the effectiveness of our Nation's medical malpractice laws. I urge my colleagues to join me in voting against this wrong-headed and harmful approach to reducing the cost of malpractice premiums. It is the wrong solution for America's patients and their families.

Mr. KIND. Mr. Speaker, my home State of Wisconsin has sensible medical malpractice laws that make the State attractive to doctors and safe for patients. The components of this successful law include a cap on non-economic damages of $442,000, which is indexed annually for inflation; a requirement that all providers carry malpractice insurance; and a victims' compensation fund.

The victims' compensation fund is a unique entity that has served both patients and health care providers well. The fund operates by collecting contributions from Wisconsin health care providers and paying the victims once an award has been determined. The physicians are liable only for the first $1 million in an award. If the award exceeds $1 million, the compensation fund will pay the remainder of the award. For several years now, this system has served the State well. Like many of my colleagues, I believe that we need sensible malpractice reform, and were the bill before us today similar to Wisconsin's system, I would be proud to support it.

Unfortunately, H.R. 4280 is vastly different from Wisconsin law and goes too far in defending negligence and not far enough in protecting patients. The legislation goes beyond medical malpractice law by including provisions regarding pharmaceutical and medical devices and completely exempts from liability medical device makers and distributors as well as pharmaceutical companies, as long as the product complies with FDA standards. These provisions would have no effect on medical malpractice insurance rates. Instead, they would leave victims with little recourse and render them unable to hold pharmaceutical companies and the makers of defective medical products accountable for faulty or unsafe products.

Another problem with H.R. 4280 is that it overrides some State laws. While the bill would not override Wisconsin's own cap on non-economic damages, it would supersede our State laws regarding statute of limitations, attorney's fees, and the criteria for punitive damages. This bill is a one-size-fits-all solution that is not right for Wisconsin.

The successful components of Wisconsin's medical malpractice laws could be the basis for a much better bill. Wisconsin law protects patients and keeps physicians in business. These laws are threatened, however, by the current proposal. Therefore, I oppose H.R. 4280 and ask my colleagues to defeat the bill, revisit the issue, and create a more sensible plan that will protect patients and help doctors.

Mrs. BIGGERT. Mr. Speaker, I rise today in strong support of H.R. 4280, the HEALTH Act.

My home State of Illinois is in the midst of a crisis. Will County, part of which I represent, no longer has any practicing neurosurgeons. A recent survey found that 11 percent of OB/GYNs no longer practice obstetrics in Illinois. And more than half of OB/GYNs in the State are considering dropping their obstetrics practice entirely in the next two years due to medical liability concerns.

Women and children are the first to suffer in a crisis like this. As a mother and a grandmother, I don't want to see pregnant women driving to another State because they can't find an OB-GYN in their own area. I don't want to see injured children transported miles away from their homes because there are no pediatric neurosurgeons left to treat head injuries. And I don't want to see health insurance premiums climb so high that employers can no longer afford to provide benefits to their workers. We need reform and we need it now.

Mr. STENHOLM. Mr. Speaker, I rise in strong support of H.R. 4280. Health care costs have been increasing dramatically over the past decade, while insurance has become prohibitively expensive for over 40 million Americans.

There are a number of factors which have contributed to the skyrocketing cost of health care, and the costs associated with medical malpractice are one factor.

This Country's tort system encourages litigation and large awards in medical malpractice suits, which has led to high malpractice insurance rates and increased health care costs through the practice of defensive medicine.

Last year, my state of Texas enacted reforms of our medical malpractice system in order to avert a growing health crisis in the Texas health-care system. Too many lawsuits against health-care providers were driving up the cost of practicing medicine, resulting in reduced access to affordable health care.

There are early signs that the reforms enacted in Texas have helped improve access to

affordable health care. Essentially, every doctor in Texas is either paying less malpractice premiums today or avoiding scheduled increase in premiums.

The bill before us today contains the same proven reforms that will translate directly into increased access to affordable health care for all Americans.

Without Federal legislation, the exodus of physicians from the practice of medicine will continue, especially in high-risk specialties, and patients across the country will find it increasingly difficult to obtain affordable health care.

In rural areas, we are particularly sensitive to the impact malpractice insurance costs have in discouraging physicians from locating in rural communities, leaving residents without health care.

Here in Washington, if an obstetrician decides to stop delivering babies because the malpractice insurance costs are too great, the yellow pages will still list hundreds of other choices of physician care for expectant parents. In rural communities, the same physician decision may well mean that young couples must entirely uproot and relocate to urban centers just so they can have a family.

The ultimate result of this legislation will be greater protections for quality health care, keeping precious health care dollars in direct care rather than feeding our legal system, and buttressing access to care for all Americans.

Medical malpractice reform isn't a magic bullet that will solve the problems of skyrocketing health care costs by itself, but it is one part of the larger process of reforming our health care system to control costs and improve access to health care.

Ms. HARMAN. Mr. Speaker, I am a strong supporter of California's Medical Injury Compensation Reform Act—or MICRA. With it, California charted a bold and creative course toward responsible medical malpractice reform.

In my view, the entire country would do well to follow California's lead, and it makes sense to have Federal legislation on the subject. But this particular bill includes the very same flaws contained in legislation I opposed last year—and I cannot support it.

H.R. 4280 is overly broad, and the cap on punitive and noneconomic awards is not indexed and does not reflect its current value.

While H.R. 4280 adopts the structure of MICRA, it is weighed down by restrictions on certain causes of action against HMOs, nursing homes, and insurance companies—areas in which California has enacted significant protections for patients. And the $250,000 cap on punitive and noneconomic awards must be adjusted upward.

In the past, I voted for other medical liability legislation. I did so with the hope and expectation that improvements would be made in conference with the Senate to narrow its egregious provisions or that, in re-introducing the bill, these changes would be made.

Mr. Speaker, once again the closed process by which we are considering medical malpractice reform belies any desire by the majority to make the improvements I and many others believe are necessary.

As the daughter and sister of medical doctors, I understand the chilling affect unlimited medical liability awards have on the practice of medicine.

But I cannot support H.R. 4280 in its present form, and I urge the leadership to postpone a vote on this legislation to open up what has thus far been a closed process and incorporate the ideas of members like myself who support common-sense medical liability reform.

Medical professionals should be able to practice in a climate of certainty, and patients should be charged reasonable rates for quality care. This is what I support for every community in the country. This is not what H.R. 4280, in its present form, delivers.

Mr. DINGELL. Mr. Speaker, what we are witnessing today is a sorry spectacle. We are voting on the same bill the House already voted on a little over a year ago. The one difference is that there is a new bill number. And, in those 14 months that have passed, our Republican colleagues have not changed one line in their bill to respond to the problems of increasing insurance costs to the doctors while protecting injured patients.

Instead, they are sticking with the same legislation, legislation they know will not pass the Senate. A bill they know will trample on the rights of legitimate patients, and will provide unprecedented protections to HMOs, the real beneficiaries of this legislation. This legislation is the exact opposite of the Patients' Bill of Rights, which would have provided real protections to doctors and patients alike in the struggle against cookie-cutter medicine foisted upon them by HMOs, if the Republicans had not successfully defeated it.

Let's be clear, this Republican bill does nothing to end frivolous lawsuits, just responsible ones. The bill limits awards for honest claims. It imposes new hurdles on aggrieved patients. And the bill does nothing to address the real problem—skyrocketing insurance premiums sending profits directly into the coffers of those companies.

I would like to point out that this bill is brought up during ''Cover the Uninsured Week.'' To say that shielding HMOs from lawsuits will help cover the uninsured is a huge stretch for even the most vivid imagination.

If the Republican leadership was really interested in helping those without healthcare insurance, they would take up legislation like the bills democrats introduced today—the FamilyCare Act and the Medicare Early Buy-in—and build upon existing successful insurance programs to give families dependable, affordable coverage. And they would take up the Small Business Health Insurance Promotion Act which targets small businesses with real subsidies to purchase solid insurance products.

Democratic proposals take us forward, providing meaningful coverage without trampling the rights of consumers, eroding protections, or causing millions to lose their existing coverage. The Republican bill, and the other bills we will see this week, pay lip service to helping consumers, while richly rewarding the health insurance company allies.

Mr. SANDLIN. Mr. Speaker, I rise today just as I did almost exactly 14 months ago in strong opposition to the so-called HEALTH Act. Of course, today, we are spending the valuable time and limited resources of the American people debating the HEALTH Act of 2004, which, ironically, is precisely the same—virtually word-for-word—as the HEALTH Act of 2003, legislation this House already passed.

Mr. Speaker, it is as if the leadership of this House is being guided by the wisdom of that great American philosopher, Yogi Berra, who once said, ''It's déjà vu all over again.'' Apparently, the Republican leadership of the House is at a loss as to how to fix the very real problems our nation is facing, so we find ourselves here in the People's House deliberating legislation that we have already considered and passed.

I don't know about the rest of the Members of this House, but I am pretty confident that my constituents in East Texas would consider our action on this flawed legislation to be a profound waste of time and money even in the best of times.

However, Mr. Speaker, these are not the best of times for our Nation. The fact is the United States is facing difficult times at home and abroad. Today, as a Nation, we have 135,000 military personnel on the ground in Iraq fighting a shadowy and lethal insurgency and struggling to bring stability to a troubled part of the globe. The United States remains in serious danger of terrorist attacks at home with vulnerabilities in our ports and other infrastructure in desperate need of improved security. Many of our first responders—the very front line of defense for our hometowns—lack interoperable communications and other resources critical to their success.

Mr. Speaker, today, almost 9 million Americans are unemployed, including almost 3 million manufacturing jobs that have been lost during the past three years. Our Nation has accumulated a national debt of over $7 trillion—more and more of which is owned to foreign nations, including China. Despite our burgeoning debt, the House Republican leadership refuses even to acknowledge a problem, refuses to adopt sensible ''pay-as-you-go'' rules that recognize the very real cost of both spending increases and tax cuts, and insists on budgets with larger and larger deficits, including a deficit in excess of $360 billion in FY 2005 alone.

Mr. Speaker, as we complete our work during ''Cover the Uninsured Week,'' almost 44 million Americans—15 percent of all Americans—have no health insurance. That number includes almost 8 million children. Almost 44 million Americans have no health insurance, despite the fact that the vast majority of them have full-time jobs.

So, Mr. Speaker, we have a health care crisis in this country that demands a solution. Nevertheless, to paraphrase President Reagan, ''here we go again.'' Instead of working on real solutions to cover the uninsured and to solve the many other very real and immediate problems the country faces, today, we are spending the People's time and money to consider again legislation we have already passed.

Mr. Speaker, our nation's health care providers—our doctors, our nurses, our hospitals and nursing homes—are confronting skyrocketing medical malpractice insurance premiums. They need relief now. What they don't need is the warmed over illusory promise of relief that the HEALTH Act represents.

The HEALTH Act will not provide the relief American physicians, hospitals and other health care providers need. It didn't do anything to reduce escalating medical liability insurance premiums when we passed it last March; legislation like it has not done anything to reduce premiums in the many states that already have enacted damage caps; and it will not magically result in reduced premiums if it passes the House again today.

The simple fact is that claims from the Republican leadership that limiting liability for medical negligence will cure the healthcare cost crisis are without merit. Focusing solely on limiting malpractice liability, without insurance reform, does nothing to reduce the ever increasing costs of medical malpractice insurance. Damage caps such as those in H.R. 4280 do accomplish one thing: they boost insurers' profits. With damage caps, malpractice insurers win at the expense of physicians, nurses, hospitals and other health care providers.

Mr. Speaker, last year, after we last considered the HEALTH Act, my home state of Texas enacted comprehensive tort ''reform'' legislation strikingly similar to the HEALTH Act we considered and passed in March 2003 and that we consider again today. During the long debate on that legislation, proponents of the damage cap legislation repeatedly assured opponents that imposition of liability limitations would lead to dramatic medical liability insurance premium decreases.

Not surprisingly, however, the imposition of damage caps did not have the predicted effect. To the contrary, all but one medical malpractice insurance carriers in Texas proposed increases in physician premiums. Consequently, malpractice insurance premiums for physicians are reported to have risen an average of 12 percent statewide despite the damage caps. For Texas hospitals and nursing homes, the news was even worse—an average proposed increase of 20 percent. Moreover, the only carrier reported to offer reduced premiums provided a rate reduction that fell far short of even recapturing the dramatic premium increases it imposed on physicians during the past three years.

In Texas, as in other states with caps, the evidence does not support the rhetoric; those who suggest the HEALTH Act or its ilk as a panacea simply fail to make their case. Clearly, old line thinking and the ''reform'' embodied in the HEALTH Act will not cure what ails the system and will not reduce premiums.

Mr. Speaker, 14 months ago, I stood on the floor of this House and called on my colleagues to stand up for the doctors and stand up for the hospitals. Because the House Republican leadership has seen fit to conduct debate on that same legislation, I suppose I am on solid ground reiterating what I said then.

Mr. Speaker, malpractice premiums are choking America's physicians, and H.R. 4280 is nothing but a sham because H.R. 4280 does not mention one time, from front to back, soup to nuts, does not ever even mention malpractice premiums. We need to do something about those premiums for the doctors. We need to do it now. We need to do it today. H.R. 4280 will not do it.

And how about frivolous lawsuits? Frivolous lawsuits need to be stopped. If a suit is filed with no basis in law or in fact, it should be dismissed at the cost of the plaintiff, and he plaintiff should be sanctioned. But what does H.R. 4280 say about frivolous lawsuits? It does not say one thing. That is a shame. That is outrageous.

We are only talking about benefits for insurance companies. We are talking about caps. The only people protected are insurance carriers. The only people celebrating today are executives in tall buildings owned by insurance companies.

H.R. 4280 is not good for doctors; it is not good for hospitals; it is not good for patients. Let us stand up for them. Let us do the right thing.

Mr. Speaker, the HEALTH Act was not progress in March 2003, and it's not progress now.

Apparently, the House Republican leadership wants to prove that Yogi Berra was wrong when he said, ''The future ain't what it used to be.'' In the U.S. House of Representatives, the future appears to be exactly what it used to be. And that's a real shame and a tragic disservice to the People who sent us to this great House.

I urge my colleagues to vote ''no'' on H.R. 4280.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SWEENEY). All time for debate has expired.

Pursuant to House Resolution 638, the bill is considered read for amendment and the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. Yes, I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Conyers moves to recommit the bill H.R. 4280 to the Committee on the Judiciary and the Committee on Energy and Commerce with instructions to report the same back to the House forthwith with the following amendments:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medical Malpractice and Insurance Reform Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—LIMITING FRIVOLOUS MEDICAL MALPRACTICE LAWSUITS

SEC. 101. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—A medical malpractice action shall be barred unless the complaint is filed within 3 years after the right of action accrues.

(b) ACCRUAL.—A right of action referred to in subsection (a) accrues upon the last to occur of the following dates:

(1) The date of the injury.

(2) The date on which the claimant discovers, or through the use of reasonable diligence should have discovered, the injury.

(3) The date on which the claimant becomes 18 years of age.

(c) APPLICABILITY.—This section shall apply to any injury occurring after the date of the enactment of this Act.

SEC. 102. HEALTH CARE SPECIALIST AFFIDAVIT.

(a) REQUIRING SUBMISSION WITH COMPLAINT.—No medical malpractice action may be brought by any individual unless, at the time the individual brings the action (except as provided in subsection (b)(1)), it is accompanied by the affidavit of a qualified specialist that includes the specialist's statement of belief that, based on a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(b) EXTENSION IN CERTAIN INSTANCES.—

(1) IN GENERAL.—Subject to paragraph (2), subsection (a) shall not apply with respect to an individual who brings a medical malpractice action without submitting an affidavit described in such subsection if, as of the time the individual brings the action, the individual has been unable to obtain adequate medical records or other information necessary to prepare the affidavit.

(2) DEADLINE FOR SUBMISSION WHERE EXTENSION APPLIES.—In the case of an individual who brings an action for which paragraph (1) applies, the action shall be dismissed unless the individual (or the individual's attorney) submits the affidavit described in subsection (a) not later than 90 days after obtaining the information described in such paragraph.

(c) QUALIFIED SPECIALIST DEFINED.—In subsection (a), a ''qualified specialist'' means, with respect to a medical malpractice action, a health care professional who is reasonably believed by the individual bringing the action (or the individual's attorney)—

(1) to be knowledgeable in the relevant issues involved in the action;

(2) to practice (or to have practiced) or to teach (or to have taught) in the same area of health care or medicine that is at issue in the action; and

(3) in the case of an action against a physician, to be board certified in a specialty relating to that area of medicine.

(d) CONFIDENTIALITY OF SPECIALIST.—Upon a showing of good cause by a defendant, the court may ascertain the identity of a specialist referred to in subsection (a) while preserving confidentiality.

SEC. 103. SANCTIONS FOR FRIVOLOUS ACTIONS AND PLEADINGS.

(a) SIGNATURE REQUIRED.—Every pleading, written motion, and other paper in any medical malpractice action shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) CERTIFICATE OF MERIT.—(1) A medical malpractice action shall be dismissed unless the attorney or unrepresented party presenting the complaint certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(A) it is not being presented for any improper purpose, such as to harass or to cause

unnecessary delay or needless increase in the cost of litigation;

(B) the claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(C) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

(2) By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances—

(A) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(C) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are reasonable based on a lack of information or belief.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated, the court shall find each attorney or party in violation in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon the person in violation, or upon both such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed more than one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court, refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings, require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

SEC. 104. MANDATORY MEDIATION.

(a) IN GENERAL.—In any medical malpractice action, before such action comes to trial, mediation shall be required. Such mediation shall be conducted by one or more mediators who are selected by agreement of the parties or, if the parties do not agree, who are qualified under applicable State law and selected by the court.

(b) REQUIREMENTS.—Mediation under subsection (a) shall be made available by a State subject to the following requirements:

(1) Participation in such mediation shall be in lieu of any alternative dispute resolution method required by any other law or by any contractual arrangement made by or on behalf of the parties before the commencement of the action.

(2) Each State shall disclose to residents of the State the availability and procedures for resolution of consumer grievances regarding the provision of (or failure to provide) health care services, including such mediation.

(3) Each State shall provide that such mediation may begin before or after, at the option of the claimant, the commencement of a medical malpractice action.

(4) The Attorney General, in consultation with the Secretary of Health and Human Services, shall, by regulation, develop requirements with respect to such mediation to ensure that it is carried out in a manner that—

(A) is affordable for the parties involved;

(B) encourages timely resolution of claims;

(C) encourages the consistent and fair resolution of claims; and

(D) provides for reasonably convenient access to dispute resolution.

(c) FURTHER REDRESS AND ADMISSIBILITY.—Any party dissatisfied with a determination reached with respect to a medical malpractice claim as a result of an alternative dispute resolution method applied under this section shall not be bound by such determination. The results of any alternative dispute resolution method applied under this section, and all statements, offers, and communications made during the application of such method, shall be inadmissible for purposes of adjudicating the claim.

SEC. 105. LIMITATION ON PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may not be awarded in a medical malpractice action, except upon proof of—

(1) gross negligence;

(2) reckless indifference to life; or

(3) an intentional act, such as voluntary intoxication or impairment by a physician, sexual abuse or misconduct, assault and battery, or falsification of records.

(b) ALLOCATION.—In such a case, the award of punitive damages shall be allocated 50 percent to the claimant and 50 percent to a trustee appointed by the court, to be used by such trustee in the manner specified in subsection (d). The court shall appoint the Secretary of Health and Human Services as such trustee.

(c) EXCEPTION.—This section shall not apply with respect to an action if the applicable State law provides (or has been construed to provide) for damages in such an action that are only punitive or exemplary in nature.

(d) TRUST FUND.—

(1) IN GENERAL.—This subsection applies to amounts allocated to the Secretary of Health and Human Services as trustee under subsection (b).

(2) AVAILABILITY.—Such amounts shall, to the extent provided in advance in appropriations Acts, be available for use by the Secretary of Health and Human Services under paragraph (3) and shall remain so available until expended.

(3) USE.—

(A) Subject to subparagraph (B), the Secretary of Health and Human Services, acting through the Director of the Agency for Healthcare Research and Quality, shall use the amounts to which this subsection applies for activities to reduce medical errors and improve patient safety.

(B) The Secretary of Health and Human Services may not use any part of such amounts to establish or maintain any system that requires mandatory reporting of medical errors.

(C) The Secretary of Health and Human Services shall promulgate regulations to establish programs and procedures for carrying out this paragraph.

(4) INVESTMENT.—

(A) The Secretary of Health and Human Services shall invest the amounts to which this subsection applies in such amounts as such Secretary determines are not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Secretary in such Secretary's capacity as trustee of such amounts may be sold by the Secretary at the market price.

SEC. 106. USE OF SAVINGS TO BENEFIT PROVIDERS THROUGH REDUCED PREMIUMS.

(a) IN GENERAL.—Notwithstanding any other provision of this title, a provision of this title may be applied by a court to the benefit of a party insured by a medical malpractice liability insurance company only if the court—

(1) determines the amount of savings realized by the company as a result; and

(2) requires the company to pay an amount equal to the amount of such savings to a trustee appointed by the court, to be distributed by such trustee in a manner that has the effect of benefiting health care providers insured by the company through reduced premiums for medical malpractice liability insurance.

(b) DEFINITION.—For purposes of this section, the term ''medical malpractice liability insurance company'' means an entity in the business of providing an insurance policy under which the entity makes payment in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim.

SEC. 107. DEFINITIONS.

In this title, the following definitions apply:

(1) ALTERNATIVE DISPUTE RESOLUTION METHOD.—The term ''alternative dispute resolution method'' means a method that provides for the resolution of medical malpractice claims in a manner other than through medical malpractice actions.

(2) CLAIMANT.—The term ''claimant'' means any person who alleges a medical malpractice claim, and any person on whose behalf such a claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.

(3) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means any individual who provides health care services in a State and who is required by the laws or regulations of the State to be licensed or certified by the State to provide such services in the State.

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care services in a State and that is required by the laws or regulations of the State to be licensed or certified by the State to engage in the delivery of such services in the State.

(5) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of a medical malpractice action or a medical malpractice claim.

(6) MANDATORY.—The term ''mandatory'' means required to be used by the parties to attempt to resolve a medical malpractice claim notwithstanding any other provision of an agreement, State law, or Federal law.

(7) MEDIATION.—The term ''mediation'' means a settlement process coordinated by a neutral third party and without the ultimate rendering of a formal opinion as to factual or legal findings.

(8) MEDICAL MALPRACTICE ACTION.—The term ''medical malpractice action'' means an action in any State or Federal court against a physician, or other health professional, who is licensed in accordance with the requirements of the State involved that—

(A) arises under the law of the State involved;

(B) alleges the failure of such physician or other health professional to adhere to the relevant professional standard of care for the service and specialty involved;

(C) alleges death or injury proximately caused by such failure; and

(D) seeks monetary damages, whether compensatory or punitive, as relief for such death or injury.

(9) MEDICAL MALPRACTICE CLAIM.—The term ''medical malpractice claim'' means a claim forming the basis of a medical malpractice action.

(10) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and any other territory or possession of the United States.

SEC. 108. APPLICABILITY.

(a) IN GENERAL.—Except as provided in section 104, this title shall apply with respect to any medical malpractice action brought on or after the date of the enactment of this Act.

(b) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this title shall be construed to establish any jurisdiction in the district courts of the United States over medical malpractice actions on the basis of section 1331 or 1337 of title 28, United States Code.

TITLE II—INDEPENDENT ADVISORY COMMISSION ON MEDICAL MALPRACTICE INSURANCE

SEC. 201. ESTABLISHMENT.

(a) FINDINGS.—The Congress finds as follows:

(1) The sudden rise in medical malpractice premiums in regions of the United States can threaten patient access to doctors and other health providers.

(2) Improving patient access to doctors and other health providers is a national priority.

(b) ESTABLISHMENT.—There is established a national commission to be known as the ''Independent Advisory Commission on Medical Malpractice Insurance'' (in this title referred to as the ''Commission'').

SEC. 202. DUTIES.

(a) IN GENERAL.—(1) The Commission shall evaluate the effectiveness of health care liability reforms in achieving the purposes specified in paragraph (2) in comparison to the effectiveness of other legislative proposals to achieve the same purposes.

(2) The purposes referred to in paragraph (1) are to—

(A) improve the availability of health care services;

(B) reduce the incidence of ''defensive medicine'';

(C) lower the cost of health care liability insurance;

(D) ensure that persons with meritorious health care injury claims receive fair and adequate compensation; and

(E) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

(b) CONSIDERATIONS.—In formulating proposals on the effectiveness of health care liability reform in comparison to these alternatives, the Commission shall, at a minimum, consider the following:

(1) Alternatives to the current medical malpractice tort system that would ensure adequate compensation for patients, preserve access to providers, and improve health care safety and quality.

(2) Modifications of, and alternatives to, the existing State and Federal regulations and oversight that affect, or could affect, medical malpractice lines of insurance.

(3) State and Federal reforms that would distribute the risk of medical malpractice more equitably among health care providers.

(4) State and Federal reforms that would more evenly distribute the risk of medical malpractice across various categories of providers.

(5) The effect of a Federal medical malpractice reinsurance program administered by the Department of Health and Human Services.

(6) The effect of a Federal medical malpractice insurance program, administered by the Department of Health and Human Services, to provide medical malpractice insurance based on customary coverage terms and liability amounts in States where such insurance is unavailable or is unavailable at reasonable and customary terms.

(7) Programs that would reduce medical errors and increase patient safety, including new innovations in technology and management.

(8) The effect of State policies under which—

(A) any health care professional licensed by the State has standing in any State administrative proceeding to challenge a proposed rate increase in medical malpractice insurance; and

(B) a provider of medical malpractice insurance in the State may not implement a rate increase in such insurance unless the provider, at minimum, first submits to the appropriate State agency a description of the rate increase and a substantial justification for the rate increase.

(9) The effect of reforming antitrust law to prohibit anticompetitive activities by medical malpractice insurers.

(10) Programs to facilitate price comparison of medical malpractice insurance by enabling any health care provider to obtain a quote from each medical malpractice insurer to write the type of coverage sought by the provider.

(11) The effect of providing Federal grants for geographic areas that have a shortage of one or more types of health providers as a result of the providers making the decision to cease or curtail providing health services in the geographic areas because of the costs of maintaining malpractice insurance.

SEC. 203. REPORT.

(a) IN GENERAL.—The Commission shall transmit to Congress—

(1) an initial report not later than 180 days after the date of the initial meeting of the Commission; and

(2) a report not less than each year thereafter until the Commission terminates.

(b) CONTENTS.—Each report transmitted under this section shall contain a detailed statement of the findings and conclusions of the Commission.

(c) VOTING AND REPORTING REQUIREMENTS.—With respect to each proposal or recommendation contained in the report submitted under subsection (a), each member of the Commission shall vote on the proposal or recommendation, and the Commission shall include, by member, the results of that vote in the report.

SEC. 204. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members appointed by the Comptroller General of the United States.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, medical malpractice insurance, insurance regulation, health care law, health care policy, health care access, allopathic and osteopathic physicians, other providers of health care services, patient advocacy, and other related fields, who provide a mix of different professionals, broad geographic representations, and a balance between urban and rural representatives.

(2) INCLUSION.—The membership of the Commission shall include the following:

(A) Two individuals with expertise in health finance and economics, including one with expertise in consumer protections in the area of health finance and economics.

(B) Two individuals with expertise in medical malpractice insurance, representing both commercial insurance carriers and physician-sponsored insurance carriers.

(C) An individual with expertise in State insurance regulation and State insurance markets.

(D) An individual representing physicians.

(E) An individual with expertise in issues affecting hospitals, nursing homes, nurses, and other providers.

(F) Two individuals representing patient interests.

(G) Two individuals with expertise in health care law or health care policy.

(H) An individual with expertise in representing patients in malpractice lawsuits.

(3) MAJORITY.—The total number of individuals who are directly involved with the provision or management of malpractice insurance, representing physicians or other providers, or representing physicians or other providers in malpractice lawsuits, shall not constitute a majority of the membership of the Commission.

(4) ETHICAL DISCLOSURE.—The Comptroller General of the United States shall establish a system for public disclosure by members of the Commission of financial or other potential conflicts of interest relating to such members.

(c) TERMS.—

(1) IN GENERAL.—The terms of the members of the Commission shall be for 3 years except that the Comptroller General of the United States shall designate staggered terms for the members first appointed.

(2) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) COMPENSATION.—Members of the Commission shall be compensated in accordance

with section 1805(c)(4) of the Social Security Act.

(4) CHAIRMAN; VICE CHAIRMAN.—The Comptroller General of the United States shall designate at the time of appointment a member of the Commission as Chairman and a member as Vice Chairman. In the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General may designate another member for the remainder of that member's term.

(5) MEETINGS.—

(A) IN GENERAL.—The Commission shall meet at the call of the Chairman.

(B) INITIAL MEETING.—The Commission shall hold an initial meeting not later than the date that is 1 year after the date of the enactment of this title, or the date that is 3 months after the appointment of all the members of the Commission, whichever occurs earlier.

SEC. 205. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

Subject to such review as the Comptroller General of the United States deems necessary to assure the efficient administration of the Commission, the Commission may—

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties;

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission;

(4) make advance, progress, and other payments which relate to the work of the Commission;

(5) provide transportation and subsistence for persons serving without compensation; and

(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

SEC. 206. POWERS.

(a) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

(b) DATA COLLECTION.—In order to carry out its functions, the Commission shall—

(1) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section;

(2) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate; and

(3) adopt procedures allowing any interested party to submit information for the Commission's use in making reports and recommendations.

(c) ACCESS OF GENERAL ACCOUNTING OFFICE TO INFORMATION.—The Comptroller General of the United States shall have unrestricted access to all deliberations, records, and nonproprietary data of the Commission, immediately upon request.

(d) PERIODIC AUDIT.—The Commission shall be subject to periodic audit by the Comptroller General of the United States.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this title for each of fiscal years 2004 through 2008.

(b) REQUESTS FOR APPROPRIATIONS.—The Commission shall submit requests for appropriations in the same manner as the Comptroller General of the United States submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

Amend the title so as to read: ''A bill to limit frivolous medical malpractice lawsuits, to reform the medical malpractice insurance business in order to reduce the cost of medical malpractice insurance, to enhance patient access to medical care, and for other purposes.''.

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes in support of his motion.

Mr. CONYERS. Mr. Speaker, this motion is being offered by me and the dean of the Congress, the gentleman from Michigan (Mr. DINGELL). We are offering this motion to recommit to attack the heart of the medical malpractice crisis. Rather than limiting the rights of legitimate malpractice victims, as the bill before us would do, our motion would logically and directly address the problems of frivolous lawsuits and insurance industry abuses.

Title I addresses the problem of frivolous lawsuits. It would require that both an attorney and a health care specialist submit an affidavit that the claim is warranted before malpractice action can be brought and imposes strict sanctions for attorneys who make frivolous pleadings. But it provides also for mandatory mediation, a uniform statute of limitations, and a narrowing of the requirements for punitive damage claims. Finally, insurers would be required to dedicate at least 50 percent of any savings resulting from the litigation reforms to reduce the premiums that medical professionals pay.

Unlike the majority's bill before us, this motion is limited to licensed physicians and health professionals for malpractice cases only. It does not include lawsuits against HMOs, insurance companies, nursing homes, and drug and device manufacturers.

The second part of this motion to recommit, title II, establishes a national commission to evaluate the rising insurance premiums and the causes for why that is occurring. The commission would consider, among other things, whether the McCarran-Ferguson Antitrust exemption for medical malpractice insurers should be reconsidered and possibly repealed and study the potential benefits of providing a Federal medical malpractice insurance program where insurance was unavailable or unaffordable.

This same commission, 15-person commission appointed by the Comptroller General, would also consider government-sponsored grant programs to give direct assistance to areas facing a shortage of health care providers, as well as to send physicians to trauma centers that are in danger of closing because of rising premiums. Finally, it would consider alternative means of reducing medical errors and increasing patient safety.

So support this motion to recommit. It is good policy. It changes the whole line of unbelievably reactionary legislation that has come out of this House on this subject before now. It is time for a change. We want to limit frivolous lawsuits, and this would give us an opportunity to examine the real causes of the medical malpractice insurance crisis.

The SPEAKER pro tempore. Does the gentleman from Wisconsin (Mr. SENSENBRENNER) rise in opposition to the motion?

Mr. SENSENBRENNER. I do, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, yes, it is time for a change, and it is time for a real change. This motion to recommit does not provide a real change, and it should be defeated. It should be defeated because it contains zero legal protections for doctors beyond current law.

Legal reforms are essential to solving the current crisis in the medical professional liability insurance area and increasing access of health care to all. Here is what the president of the National Association of Insurance Commissioners said: ''To date, insurance regulators have not seen evidence that suggests medical malpractice insurers have engaged or are engaging in price-fixing, bid-rigging, or market allocation. The evidence points to rising loss costs and defense costs associated with litigation as the principal drivers of medical malpractice rates.''

The underlying bill, and not the motion to recommit, is the only proven legislative solution to the current crisis. According to the CBO, under H.R. 4280 ''premiums for medical malpractice insurance ultimately would be an average of 25 to 30 percent below what they would be under current law.''

The motion to recommit, on the other hand, besides including zero legal protections for doctors beyond current law, sets up an advisory commission to study a problem that is already patently obvious to the most casual observer and to report back sometime in the future when even more patients will have lost access to essential medical care.

Opponents of the bill claim there is no enforcement mechanism to make sure that medical professional liability rates go down. That is completely false. An enforcement mechanism already exists throughout all 50 States, namely, State insurance commissioners who are required by State law

to turn down rates that are excessive, unfairly discriminatory, or otherwise unjustified. On the other hand, the motion to recommit creates a system of price controls linked to savings that without the legal protections in this bill will be nonexistent. Without legal reforms, there will be no cost savings, and the motion to recommit contains zero legal protections beyond the current law.

Along with creating a commission to further study a problem that is obvious, the motion simply throws more Federal money at it. H.R. 4280, on the other hand, contains solid legal reforms that have been proven successful over 28 years in California and will save billions of dollars in taxpayers' funds, according to the CBO. The choice is clear: oppose the motion to recommit, support H.R. 4280, and let us make sure that doctors are there to care for the 287 million Americans.

Mr. Speaker, I urge defeat of this motion and passage of the bill.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes, if ordered, on passage of H.R. 4280, adoption of H. Con. Res. 378, and adoption of H. Con. Res. 409.

The vote was taken by electronic device, and there were—yeas 193, nays 231, not voting 9, as follows:

[Roll No. 165]

YEAS—193

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Duncan
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Flake
Ford
Frank (MA)
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Larsen (WA)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—231

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berkley
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Isakson
Issa
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Brown-Waite, Ginny
DeMint
Hyde
Istook
Lantos
Lowey
Reyes
Scott (GA)
Tauzin

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SWEENEY) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1748

Ms. MCCOLLUM changed her vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated against:

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, on rollcall No. 165, I was unavoidably detained. Had I been present, I would have voted "no."

The SPEAKER pro tempore (Mr. SWEENEY). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GREENWOOD. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 229, noes 197, not voting 7, as follows:

[Roll No. 166]

AYES—229

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carter
Castle
Chabot
Chocola
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, M.
Dooley (CA)
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Foley
Forbes
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon

Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Isakson
Issa
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—197

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Coble
Conyers
Cooper
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doolittle
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Flake
Ford
Frost
Gephardt
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (NY)
Kleczka
Kucinich
Lampson
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—7

DeMint
Hyde
Lantos
Lowey
Reyes
Scott (GA)
Tauzin

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1800

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MAKING IN ORDER AT ANY TIME CONSIDERATION OF H. CON. RES. 414, EXPRESSING SENSE OF CONGRESS THAT ALL AMERICANS OBSERVE THE 50TH ANNIVERSARY OF BROWN V. BOARD OF EDUCATION WITH A COMMITMENT TO CONTINUING AND BUILDING ON THE LEGACY OF BROWN

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that it shall be in order at any time without intervention of any point of order to consider House Concurrent Resolution 414;

The concurrent resolution shall be considered as read for amendment; and the previous question shall be considered as ordered on the concurrent resolution to final adoption without intervening motion or demand for a division of the question excepted: (1) 30 minutes of debate on the concurrent resolution equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and (2) one motion to recommit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

□ 1800

CALLING ON THE GOVERNMENT OF SOCIALIST REPUBLIC OF VIETNAM TO RELEASE FATHER THADDEUS NGUYEN VAN LY

The SPEAKER pro tempore (Mr. SWEENEY). The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 378, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 378, as amended, on which the yeas and nays are ordered.

Without objection, the remaining two votes in this series will be 5-minute votes.

There was no objection.

The vote was taken by electronic device, and there were—yeas 424, nays 1, not voting 8, as follows:

[Roll No. 167]

YEAS—424

Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gephardt
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski

LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—1

Paul

NOT VOTING—8

Abercrombie
DeMint
Hyde
Lantos
Lowey
Reyes
Scott (GA)
Tauzin

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1809

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RECOGNIZING THE VETERANS WHO SERVED DURING WORLD WAR II, THE AMERICANS WHO SUPPORTED THE WAR, AND CELEBRATING THE COMPLETION OF THE NATIONAL WORLD WAR II MEMORIAL

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 409.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 409, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 422, nays 0, not voting 11, as follows:

[Roll No. 168]

YEAS—422

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gephardt
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—11

Cantor
DeMint
Hyde
Lantos
Lowey
Otter
Reyes
Scott (GA)
Stenholm
Tauzin
Wicker

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1817

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. OTTER. Mr. Speaker, unfortunately I missed the vote on H. Con. Res. 409 "Recognizing with humble gratitude the more than 16,000,000 veterans who served in the United States Armed forces during World War II and the Americans who supported the war effort on the home front and celebrating the completion of the National World War II Memorial on the National Mall in the District of Columbia". Had I been present I would have voted for this bill.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. GEORGE MILLER of California. Mr. Speaker, under rule XXII, clause 7(c), I hereby announce my intention to offer a motion to instruct on H.R. 2660, the fiscal year 2004 Labor-HHS appropriations bill.

The form of the motion is as follows:

Mr. George Miller of California moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 2660 be instructed to insist on reporting an amendment to prohibit the Department of Labor from using funds under the Act to implement any portion of a regulation that would make any employee ineligible for overtime pay who would otherwise qualify for overtime pay under regulations under section 13 of the Fair Labor Standards Act in effect September 3, 2003, except that nothing in the amendment shall affect the increased salary requirements provided in such regulations as specified in section 541 of title 29 of the Code of Federal Regulations, as promulgated on April 23, 2004.

MOTION TO INSTRUCT CONFEREES ON S. CON. RES. 95, CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2005

Mr. POMEROY. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore (Mr. SWEENEY). The Clerk will report the motion.

The Clerk read as follows:

Mr. Pomeroy moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the concurrent resolution S. Con. Res. 95 be instructed to agree to the pay-as-you-go enforcement provisions within the scope of the conference regarding direct spending increases and tax cuts in the House and Senate. In complying with this instruction, such managers shall be instructed to recede to the Senate on the provisions contained in section 408 of the Senate concurrent resolution (relating to the pay-as-you-go point of order regarding all legislation increasing the deficit as a result of direct spending increases and tax cuts).

The SPEAKER pro tempore. Pursuant to rule XXII, the gentleman from North Dakota (Mr. POMEROY) and the gentleman from Iowa (Mr. NUSSLE) each will control 30 minutes.

The Chair recognizes the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we know that we have a very large problem facing this Congress: we cannot pass a budget. We have got a budget that has passed the House, a budget that has passed the Senate, but an absolute train wreck in conference committee with neither side indicating any indication to reach compromise and finish the budget process.

The motion that we have before us, we believe, unlocks this problem. It would have the House pass the motion to instruct conferees relative to the PAYGO requirement, a requirement I will explain more fully in a moment. This passed the Senate and is now, I believe, the key to getting this resolved, will we have the PAYGO budget enforcement provision as part of the budget. Quite frankly, it appears very possible that without embracing some kind of bipartisan step toward budget discipline along the pay-as-you-go requirement, this House, this Congress, will not be able to pass a budget. Obviously, with the President, the Senate and the House in one-party control, one would not expect that that would be the result, but that is the result without some movement toward budget discipline.

Why has budget discipline become so central to the budget debate? I have got some charts that illustrate in very painful fashion what has happened to the Federal budget during the last 3½ years. This chart captures the skyrocketing deficit from years 2002 to projected end of year 2004. What we see is a budget spinning entirely out of control, an absolute hemorrhage of red ink with Congress now spending more than $1 billion a day more than it takes in. This all accumulates in the national debt, a soaring burden for our country and the next generation.

If that chart captured the whole story, it would be very dangerous and frightening. I hate to tell you this, but the story is actually worse than that. Because of budget rules, the full exploding nature of the tax cuts which throw our budget even more radically out of budget occurs after the measurement period of this budget debate. This chart captures that. The budget before us covers the first 5 years. What happens in the next 5 reveals the dirty little secret of their budget plan, skyrocketing red ink, a budget more out of balance than ever before, just at the period of time baby boomers leave the workforce, move into retirement, each one carrying a guarantee from the Federal Government that Social Security will be paid, that Medicare will be paid.

Knowing how many baby boomers there are relative to the rest of the population, the obvious thing for this country to do is pre-position and improve the fiscal condition of this country so that we are ready to take the tremendous hit entitlement spending will bring when baby boomers retire.

My colleagues can see what we are doing: exactly the opposite. It is fiscal lunacy as we borrow in ever-radical fashion just before baby boomers retire. The long-term trend here, assuming the administration budget policies, AMT reform and the ongoing war costs take us to a national debt situation of $14.8 trillion by the year 2014. The debt service cost on that alone is $400 billion, just in interest costs. So this is a very, very serious problem. It is a fiscal catastrophe that has been foisted upon this country. The only thing to do is to begin to deal with it.

This is not the first time the country has had budget problems. It is not the first time we have had people of good will trying to reach across a partisan aisle and come up with some answers. The pay-as-you-go requirement, in fact, that is before the House with this motion was initiated in a budget conference convened by President George Bush, not this President George Bush, his father, George H.W. Bush. They came upon a fairly basic budget enforcement mechanism. In light of not wanting to make the budget situation any worse, they agreed that a pay-as-you-go requirement would apply.

What does that mean? That means if you spend more, you are going to have to find the money to pay for it. You are going to have to either cut spending, or you are going to have to raise revenue. Also on the revenue side, if you cut taxes and reduce the inflow of revenue, you are going to have to deal with it. You are going to have to show at that time where the spending cuts are going to come that offset the revenue loss or what other revenue increases you would have to offset that revenue loss. This was ultimately adopted in a bipartisan vote in 1990. Many believed it was an extraordinarily important contribution to national budget discipline. Chairman Alan Greenspan spoke about the need to get such tools back in the budget process in his testimony to Congress just within recent weeks.

After the 1990 agreement, this thing started to show that it really could work. The budget picture continued to improve. In the budget vote of 1993, the budget votes thereafter, the bipartisan balanced budget agreement of 1997, the pay-as-you-go requirement was affirmed no fewer than two additional times by bipartisan votes of Congress. There is some confusion, I believe, raised by some of the arguments that I have heard coming from majority leadership that those early pay-as-you-go requirements were not applicable to the revenue side. That was misinformation. I have the language of the earlier pay-as-you-go requirements with me, and I am prepared to debate on the floor of this House the applicability of those earlier pay-as-you-go requirements to the motion before us. The motion is the same. And so to my friends in the majority who are inclined to look at this very carefully, thinking about their earlier votes back in 1995 and 1997 in favor of the pay-as-you-go

requirement, I am telling you that you have done this before, and now we need to do it again. We need to do it again worse than ever in light of the budget situation.

That is the motion we have before us. This motion has had two very close votes. When it was offered by the gentleman from California (Mr. THOMPSON) last spring, it was a tie vote, 209–209. Last week, a similarly very close vote on an identical motion brought by the gentleman from Kansas (Mr. MOORE), that one failing 208–215, although we have been informed that some of those voting late in the balloting against this bill were led to believe that the motion before us was different than the pay-as-you-go requirement they had voted for in the 90s.

Let the record be very clear on this. The motion before us on this pay-as-you-go requirement would reinstate the same pay-as-you-go requirement that we had in the 90s that many of my colleagues have voted for before. We have got a situation where we are going to leave our children with this as the legacy, or we are going to have to come to some kind of awakening and recognize it is time for us in a bipartisan way to begin to assault this monster. The way to do it is by reinstating budget discipline.

For that reason, I urge very careful consideration of the motion I have put before us.

Mr. Speaker, I reserve the balance of my time.

Mr. NUSSLE. Mr. Speaker, I yield myself such time as I may consume.

I have been doing a little research over on this side. Again for the third time in a row, the minority rushes to the floor with a breathless motion on fiscal catastrophe, as it was announced, and how if we vote for tax cuts without paying for them, all sorts of red ink will be used on charts all over America. My goodness, you had to almost ruin a printer to print all that red ink on that poster. It is fascinating to me that someone who would be so concerned, so breathlessly concerned about the fiscal catastrophe that awaits the United States if, in fact, you vote for taxes without paying for them would, as I have discovered in roll call No. 144, which was just voted on here, let us see, May 5, where the gentleman who just spoke voted for just such a proposition. He voted for tax cuts without paying for them. And now he rushes down here to the floor saying it is an important principle of fiscal sanity to pay as you go.

I know another principle and that is actions speak louder than words. In this instance, the actions of the gentleman voting not only on May 5, and that is what I was doing some more research on, not only on May 5 did he do that and joined 109 Democratic colleagues doing the exact same thing, wringing their hands at home, decrying tax cuts, trying to talk down the economy and telling how tax cuts are the bane of our existence and yet put out the same press release that day voting in favor of tax cuts and how that was so important to families and small businesses and I am sure the word ''farmer'' may have even been used in the gentleman's press release.

Then I discovered that on April 28, in a roll call vote, No. 138, I see yet again the gentleman from North Dakota voted in favor of tax cuts without paying for them. Once again I wonder, paying as you go, if that is such an important principle, why would the gentleman's actions, not his words, his words, of course, are we should pay for these things. We are facing a fiscal catastrophe, the gentleman just said. Yet he comes to the floor and votes not once but twice, and I am just wondering how the gentleman will vote tomorrow on tax cuts to make sure that we do not have a tax increase at the end of this year for the 10 percent bracket, the bill that I believe is going to be on the floor tomorrow. I wonder if the gentleman is going to vote for making sure that that tax is not increased on his farmers and small businesspeople. Many of them probably are similar to mine in my small towns and my small counties in Iowa. My guess is that he is not only going to vote the way he did the other two times in favor of cutting taxes without paying for them twice before, but I would bet he is going to do it tomorrow.

□ 1830

And I know why. Because the gentleman is going to argue that that is good for the economy, and he is right; and that it is good for those small business people, and he is right; and that it actually does create jobs, and he is right; and that it is unfair to tax families with children, to have an automatic snap-back tax increase at the end of the year, and he would be correct; and that it is unfair to penalize people who are married; and he would be correct. And so again the puzzlement occurs to this gentleman and so many others why it is that he says on one day pay as you go, but come to the floor on the next day and say, but I really did not mean it for those tax bills that I am in favor of that help my constituents. And it would suggest to me that maybe there is a new saying and it is, ''Do as I say, not as I do.''

So we have a situation here yet again, the third time that the exact same motion comes to the floor, and I am wondering if this is not for political purposes that you would on one instance say you have to pay for them and on another instance vote for those exact same tax relief bills as they come to the floor.

The economy is just now finally starting to come off the ground from where it has been, starting to create jobs, starting to see that jobless rate come down and people go back to work. And I know that there are many of my friends on the other side that are just desperately hanging on to any possible bad news about the economy because they know they are losing that issue politically for the fall election, and so they are desperately holding on to the last vestiges of that issue.

But I would suggest that what is good for our economy and our constituents now is to not have an automatic tax increase, that it does in itself pay for itself with the increase of economic development that is happening in our country. In fact, this year alone, CBO projected a $35 billion increase from one year to the next, paying for those tax cuts with the economic growth.

Oh, a lot of red has come to the floor. Another big red chart has come to the floor. Let us see how the gentleman who is about to speak voted. I can do that research pretty quickly. Oh, interesting, the gentleman from Virginia with another chart on the floor with a lot of red voted in favor of those same tax bills, not paying for them but voting for them, and I will bet I can find a press release telling his constituents how important those tax cuts were as we face this fall's election.

I have a suspicion that this is a political vote, and I would encourage my colleagues to treat it as such.

Mr. Speaker, I reserve the balance of my time.

Mr. POMEROY. Mr. Speaker, I yield myself such time as I consume.

To have the effort to break loose the budget stalemate in conference committee by having our House pass something similar to what the Senate in a bipartisan vote passed is a serious effort. Obviously they are taking it pretty seriously. They have the chairman of the Committee on the Budget on the floor. And rather than rebut the rather painful underlying reality about the Nation slipping into what would almost appear to be an irreversible hemorrhage of red ink, in very bellicose and sarcastic tones, he wants to point at individual votes and accuse other Members of hypocrisy. I guess that is kind of a refuge when they do not have arguments on the issue, let us blow a little smoke, let us have a little fun, let us throw a little political rhetoric around. But this deserves so much more than that.

I would say to my friend from Iowa, it is not ruining printers that concerns me, it is ruining the Nation. And I really do believe that the red ink that we are generating and continuing in escalating fashion as the baby boomers move into retirement is a dire threat to the future of our country. I believe that you have already put us on a path, with you serving in your leadership as position as Committee on the Budget chairman, working with the administration, working with the Senate Budget Committee, to diminish the prospects of our children by so undermining the fiscal strength of our country.

Mr. NUSSLE. Mr. Speaker, will the gentleman yield?

Mr. POMEROY. I yield to the gentleman from Iowa.

Mr. NUSSLE. Mr. Speaker, I only have one question. Why would he vote

to cut taxes on one day without paying for them and then come to the floor with a motion the very next day saying he does not have to pay for those taxes?

Mr. POMEROY. Mr. Speaker, reclaiming my time, the gentleman has been most selective in the votes he has cited because I want to tell him, as he knows already, but tell my colleagues that I supported a budget that had the tax cuts mentioned and had them fully offset and paid for, bringing the budget to balance by the year 2008. That was the Democrat alternative, and that is what I voted for. And in addition, we have offered specific substitutes to each of the tax cuts he referenced, and those substitute motions which had the paid-for alternative have been voted down.

I believe there is a merit to those particular tax cut proposals, and I believe that the process is best served by moving them forward, moving them forward hopefully to be resolved ultimately in conference committee in a paid-for manner. So that is what is at stake with my votes. But really there is a whole lot broader issue to discuss on the floor right now, and that is not the voting record on two isolated votes, although I do fully offset in other votes that I have cast on those particular subject matters, but much more over the fiscal situation facing this country.

Mr. Speaker, I yield 4 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, I thank the gentleman from North Dakota (Mr. POMEROY) for yielding me this time.

I do feel motivated to respond to my friend from Iowa's comments. I am sure it was not he that suggested there is hypocrisy on our side, but I want to make the record clear, because 2 weeks ago, Mr. Speaker, the Democrats voted 187 to 10 in favor of a fully paid-for marriage penalty tax bill. Last week Democrats voted 196 to 5 in favor of a fully paid-for alternative minimum tax relief bill.

The only way you got us to vote for those tax cuts was after you rejected our very aggressive efforts to pay for those. You recall we got that vote, we took it to a vote, and overwhelmingly the Democrats voted to pay for those tax cuts, and we only voted otherwise after you rejected our ability to pay for them.

But I need to remind my good friend whom I have served with now for several years on the Committee on the Budget that in 1997, the gentleman from Iowa (Mr. NUSSLE) voted for pay-go as applied to tax cuts. In fact, in 1997, the gentleman voted twice along with virtually all of the House Republicans for pay-go to apply to tax cuts. So when he suggests that we are acting inconsistently, and we would not use the word ''hypocritically,'' but I do think ''inconsistently'' is a proper term when it is applied to the facts of the matter, and again in 1999, the gentleman will recall the Nussle-Cardin budget process bill which required that we have on-budget balancing for tax cuts.

Now, today what we are trying to do is to behave responsibly, fiscally responsibly, because we are looking at the facts, not at any far-flown projections. We are looking at the facts. And the facts tell us that after President Clinton's balanced budget amendment, which passed without any Republican votes, we actually turned our backs on deficit spending, got all the way up to the point where we had a surplus, the green, of course, which the gentleman from Iowa (Mr. NUSSLE), I guess it appears, perhaps was intimidated by some of these colors because they are in stark contrast to some of the rhetoric we have been hearing. This is the fact: During the Clinton administration, there had been a trajectory, right up to surplus, change of administrations, and look what this policy has done all the way down. I mean one would not want a ski slope that steep.

The point is that our policy worked, and it is because we had pay-go applied to spending and to tax cuts. What we have here, clearly, if you want to stop spending, stop the spending. We are saying stop both. If you are not willing to stop the spending, and you obviously have not been, because once the Bush administration came in, there goes the spending on an upward trajectory and there goes the revenue on a downward trajectory. The problem is this is not sustainable.

You say that this is going to balance out, but the fact is it has not. And we have to look at the reality, the real experience. These policies are not working. If you want to cut spending, cut spending and then we can work with you. But right now the reality is unless we apply pay-go to tax cuts as well as spending, this line of deficit is going to continue to decline because we will not have the revenues to pay for the spending that you insist on, and that spending clearly has been going up in an unrestrained fashion.

Mr. NUSSLE. Mr. Speaker, I yield myself 30 seconds.

I do not recall the gentleman from Virginia standing with me on that Nussle-Cardin plan. I appreciate the rendition of history, but I wish he would have voted for that bill as well. I do not think any of the Members on the floor here today voted for that. It would have been a beautiful thing.

Mr. MORAN of Virginia. Mr. Speaker, will the gentleman yield?

Mr. NUSSLE. I yield to the gentleman from Virginia.

Mr. MORAN of Virginia. Mr. Speaker, I think I did. Does the gentleman have the names?

Mr. NUSSLE. I do not, Mr. Speaker. Let us do some checking on that.

Mr. MORAN of Virginia. Mr. Speaker, I think he needs to do a little research on that.

Mr. NUSSLE. Mr. Speaker, there were so few who did, it would have stuck out like a sore thumb. That was not one of my finest hours, I would have to say.

Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Speaker, I thank the chairman of the Committee on the Budget for yielding me this time.

I am delighted today to be able to talk about the motion to instruct. I am on that budget conference, and I would assure my friend from North Dakota, who spoke earlier, that we are very close to having a budget agreement. The pay-go point of order he is offering tonight, he is saying, is to enable us to move forward with the budget. I can just tell him I think there are other ways to move forward that are much more constructive. This motion to instruct, in my view, goes too far and does not go far enough.

With regard to spending, which the gentleman from Virginia has just stated is the major problem, and I could not agree with him more, it does not go far enough. Why would we want a budget point of order? Why would we not want a law? By having a law, we have a discipline that will actually work to control spending. It would have the force of law. And I do not know why the gentleman would not prefer what was reported out of the Committee on the Budget and what this House will be taking up after the budget is passed, which is a budget process reform that actually has a law. So on the spending side, it should be stronger.

On the tax side, we have a philosophical difference, and we have talked about some inconsistencies here. Yes, it is true that not only did a couple of gentlemen on the floor vote for tax relief as recently as this week, without paying for that tax relief, but the majority of Democrats voted for it, including some who are on the floor tonight who have not been part of the debate yet. Others did not vote for it, and those are the ones who are smiling.

But it is a philosophical difference as to whether spending and tax relief should be both subject to the same pay-go standards. I think they should not be, and I say this for a very simple reason. Tax relief is put in place and has been put in place in 2001, 2002, and 2003 in order to stimulate the economy. Some tax relief is better than other tax relief. We can argue about which tax relief is better. But the proof is in the pudding, as they say, and the pudding is fresh.

We know right now, based on what CBO told us on May 6, that is, earlier this month, and what they told us in March, that even though this tax relief was put in place, even though we reduced taxes on the American people, on small businesses, on investors, guess what is happening? Revenues are increasing, they are not decreasing. If they can point to some spending that has those same characteristics, or spending in general that does, I might feel differently about it. But I do not

know how we can come to this floor time and time again and put up the charts and say tax relief is the reason we are in deficits. It is not. Even if we did all the tax relief in 2001, 2002, 2003, put it together, we still would be in deficit because of spending and because of the economy.

□ 1845

The economy was the biggest problem, the economy going down and revenue going down because of it. And second was spending. Yes, we spent too much. On the other hand, we had some real needs, including increasing our military spending to respond to the war on terrorism, including spending, we were told, over $100 billion just to respond to 9/11. The tragic loss of life also required a tremendous amount of Federal revenue. Now today in Iraq, yes, we have increased spending for those purposes. But tax relief was not the reason we are in deficits.

The irony is, it is the reason we are making progress against the deficit. CBO has just told us again within the last week, they believe the revenues this year will be $30 billion or $40 billion or so greater than projected. Revenues are going up, not down. Because of tax relief, revenues are going up, because the economy is growing in response to the tax relief.

Economists right, left, and center will tell you this tax relief which was passed by this Congress had the effect of helping on consumer spending, more money in people's pockets; on helping on investment, corporate profits; therefore more revenue coming into this economy, more capital gains revenue.

So it is a philosophical difference, and that philosophical difference will be played out again tonight on this motion, as it has been played out over the years in this House.

The final point I would like to make with regard to whether we should put pay-go rules on taxes as we should on spending is to look back at recent history. My friend from Virginia talked about the 1993 agreement. Let us talk about the 1997 budget agreement that was called the balanced budget agreement that actually got us out of red ink.

There was tax relief from that agreement, by the way. There was also a commitment by this House to restrain spending. The Republicans controlled the House and the Senate. Republicans decided, working with Democrats in a bipartisan way, we would control spending together, and we stood down here on the floor of this House and we pounded our chest and we said within 5 or 6 years we will have a balanced budget. I did the same.

That would have been 2002, maybe 2003. Within a couple of years, we had a balanced budget, and within 3 years we had surpluses. Why? Because, by restraining spending, by growing the economy through smart tax relief, we grew, we grew out of the deficit.

That is what we want to do again. We want to grow out of this deficit. We want to restrain spending, very important, and pay-go ought to apply to spending for that purpose, and we want to put smart tax relief on the floor of the House for an up-or-down vote. It is not like it is not subject to some procedure here or some discipline. It is subject to the discipline of the House and the Senate and getting through a conference and being signed into law by the President.

But by restraining spending and by growing the economy, we believe we can make progress on the deficit. We believe we can reduce the deficit in half by 3 or 4 or 5 years, depending on how much spending we can reduce and how the economy grows. And we believe the pay-go rules ought to apply, and apply even more aggressively than is proposed tonight to spending, but not take away the opportunity for us to have meaningful tax relief, to be able to grow this economy, which after all was the solution to getting us into surpluses back in the 1990s and into 2000.

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would respond quickly. By omitting the revenue side of the equation in a pay-as-you-go requirement, you literally leave out a critical component of what drives the budget. This might straighten out the gentleman's history here.

Revenues have plunged as a result of the earlier tax cuts, the lowest percentage of GDP since the year 1950. As revenues plunge, you get yourself into deficit.

Can you imagine a family trying to balance their household budget saying, you know, we are going to have to get hold of this. We are going to have to cut spending, cut our family spending. Then, at the same time, saying, but, you know, we are working a little too hard, so I am going to take more vacation. I am only going to work part-time, because the revenue side, we are not going to deal with the revenue side, we are just dealing with the spending side.

That is as much lunacy as what is proposed in terms of dealing only with pay-as-you-go on spending and leaving off consideration of the revenue.

To put it in another way, revenues have plunged very significantly over the past 3 years. Revenue has declined 12 percent. So this business of we are going to cut taxes and get more revenue as the economy grows has not been demonstrated.

There has been one area of growth, one very predictable area of growth; the deficit has grown to the largest level in the history of the country. And if there is a budget deal coming out of the conference committee, it is going to have an increase in borrowing authorization for this country, and we are told it might exceed borrowing authority in the amount of $10 trillion, debt we will pass on to our children.

We will have a better way to further explain that.

Mr. Speaker, I yield 4 minutes to the gentleman from Washington (Mr. MCDERMOTT).

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, my good friend from Iowa is such a good Member, and I really hate to review the bidding here, but last time I looked, Republicans had the Presidency, and they had control of the Senate and they had control of the House, and, if I am not mistaken, the Federal law says that on the 15th of April you are supposed to pass a budget.

Now, if we give you all the cards, for heaven's sake, can you people not work it out? Do you have to keep fighting among yourselves? I mean, here we are, and all we are asking you is to go along with that other body.

Now, I know that the gentleman is not a bad person, and I do not like to bring up this stuff about how we have voted for this. You know, you pick on guys, these other guys who voted for tax cuts. Look for me in that list.

Mr. NUSSLE. Mr. Speaker, if the gentleman will yield, I am looking here. I do not see ''MCDERMOTT'' anywhere on the list.

Mr. MCDERMOTT. Mr. Speaker, reclaiming my time, we finally got one up here that the gentleman is not going to call a hypocrite, is he? I do not mean that consistency is the hobgoblin of small minds. I know that one has to be flexible when one is the chairman, because the gentleman voted for pay-go many times and said it was a good idea, and the gentleman from Virginia (Mr. MORAN) got out here and gave the gentleman all that evidence.

But the fact is that what we are talking about here is, you know, there are a lot of people sitting out there watching this, and they go down to the grocery store and they have a $20 bill and they say, well, I am going to buy some groceries here. So they buy what they can get with $20. That is the way a lot of people operate in this world.

But the Republicans, ever since they have taken over this House, in fact you did it under Reagan, we tried this Laffer curve business and all that and went into this great big deficit, and it took Clinton to get us out. For all you want to say about Bill Clinton, he did dig us out of your mess from the Reagan years. You did not learn anything from that.

So you decided let us get out our favorite two credit cards and you said, well, we got Social Security, we got a whole lot of money over there in that one, and we got a whole lot over here in the Medicare one. Let us just spend off these credit cards like wildfire. That is where you get those red blotches on the graphs.

Now, the people out there, they do not understand why it is you do not want to pay as you go. Who do you think is going to pay off these credit

cards? Do you think maybe it is the Democrats who are going to pay it off when we take over next time? Our job will be, how do we dig ourselves out of the hole you put us in?

We are just trying to lay the groundwork for saying, hey, look, we know we are going to be in charge soon, or hope so, or, if God wills. You know, under God we do not know what will happen, but we may wind up in charge. And you have spent our credit cards into such a mess, we will have to do something.

We cannot keep spending, because people are getting older. There are a lot of those baby-boomers that are coming up, and they are expecting that the money that was in the account that you have been borrowing from is going to be there for them, and they are going to find out it is empty. We are going to be caught with digging us out of the hole.

Now, you may think it is funny, and you may enjoy this ride, but I will tell you something: When the baby-boomers get to be senior citizens, you are going to have a price to pay, because all this profligate spending is going to come home to roost.

I think it just makes sense to adopt this resolution and go with the Senate. They are very smart over there; oh, very smart.

Mr. NUSSLE. Mr. Speaker, I yield 3 minutes to the gentleman from Kansas (Mr. TIAHRT).

Mr. TIAHRT. Mr. Speaker, I thank the gentleman from Iowa for yielding me time.

Mr. Speaker, I want to point out and expand on a point that the gentleman from Washington just brought up, and that is about the Federal deficit. He talked about the future obligations that are part of our Federal deficit. If you look at all the red ink we have seen on the charts and you look at today's Federal deficit, we are not talking about the same thing as what we have in our outstanding debt.

There is a lot of confusion between the deficit, which is how much money we spend versus how much money we take in, and then the national debt, which is when we start talking about baby-boomers, then you start talking about the impact of the national debts.

Right now, our national debt is around $7 trillion. About half of that is publicly held debt. The other half is future obligations. So when we look at all that red ink and get up to $14 trillion, a lot of that is future obligations. It is Social Security for every individual in elementary school today. It is Medicare for every person that is in day care today. It is those people that exist today that at some point are going to be part of public law and they are going to qualify for Social Security, for Medicare, for the prescription drug plan. And that is some of that red ink you are seeing out there. So I think we need to distinguish between publicly held debt and future obligations.

The concept of pay-go which is being pushed by the Senate is really fundamentally flawed economic policy. It makes an underlying assumption that if you reduce revenue by $1 for tax relief, you are going to have a $1 reduction in Federal revenue; a $1 reduction in taxes equals a $1 reduction in Federal revenue.

But we know from history that is not true. In fact, if you looked at the 1980s, in 1980 the Federal revenue was about half a trillion dollars per year. Reagan, under his leadership, we passed the largest tax decrease at that point in history, and what happened over the next decade is revenue doubled. The Federal revenue by 1990 was $1.1 trillion.

Even under the plan that was shown under the so-called Clinton surplus, the Clinton surplus was even preceded by tax relief. He signed tax cuts into law. One of them was capital gains. When we reduced capital gains from 28 percent to 18 percent, we actually had an increase in Federal revenue, not a dollar-for-dollar reduction, $1 tax versus $1 reduction in Federal revenue.

So the fundamental policy of pay-go is flawed. If you have tax relief, three things happen: Tax relief provides a little more money in somebody's pocket. They either save it, spend it, or invest it. If they spend it, that is a demand for goods and jobs. That is good for the economy. If they save it, it provides money for home mortgages. That means more building, more jobs, a good thing. The third thing is they invest it. If they invest it, that means capital for companies to expand and hire more workers. So all three things that come out of tax relief are good, fundamental economic policy.

But if you have this Keynesian economic view buried in this pay-go provision, then you think the Federal Government drives the economy and not the free market system. That is fundamentally flawed. It is the free market system that makes America great.

When you increase taxes, you limit that; and when you reduce taxes, you increase the ability for Americans to do the right thing with their money, and that means more Federal money.

Mr. POMEROY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, that is a very interesting bit of economic history there, but I would put forward a different view. Which economy worked best, the economy of the nineties, when you had pay as you go, or the economy of this decade, so far a very stalling, disappointing economy?

Mr. Speaker, I yield 4 minutes to my friend, the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, I thank my colleague from North Dakota for yielding me time.

Mr. Speaker, since everybody wants to talk about the 1997 plan and what we did, just so we can all have a rendezvous with the record here, in fact we cut taxes on middle-class families with the introduction of the $500-per-child tax cut for people making $100,000 or less. We increased spending in higher education. We created the Children's Health Insurance Program, a $24 billion program for the children of uninsured parents who worked. We invested more dollars in environmental cleanup. We made long-term investments in the health of this country, which is in health care, education, and the environment. We expanded charter schools up to $2,000.

So we in fact paid for those spendings because they were good investments. We reduced the deficit down to a balanced budget, and we cut taxes for middle-class and working class families.

What we did not do was say every tax cut is good and every spending increase is bad. Some tax cuts are good. The $500 per child, which was the introduction in 1997, was a very good tax cut.

□ 1900

In 1993 we cut taxes on working families with the doubling of the earned income tax credit, which was originally created by Ronald Reagan in the 1983 budget.

So, in fact, not all tax cuts are bad; but when you have a tax cut for corporate jets and yet you put a squeeze on middle-class families, those are bad choices. As President Kennedy once said, to govern is to choose. When you make investments, not all spending by government is good; there is a lot of waste. But when you invest in uninsured children of working parents, 10 million of them who finally get health care and you pay for it, you are a better country and those are good investments.

When you expand the investments in opening the doors of college education, doubling the size of Pell grants as we did in 1997, that is a good thing. When we provided for middle-class families a tax deduction for a college education, we created the lifetime learning, the HOPE scholarship for continuing learning, those are good tax cuts. They led an investment boom, an economic boom which all incomes enjoyed, not just the top 1 percent, as is happening now.

So to compare what happened in 1997, to think fondly of your memory, we increased our investments and government spending in the areas of health care, education, and the environment, we cut taxes for middle-class families, and used the rule of putting our fiscal house in order. And all of those investments, all of those tax cuts started with the notion that we had to have a balanced budget.

The difference today is our tax cuts are skewed not to middle-class families, not to working families; they are skewed towards people who make money from money where the burden on people who work for a living are carrying more of the tax burden than those who do not.

So not all tax cuts are good and not all spending is good. We have to make choices based on an economic strategy.

Today, we have had the most anemic wage growth for middle-class families:

1 percent. College costs this year went up 14 percent; last year, 10 percent; and the year before that, 11 percent. Health care costs have gone up by a third, and people's savings have lost their net value by $200 billion in the last 2 years. That is the economic condition of our middle-class families, and we need an economic strategy that puts our fiscal house in order, reflects the priorities that American families are facing by making sure we invest in health care, invest in education, invest in the environment, and give middle-class families, rather than corporate jets, which your budget and your economic plan does, give middle-class families the type of tax cuts they deserve because they are trying to raise their children. That is where we should invest our limited dollars.

This PAYGO rule begins by putting the budget of the Federal Government back in order, as the gentleman from Iowa (Chairman NUSSLE) voted for in 1997 and made sure every tax cut was paid for, made sure every investment in spending was paid for. Those were good economic times. They created 22 million jobs. We need to go back to that strategy. It was good in 1997, and it will be good in 2004.

Mr. NUSSLE. Mr. Speaker, I yield myself such time as I may consume.

Let me start by saying that I am sure, because I know the gentleman from Illinois to be a very honorable Member and friend, and I am sure all of those facts that he just cited were true about 1997 and the economy of the 1990s. Let us just assume for a moment that they are. It was peacetime. I mean, does the gentleman think there is a difference between the 1990s and the period of the 2000s since what happened when we inherited the Clinton recession of 2000 and the attacks on the World Trade Center and the Pentagon of 2001, and the war with Afghanistan and now Iraq? Does the gentleman think there is just a little bit of difference between the 1990s and this next century that we are in? Maybe just a little. Maybe just a smidgen, it might be different.

And even though we found all sorts of spending priorities during the 1990s, education and the environment that the gentleman talked about, it is interesting that during those 1990s, we did not seem to find the priority of national defense or intelligence or homeland security, or a prescription drug benefit for seniors.

All of that time that President Clinton was working on all of these great policies of growing the size of government, taking more money out of the pockets of families with that huge tax increase of 1993, during all of that expansion of government, not once during that time could there be found the priorities of defense, intelligence, homeland security, and a drug benefit for seniors.

So I understand that there were different priorities back then. It was a different decade. We were at peace. We are now at war. This is not a time to raise taxes on the American family. We are just now coming out of a recession. This is not the time to raise taxes on business. We are now finally getting back on our feet; and it is not the time to say to people, we need more of your money. This is exactly the time, exactly the time to say that those tax cuts should be predictable, they should be permanent, people should be able to bank on them, they should be able to plan for their futures, they should be able to make decisions that affect their families and their small businesses and their farms without having the peril of somebody coming to the floor and suggesting now, for some reason, that we have to start paying for tax cuts, and then voting just the opposite when the actual tax cut comes to the floor for a vote.

It is interesting that on one hand they say we should pay for tax cuts and then the actual vote; and boy, I know they are kind of tricky, because just that vote, that specific vote on tax cuts, when that vote comes to the floor, they seem to be very interested in voting for that tax bill.

Let me just review some things, though, because I know my friends on the Democratic side are very interested in talking down the economy. They are interested in saying, those tax cuts have not worked. I want to tell my colleagues that the tax cuts have worked. Let us just review a few things.

Payroll employment increased by 288,000 jobs in April. We have the most people working in America at any time in our history, today. More people are working in America today than at any time in our history. Manufacturing employment increased by 37,000 jobs over the last 3 months alone. It was the best 3-month period since those boom days of the 1990s, since 1998; the best 3-month period since 1998. Unemployment was down to 5.6 percent in April from its high of 6.3 percent last June. Unemployment insurance claims have fallen to their lowest level in 3½ years since we inherited that Clinton recession of 2000.

Real growth in the economy, which is measured by our gross domestic product, was at 4.2 percent at an annual rate for the first quarter of 2004, following an 8.2 percent growth in the third quarter. It is the highest quarterly rate in over 2 decades, and the last 6 months have been the fastest growth in over 20 years. Manufacturing activity soared at the end of 2003 and into the beginning of 2004, registering its highest pace in 20 years.

So keep talking about the bad economy, keep using it as a political issue, keep trying to talk down the marketplace, keep trying to deliver all that bad news, because it is not here. People are going back to work. The economy is improving. People are making things. Because as my friend, the gentleman from Kansas, said, they have the money to spend. We are not taking it out here in Washington.

It is interesting that when Democrats come to the floor and they say pay as you go, guess what? They are not the ones willing to pay. When they say pay as you go, it means there is a tax increase buried some place, there is a secret tax plan that is available for anyone to look at, and it is called tax the rich. Well, hold on to your wallets, folks, because they think you are rich, and they are coming after you. And every single time they talk about taxing people, they are talking about taxing you. They are talking about taxing people who are married. They are talking about families with children. They are talking about small businesses that are creating the most jobs.

Mr. Speaker, that is what we are concerned about when we say this is not the time to raise taxes and this is not the time to talk about paying as you go, because these tax relief packages that we have passed are getting the economy back on its feet and revenue, as a result, is coming into the Federal Government. We are receiving more revenue into the Federal Government than we are allowing people to keep in their pockets through these tax cuts that we are promoting on the floor.

Mr. Speaker, I know it is working. And the reason I know it is working is because 102 Democrats voted for them. They know, including the gentleman from North Dakota, who voted on April 28 to cut taxes without paying for them, because he knows, he knows what that means to the economy of North Dakota. He knows what it means to the economy of Iowa. He knows what it means to the economy of the United States. He knows where jobs are created. I know that because I have served with him every year he has served in the Congress, and I know the gentleman understands that that is how jobs are created. That is why he voted for these things.

I do not argue with the fact that he votes for them. What I am concerned about is that the leadership has forced the gentleman to come down here with a political issue. The last two gentlemen have failed in their attempts to try a political issue on the floor, and so now they roll out the gentleman from North Dakota.

But the gentleman from North Dakota, I know, is smarter than that, because on May 5 he voted to cut taxes without paying for them, because he knows that you do not have to pay for some of these tax cuts, because they generate economic activity. They generate that economic activity in farms and small businesses, putting people back to work; and as a result of those people back to work, they pay into the Federal Government in taxes as taxpayers, and the result is more revenue coming into the Federal Government. The gentleman knows that. That is why he votes consistently to reduce taxes.

I just wish that he would stop trying to tie our hands for the future; trying to tie our hands, just as the economy is

getting back on its feet, blaming tax cuts for all the red ink when we know because of two wars, when we know because of the gut-punch of 9–11, when we know because of the bail-out of the economic crisis that occurred after the terrorists attacks, that we know because of huge increases for defense and homeland security, appropriately so, to protect the country, we have had to borrow money. We borrowed money deliberately, at a time with interest rates being very low, to do two important things: make sure that our country was protected and make sure that our economy could get back on its feet and start growing again.

Well, our country is protected and continues to be protected; and we will all do whatever it takes to make sure it continues to be protected. But we also have to make sure that it continues to grow, because while we can be secure in our border, we also have to be secure around the kitchen tables of North Dakota and Iowa and the rest of the country. We want to make sure those families who are faced with sometimes much more perplexing issues than what we face here in Congress, like how am I going to pay for college; and how am I going to pay for the health care bills; and how am I going to deal with clothing my kids when I have been out of work for a little while, those are important issues that they face, and we want to make sure they have all of the resources necessary in order to make those important decisions around their kitchen tables with their families.

The only way to do that is to continue the policy which has worked, which has gotten our economy back on its feet, and will continue to work if we allow it to do so, without being hamstrung by a special Senate rule that only stands in the way of making sure that those tax cuts can be predictable, that they can be permanent, and they can continue the job of making sure the economy grows.

Let us vote down this special rule that will only cause tax increases in the future, and let us support the underlying budget which controls spending, which grows the economy, and which makes sure our country is protected. That is the budget we need to pass. We do not need to have a Senate rule, a rule from the other body to tie our hands for tax reform, tax relief, tax simplification in the future. That is what the gentleman, unfortunately, and probably inadvertently, would accomplish if, in fact, this plan passed. He wants to continue to support tax cuts; so do we. We want the economy to continue to grow, and the only way to do that is to vote down this motion to instruct.

Mr. Speaker, I yield back the balance of my time.

□ 1915

Mr. POMEROY. Mr. Speaker, I yield myself such time as required to close and I will speak from the other podium.

I thank my friend from Iowa, the chairman of the Committee on the Budget, for joining in this spirited debate, but to any one of our colleagues watching, there is something that we know for sure and that is that bluster does not cover facts. Energetic presentation of lots and lots of stuff does not mask an economic record reflected in these charts.

This is what has happened to the deficit during the last 2 years, and this is where we are going over the next 10 years.

Now, what we are seeking with this motion is budget enforcement ability to try and level out this deeply alarming trend line on national debt. Pay-as-you-go means that if you spend more, you have got to cut somewhere else; or if you cut taxes, you have got to cut spending and show where you do it; or if you cut taxes, you have got to raise taxes somewhere else. It has all got to work out in a zero-sum game. You cannot continue to make the budget situation worse.

We can get lost in the economics and the numbers, but I think it is helpful to just think of it this way. We pay as you go now, or our kids pay when we go later, because these things are not balancing out. Representations that tax cuts are producing more revenue are not at all borne out. The Federal revenues from individual income taxes in the year 2000 was $1.4 trillion. The 2004 estimate is $765 billion, almost down a quarter.

As you have revenues fall so precipitously, you have had the debt line grow so significantly. We have had some job numbers thrown out. The fact is we are down 1.6 million jobs. This administration is the first administration on track to have a net loss of jobs since Herbert Hoover was President, but those are issues for another day.

Let us just understand that if you like the economy of the 1990s better than the economy we have seen this decade, realize that throughout the 1990s we had pay-as-you-go budget enforcement, which meant we were trying to get a handle on national debt. We have absolutely lost our way when it comes to fiscal sanity, and that is why we have had this explosion of debt, a deficit leading to debt, and we have got to get our hands around it.

So I believe that if this House took the step of instructing conferees to go with what the Senate has passed, and that is a bipartisan vote to embrace this pay-as-you-go requirement, we can once again get on track. This has been the very issue that has received bipartisan agreement in the past, 1990, 1995, 1997, and now it is time in 2004 for us to do it once again.

It is time for us to do this for our children. We put pay-as-you-go in the budget or it is you pay when we go to our children. As a father of an 8- and a 10-year old back home in Bismarck, North Dakota, I know we owe them a good deal better than this, a very unstable fiscal situation just when baby boomers retire and start drawing on Medicare and Social Security. We could turn this around, and passing this motion is the place to do it.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CHOCOLA). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from North Dakota (Mr. POMEROY).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. POMEROY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. DEFAZIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the subject of the Special Order of the gentleman from Michigan (Mr. STUPAK).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. GOODLATTE) is recognized for 5 minutes.

(Mr. GOODLATTE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

ORDER OF BUSINESS

Mr. HENSARLING. Mr. Speaker, I ask unanimous consent to take my 5 minute Special Order at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

WASHINGTON WASTE WATCHERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. HENSARLING) is recognized for 5 minutes.

Mr. HENSARLING. Mr. Speaker, I rise again as part of the Washington Waste Watchers, a Republican working group dedicated to rooting out the

rampant waste, fraud, and abuse in the Federal Government.

Despite a major economic recovery underway, rising employment, new jobs and historic rates of home ownership, Democrats keep demanding that we take away the tax relief, take away the tax relief that is responsible for this unparalleled growth in our economy, the tax relief that is bringing down the unemployment.

The tax relief, if it were a line item in the budget, amounts to 1 percent, 1 percent of the $28.3 trillion 10-year spending plan approved last year. In other words, 99 percent of our fiscal challenges are on the spending side. And, Mr. Speaker, that is where we need to focus our attention, and by any measure, spending is out of control in Washington.

For only the fourth time in the history of our Nation, the Federal Government is now spending $20,000 per household. Mr. Speaker, it is up from just $16,000 just 5 years ago, representing the largest expansion of the Federal Government in 50 years.

We have a spending problem, not a taxing problem, and now is not the time to raise taxes again on American families and small businesses, as Democrats seek to do. Instead, it is time to take the trash out in Washington. Let me give my colleagues just a few examples of typical waste, fraud, and abuse in government that we found just this week.

The Interior Department's Inspector General discovered that the Bureau of Indian Affairs accepted inflated school enrollment estimates that resulted in the construction of schools that were larger than required. The Bureau spent $37 million for unneeded school space and has future plans to spend an additional $74 million for even more excess school space. This wasteful use of our tax dollars occurred because the Bureau had not developed or implemented simple policies to count students. And yet Democrats want to raise our taxes to pay for even more of this? One hundred and eleven million dollars of the American people's hard-earned money down the drain. That is enough money to outfit 3,700 Humvees in Iraq with armor plating.

Additionally, the Department of Transportation's Inspector General stated that if the Department simply imposed better oversight on projects from start to finish and aggressively fought gas-tax evasion, the Department could save billions of dollars. In fact, if the efficiency with which the Federal Government and the States invested $700 billion in highway projects was improved by only 1 percent, an additional $7 billion would be available, and that could fund 8 out of the 15 active major highway projects today.

This is especially relevant because the House voted recently to approve a $284 billion highway bill that will force Congress to either increase the deficit or raise gas taxes to pay for it.

Next, Mr. Speaker, just this week the GAO announced that the government paid $169,000 in fees to unaccredited schools for bogus graduate degrees for Federal employees. I mean, that is a blatant violation of Federal law. The General Accounting Office said this amount was actually an understatement and that it is impossible to verify the true cost of this fraud because the Federal agencies do not have systems to verify academic degrees and because they do not accurately account for these expenses. In fact, the Department of Health and Human Services, when asked by the General Accounting Office to verify expenses on degrees, said they could not produce them because they maintain such large volumes of information in five different accounting systems.

One hundred sixty-nine thousand dollars on bogus degrees. That is enough money to protect over 100 of our American soldiers in Iraq with Kevlar vests.

Mr. Speaker, the list goes on and on and on; so does the waste, the fraud, the abuse and the duplication, and this has been going on for decades.

The problem is, we now have over 10,000 Federal programs spread across 5- to 600 agencies with little accountability to anyone, and when you just scratch the surface a little bit, what you discover is that so many of these programs routinely waste 5, 10, even 20, 25 percent of their taxpayer-funded budgets, and have for decades.

Republicans are working hard to root out this senseless waste of American tax dollars, but too many of our Democrat colleagues keep fighting us every step of the way. Last year, our Committee on the Budget approved a budget asking for authorizing committees to identify 1 percent of waste, fraud and abuse, just 1 percent. Yet the Democrat leaders ridiculed and reviled our efforts. One Democrat leader termed it ''a senseless and irresponsible exercise.''

Mr. Speaker, I am sure that most Americans disagree. With the Nation at war and with a large budget deficit, there is no better time to root out this waste, fraud and abuse than now, because when it comes to Federal programs it is not how much money Washington spends that counts, it is how Washington spends the money.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Mr. DEFAZIO. Mr. Speaker, I ask unanimous consent to replace the gentleman from Ohio (Mr. BROWN).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

RESPONSE TO THE WASHINGTON WASTE WATCHERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, well, that was interesting. Now if only the Republicans controlled the White House, the House of Representatives and the Senate, they would take care of this waste, fraud and abuse at the agencies.

Many of the things the gentleman talked about are due to administrative mismanagement. If only George Bush was a Republican and they controlled the White House. Whoops. He is and they do. If only they controlled the House of Representatives. Well, they do; and the Senate. They control the entire Federal Government, and he comes up here and talks about the waste, fraud and abuse that he would eliminate if only they were in charge. Well, they are in charge. Why do they not eliminate it?

They never bring bills to the floor to deal with waste, fraud and abuse. He talked about a few things that could provide a little bit of help for the troops. Let me talk about things that could provide a lot for the troops.

Comanche helicopters, a scandal that has been going on starting with the Democratic administration and Republican Congress but continued under the Republican administration; $9 billion wasted. Finally canceled. No products. How many Humvees and sets of armor could we buy for that? Tens of thousands, hundreds of thousands of sets of armor and armored Humvees which, guess what, Donald Rumsfeld did not order. That is why we do not have them, not because there is not enough money in the Pentagon budget.

They did not order what we needed to protect our troops because they did not predict what would happen because Rumsfeld would not read the reports from the State Department intelligence folks and from the CIA. He had Ahmed Chalabi, his favorite convicted felon from Jordan, who was feeding him information that he was paid to give, that he admitted was false.

Then there is the $2 billion Crusader cannon, canceled. No product. How many sets of armored Humvees could be we buy for $2 billion?

Then, of course, the $100 billion Star Wars fantasy. The Republican majority and the President want to spend $10 billion this year to deploy a missile defense system that does not work, according to the Pentagon itself; is untested, cannot even intercept a missile on a trajectory without decoys; $10 billion. Twice what we will spend defending all the borders and all the ports of the United States of America against the real threats, the new threats, the terrorist threats that these people are ignoring because they are worried that some suicidal maniac is going to shoot one missile at the United States, like Kim Jong Il who does not have any

missiles that can reach the United States, and have this country instantly incinerated.

□ 1930

That is not the threat. The threat is a tanker, a freighter, a truck coming across the border, or something being smuggled in some other way. But we are doing nothing to protect against that. We are going to spend the money. Why? Because the defense contractors are making a bundle, and then they turn around and give a cut to the Republicans to help keep them in the majority, just like the pharmaceutical industry I talked about earlier today.

So it is just kind of pathetic, people standing up here saying, I'm a waste-watcher, and if my party was in charge,'' oops, they are. ''If my party had the Senate,'' oops, they do. ''If my party had the White House,'' oops, they do. And you are doing nothing about it. Well, do something about it. The minority cannot stop you.

Please, do not give us that. The American people are not quite stupid enough to believe that the minority in the House, who is trampled over day in and day out, is stopping the Republicans from taking those steps. You are not even trying, because a lot of your buddies are making money on that stuff.

NEW RECORD SET BY PRESIDENT BUSH

Mr. DEFAZIO. Mr. Speaker, I came to talk about something else. I do not have much time left now, but I wanted to talk about a new record that has been set by the Bush administration.

Congratulations to George Bush and his economic team; they have set yet another record. They told us last year, if only the dollar dropped in value, well, that was all that was hurting our manufacturing. It did not have to do with their totally failed trade policies and the outsourcing of American jobs. It was just that the dollar was a little too high.

Well, the dollar dropped catastrophically. It was at a record low just a month ago, and guess what happened during that month? The U.S. ran a record trade deficit. So their theory does not seem to quite work. But we are still outsourcing jobs at a record rate. The dollar has come back a little. That might even make the deficit worse yet again. Their theories have not panned out.

We have a failed trade policy in the United States of America. We are losing our manufacturing base, our technology base. China is stealing our technology, stealing it from small companies in my district; and the Bush administration will not file a single complaint. Not one. They say, let us get China into the WTO, then they will have to follow the rules. Okay, well let us enforce the rules. Oh, no, we cannot enforce the rules.

We are not going to file complaints against China. It might upset our friends, the Chinese. Our friends the Chinese are dealing in weapons, they are dealing with terrorists on sophisticated manned pads that can shoot down airliners, they are dealing in nuclear technology to terrorist nations. Our friends, the Chinese. The Bush administration says, if we only embrace them a little tighter, they will come around. Yeah, right, after they get all our money, all our jobs, and all our technology, they will come around?

I am just getting tired of these excuses: that if only they were in charge, they would do better. We have a failed trade policy, and what has this President proposed? More of the same.

Now, I have to admit Bill Clinton had a failed trade policy, too; but he copied his from George Bush who copied it from Ronald Reagan, and I opposed all of them as I oppose this.

Let us bring jobs back home to America. We need a new trade policy, and we need a little honesty around here instead of a bunch of whatever.

The SPEAKER pro tempore (Mr. CHOCOLA). Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

REMEMBER THE MISSION IN IRAQ

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Mexico (Mr. PEARCE) is recognized for 5 minutes.

Mr. PEARCE. Mr. Speaker, as we consider the implications of the debate about the photographs that our news media has been putting on the front pages and on the TV screens, it is important that we begin to calm down and to take a look at what we are doing and to remember why we are in Iraq.

Frankly, as we hear the discussions about having the President impeached and the Secretary of Defense resign, it is important for us to remember that 9–11 changed everything. So soon we forget, Mr. Speaker. 9–11 is the day that innocent civilians in this country went to work in the morning expecting they would come home to their families that night. 9–11 was the day that this body convened for its normal business. 9–11 was the day soccer moms became security moms, worried about the safety of their children in the streets. And President Bush said that he would fight terror; that if you harbored a terrorist, you were a terrorist; if you funded a terrorist, you were a terrorist; if you allowed them to pass through your country, you were a terrorist. And, Mr. Speaker, he has been solid and resolute about that commitment.

No matter how despicable the acts of our soldiers in Abu Ghraib prison, they remain the actions of just a few. They do not reflect the majority opinion. They do not reflect American values, and they do not reflect what is going on in Iraq. Because there are magnificent tales of sacrifice and commitment going on in Iraq.

For those people who wonder why the Secretary of Defense should not step down, it has not been that long ago, Mr. Speaker, that we saw Rodney King in those famous videos where members of the Los Angeles Police Department were beating him. That circumstance did not reflect the policemen in L.A. any more than our current actions reflect our soldiers in Iraq. To put it in perspective, we should have, if we want equivalent actions, have called for the Governor of California to step down.

Secretary Rumsfeld is a tremendous political and military leader. If we look at the advances and the accomplishments that have occurred, to suggest change at this point in this war begins to seem irresponsible. Al Qaeda is completely uprooted and on the move. Thousands of al Qaeda members are dead or in prison. The Taliban is gone from Afghanistan. Saddam Hussein sits in a prison cell. We have over 40 of his top officials in prison cells awaiting trial. Libya has begun to give up its weapons of mass destruction, its nuclear weapons. Pakistan worked with us on the Afghanistan border fighting terror. Worldwide, we are seeing terrorists captured and imprisoned by the network of people on the side of good and against evil.

Mr. Speaker, Secretary Rumsfeld is greatly responsible for the actions that are positive and that show that we are winning the war on terror. And to suggest that he step down is irresponsible.

But we must also consider what it is going to take to win this war on terror. It is going to take valor, valor like that of Pat Tilghman, who gave up a lucrative career to go serve his country. It is going to take sacrifice, like a young helicopter pilot from my district who died in a night crash in Afghanistan. It is going to take courage, because this is going to be a long fight, Mr. Speaker. And if we are going to run right now, I will guarantee you that we will not win this war on terror, and that every American life will be affected. And those soccer moms who became security moms will have been justified in their fears, and they will have been let down by the leadership of this country, many of whom are calling for the President to come back home and to leave that fight.

Mr. Speaker, we owe it to the people of this country and to the free people in the entire world to stand our ground and to fight and to have the resolute intent to see that this war on terror is won. Mr. Speaker, I cast my lot on the side of those people who will fight this war, who will see that liberty triumphs over tyranny and over terrorism.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GEORGE MILLER) is recognized for 5 minutes.

(Mr. GEORGE MILLER of California addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

A TALE OF TWO ECONOMIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

Mr. EMANUEL. Mr. Speaker, the past 3 years show a tale of two economies and an unprecedented redistribution of wealth in this country resulting in one economy for middle-class families and one for the special interests.

While there is a profits boom for corporations and a compensation boom for the CEOs, there is a growing wage and benefits recession for the middle class. To those who say redistribution of wealth is wrong, I agree. I say redistributing the wealth to the wealthy is wrong and bad economics.

The tale of two economies is a contrast fueled by executive compensation that too often bears no relation to performance and regressive tax policies that punish work and reward wealth, creating an upside-down economy that has shifted the tax burden from wealth to work, burdening middle-class families already facing skyrocketing health care costs, skyrocketing and rising tuition costs, job uncertainty, and retirement insecurity.

While this administration creates tax loopholes for corporate jet use and has reduced the audits of millionaires, it is auditing hundreds of thousands of people and families earning $30,000 or less. This is the essence of class warfare. And as the famed investment adviser, Mr. Buffet, once said, ''There is class warfare and my class is winning.''

A report this week, recently out and reported by Bloomberg in the Chicago Tribune showed U.S. corporate profits have increased by 87 percent between the third quarter of 2001 and the end of 2003. Compensation for the average CEO got a big raise of 8.7 percent while salaried employees have seen an anemic increase of 1.5 percent. That is the lowest salary and wage growth since World War II in the beginning of an ''economic boom.''

Bill McDonough, the former chairman of the New York Fed, and now chairman of the Public Accounting Oversight Board, describes the gap between CEO and worker pay as ''immoral.'' That is his quote. And the New York Fed is not a bastion of liberalism. He notes that in 1980, CEO pay was 40 times higher than the average salaried employee and now is 500 times higher. He sums it up, and I quote, ''I know a lot of CEOs from 1980, and I can assure you the CEOs of 2000 are not 10 times better.''

The performance of Ken Lay from Enron, Dennis Kozlowski of Tyco, and Bernie Ebbers of WorldCom bear his statement out. At every turn the administration tells us the economy is coming along. That may be true in the executive suites and board rooms, but the other economy has created the largest income disparities in this Nation.

David Rosenberg, chief economist at Merrill Lynch, one of the leading investment banking firms on Wall Street, said, and I quote, ''The income from the recovery has been locked up in the corporate sector. We have had a redistribution of income to the corporate sector.''

This redistribution has been accelerated by the President's economic and tax policies. A study cited by The New York Times this week found that Americans are being taxed more than twice as heavily on earnings from work as they are on investment income, even though more than half of all investment goes to the wealthiest 5 percent of taxpayers.

While this administration has been cutting taxes, the rest of working America have been literally going from paycheck to paycheck and having a tax increase. As paychecks have often been effectively frozen for many, what has happened to their lives? Health care costs have gone up from $6,500 for a family of four in 2001 to $9,000 today. College tuition costs have gone up 10 percent in 2001, 10 percent in 2002, and 14 percent in 2003. $180 billion worth of retirement securities locked in 401(k)s have lost their net value.

We have literally put a squeeze on the middle-class family, and what we have today is the end of the middle class as we know it.

As President Bush seeks reelection, he can say he kept his commitment to the top 1 percent of America. The other 99 percent has not made out quite so well. This administration has two books, two sets of values, two sets of priorities, and a single economic strategy that divides the country along class. Compared to how Americans view their futures, we cannot deny the middle-class families the same dreams of affordable health care, quality education, a safe place to live that the most fortunate in this country have today.

A government that pays no heed to the yawning gap between rich and the middle class does it at its own peril.

As Louis Brandeis, a famous Supreme Court Justice, once said, ''We can either have democracy in this country or we can have great wealth concentrated in the hands of a few, but we cannot have both.''

DOUBLE STANDARD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. GARRETT) is recognized for 5 minutes.

Mr. GARRETT of New Jersey. Mr. Speaker, I rise now to speak on a double standard. Yesterday, the world learned of a young brave man from Philadelphia named Nick Berg. Nick Berg was a 26-year-old man who was in Iraq looking for work with the reconstruction and helping to lend a hand to the people in that country.

But a gruesome video, posted on a radical fundamentalist site, shows this young man, Nick Berg, bound in an orange jumpsuit with five hooded al Qaeda operatives standing behind him. One of those operatives read a prepared statement, pulled a large knife from his pocket, proceeded to push his head to the ground, and then with five strokes of the knife, decapitated Nick Berg and then held the head up to the camera.

I tell you, Mr. Speaker, my thoughts and my prayers go to Nick Berg's family and friends.

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I honestly cannot imagine what the family is going through right now and how they must feel, but this act by al Qaeda is a reminder of the evil we face in this world, and it should reinforce this country's determination to win this war against terror.

Yet another concern in the tragic death of Nick Berg is the lack of any forceful response and condemnation from the European nations or the Arab community over this incident.

The worldwide broadcast of the photos of Iraqi prisoners has brought forth outrage by Americans and Iraqis alike, but not surprisingly, the anti-Americans who are already on the radio exploiting that incident as an opportunity to condemn America and Americans, further promoting this double standard of which I speak. Yes, a small number of American soldiers committed crimes against Iraqi prisoners. Those soldiers should be and will be tried and punished accordingly.

However, while explaining our anger over these crimes and our will to punish these people rightfully when found appropriately guilty, calling for the resignation of a Secretary or even appearing over-apologetic for actions at the prison, I think it is a mistake and plays into the hands of the double standard.

The anti-American left, in this country and elsewhere, forever remembers every single American misdeed while forgetting every anti-American and every anti-human atrocity that the terrorists have taken against those who oppose any one of their causes.

Mr. Speaker, what of the media outlets? They detail the outrage of Iraqis based on the images of a few soldiers' crimes against prisoners. They are the same media outlets that showed no remorse, no outrage whatsoever a few years ago, for the thousands of lives that Saddam Hussein killed using his mass graves, nor when the Iraqi crowds in Fallujah burned and mutilated four American contractors and then hung their corpses from a bridge, there was no outrage or remorse.

A while back in an article, Eason Jordan from CNN, he admitted that his network had deliberately covered up and ignored Saddam Hussein's atrocities and they did that just so they

could stay on TV. This policy of caution by CNN is not reflected in their current coverage of the charges against American soldiers.

Although the actions against the Iraqi prisoners are unacceptable, they are not part of the standard procedure here in the United States or in the military treatment of our prisoners. Although al Qaeda states that their actions against Nick Berg are in retaliation for the crimes taken against these prisoners, their actions by al Qaeda in reality are typical of al Qaeda and all their affiliates. Their previous acts of violence against Americans serve as a testament to that fact, such as the attacks of September 11 and the slaying of a Wall Street Journal reporter, Daniel Pearl.

Mr. Speaker, make no mistake, the slaying of Nick Berg was about a war against the West in general, and America in particular, and we should firmly stand on our commitment to our American morals and values and denounce anti-American acts. However, while we publicly uncover crimes committed by some members of our military against Iraqi prisoners, we should not play into this double standard set by various media outlets, the European community and the Arab community, and the American left where America is condemned and the brutality, terror, and the cold-blooded acts of murder of innocent people by terrorists is left unreported and without condemnation.

As these recent actions show, the terrorists are not bound by any moral conscience. America must maintain its strength and its resolve to win this war on terror.

The SPEAKER pro tempore (Mr. CHOCOLA). Under a previous order of the House, the gentleman from Maryland (Mr. WYNN) is recognized for 5 minutes.

(Mr. WYNN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Mr. MCDERMOTT. Mr. Speaker, I ask unanimous consent to claim the time of the gentleman from Maryland (Mr. WYNN).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

AFFIRMING DEMOCRACY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

Mr. MCDERMOTT. Mr. Speaker, the debate over the war in Iraq should not be derailed by the tragedy overwhelming the Berg family. That would be a victory against America that al Qaeda is hoping for. No Republican or Democrat should do or say anything except that we are profoundly sorry for their loss. The country and Congress must remain focused on those responsible for the abuses at the Abu Ghraib prison.

The administration would have us believe that the abuses were the work of a few rogue soldiers, but accounts from some of those directly involved tell a different story. Today's Washington Post and other media worldwide are reporting on interviews and testimony given by soldiers. A private seen in the photos told the news media she was ''just following orders.'' The general in charge of the prison says she was confronted by a superior and told ''my way or the hard way.''

From the Middle East, a 16-year-old Iraqi alleges he was subjected to a mock execution in front of his family.

Mr. Speaker, I will include for the RECORD several news accounts.

The military commanders and civilians at the Pentagon cannot agree on who was in charge and what policies were approved. That is what happened in a scandal before. History gets rewritten. Memories fade as if on cue.

From the little Congress has been able to learn in the last few days, one thing is clear; the story keeps changing. This has the look and the feel of a cover-up. The tactic is a well-known one around here: Find some scapegoats; send out surrogates to decry every call for a full and impartial investigation; act and speak like scandal is no big deal.

The American people have seen a cover-up in the past by another Republican administration, and the American people refuse to accept anything less than full disclosure and the truth. It was true for the Nixon administration, it will be true for the Bush administration.

We do not have time to wait for the truth to trickle out, but we certainly cannot show the world that the government leaks are how America finds the truth. These abuses will not go away, no matter how many speeches the majority leader makes trying to divert the attention of the American people. These abuses will not go away until we back our words with deeds and bring justice to everyone involved. Privates do not set policy, they follow orders. This scandal goes deeper and higher than the Congress, and the American people have been told so far.

The Australian newspapers carry the story ''Rumsfeld Approved Harsh Interrogation.'' We need to know the truth, and that means we conduct the most vigorous and independent investigation ever undertaken. An investigation must begin at the top where policies were set and command decisions were made. The investigation must be widened to include Afghanistan and Guantanamo. People outside the reach of the administration should conduct an investigation.

This scandal has shaken this Nation to its core. It is a scandal being televised around the world every hour of every day. Virtually no one on the face of the earth has not seen or heard about the photographs and the atrocities. Yet some of the administration insist things are not so bad. Every time a Republican steps up to the podium to undertake damage control, the words echo around the world, and the words ring hollow.

Every attempt to act like this is no big deal undermines leaders in both parties who are trying to show the world that America does understand the meaning of justice and responsibility. Like it or not, and I certainly do not, we have to meet this head on. Words like torture, humiliation, and murder do apply. We have no choice but to shine the light of free and democratic society into the darkness of the scandal, whatever the outcome.

No one is above the law in America and we must show the world that the rule of law prevails in this country. It is not enough for the administration to say it will not happen again when the American people do not know how it happened in the first time. It is not enough to speak an apology on one hand, and then send Republicans to the podium to act as if we were somehow permitted an injustice now and then.

Freedom does not come easy, and freedom does not come with exceptions. It is not enough to name a few low-level soldiers and pretend we have addressed the issue. Administration surrogates are sent to the podium to paint Democrats, the news media, and anyone who dares to disagree as unpatriotic. The message around the world is America will do what it damn well pleases, anywhere in the world, illegal, immoral; sorry, world, we are immune. We cannot and we must not send that message.

The administration cannot spin-doctor its way out of the crisis. The world simply will not allow it. We cannot spin the inhumanity displayed in 1,000 pictures. No words can mitigate the humiliation. The war in Iraq is longer about affirming democracy in a far-off land. Now the war in Iraq is about affirming democracy in the United States.

[From The Age, May 13, 2004]

RUMSFELD APPROVED ''HARSH'' INTERROGATION

(By Julian Borger)

A list of two types of interrogation techniques: one is basic and for all prisoners; the other is much tougher and requires approval.

U.S. Defence Secretary Donald Rumsfeld approved the use of ''harsh'' interrogation techniques at Guantanamo Bay, including stripping detainees naked, making them hold ''stress'' positions and depriving them of sleep, a Pentagon official has confirmed.

Stephen Cambone, the under-secretary of defence for intelligence, also said severe interrogation techniques, including the use of dogs to intimidate prisoners, had been approved by military commanders in Iraq.

But Mr. Cambone, Mr. Rumsfeld's top intelligence official, insisted that all U.S. soldiers in Iraq were under orders to obey the Geneva Convention. He denied that the U.S. military leadership had helped create a climate for prison abuse.

Mr. Cambone was speaking at a Senate hearing to investigate the torture scandal at Abu Ghraib prison near Baghdad, and to determine whether the seven low-ranking guards facing courts martial for physical and sexual abuse of prisoners were following orders.

Revealing the interrogation methods allowed in Iraq, the Senate Armed Services Committee released a single page titled ''Interrogation Rules of Engagement'', listing two categories of measures.

The first showed basic techniques approved for all detainees, while the second involved tougher measures that required approval by Lieutenant-General Ricardo Sanchez, commander of U.S. forces in Iraq. Among the items on the second list were stress positions for up to 45 minutes, sleep deprivation for up to 72 hours and use of muzzled dogs.

Mr. Cambone said the Bush Administration's policy has been to apply the Geneva Convention to the interrogation and other treatment of detainees in Iraq, but several senators expressed doubts about whether some of the listed techniques conformed with international limits.

Major-General Antonio Taguba, who wrote a damning army report on abuse at Abu Ghraib, told the committee he found no evidence ''of a policy or a direct order given to these soldiers to conduct what they did''.

However, he said the scandal was a result of ''failure of leadership . . . lack of discipline, no training whatsoever and no supervision'', and he criticised a command decision to put the jail under the control of a military intelligence unit.

Critics have argued that Mr. Rumsfeld's decision to suspend Geneva Convention safeguards for prisoners at Guantanamo Bay, and the transfer to Iraq of interrogation techniques used there, helped create the conditions for the Abu Ghraib scandal, even if no order was issued to use torture.

''The despicable actions described in General Taguba's report not only reek of abuse, they reek of an organised effort and methodical preparation for interrogation,'' Democrat Senator Carl Levin said.

According to Senator Levin, an unpublished annexe to the Taguba report stated that ''sleep management, sensory deprivation, isolation longer than 30 days and dogs'' were described as a ''permissible technique for use in the Iraqi theatre'' on condition that the commanding general gave approval ''prior to employment''.

Mr. Cambone said the techniques had been approved by U.S. commanders in Iraq, not by the Pentagon.

However, he confirmed that Mr. Rumsfeld had last year approved a new set of techniques, but insisted on being asked for permission each time this ''stress matrix'' was used.

General Taguba stood by his inquiry's finding that military police jailers should not have been involved in conditioning Iraqi detainees for interrogation, even as Mr. Cambone disputed that conclusion.

Mr. Cambone said that the military policy and military intelligence needed to work closely to gain as much intelligence as possible from the prisoners.

Mr. Cambone also said that General Taguba misinterpreted the November order, which he said only put the intelligence unit in charge of the prison facility, not of the military guards.

While General Taguba depicted the abuses at the prison as the acts of a few soldiers under a fragmented and inept command, he also said that ''they were probably influenced by others, if not necessarily directed specifically by others''.

His report called for an inquiry into the culpability of intelligence officers, which is still under way.

The unusual public sparring between a two-star army general and one of Mr. Rumsfeld's most trusted aides cast a spotlight on the confusing conditions at the prison last year when the worst abuses occurred, as well as the sensitive issue of whether the Pentagon's thirst for better intelligence to combat Iraqi insurgents contributed to the climate there.

I Was Forced to Abuse Inmates, Says U.S. Soldier

An American soldier photographed mocking naked Iraqi prisoners has claimed she was told to pose for the pictures by senior officers.

Pte Lynndie England, 21, faces a court martial over the pictures of abuse in the Abu Ghraib prison in Baghdad which included her holding a dog lead tied to the neck of a naked Iraqi inmate.

She was also shown laughing with a cigarette in her mouth while pointing at the genitals of naked prisoners.

However, Pte England claimed in an interview with the American television network CBS, the first broadcaster to show the abuse pictures, that she was forced to take part in the humiliation of prisoners.

''I was instructed by persons in higher rank to stand there, hold this leash,'' she said. ''And they took a picture and that's all I know.''

She also admitted that prisoners had suffered worse abuse, but refused to elaborate on the advice of her lawyer.

Pte England, who is being held in custody at Fort Bragg, North Carolina, said she had been told that the abuse was helping to stop attacks on American soldiers by Iraqi insurgents.

Pte England's lawyer, Giorigo Ra'Shadd, claimed that some of the abuse at the prison was orchestrated by CIA agents. ''The spooks took over the jail,'' he said. ''Everything about that command was wacky.''

Military officials have admitted that intelligence agents did interview inmates at the prison, and a military intelligence officer was put in charge of Abu Ghraib last November.

However, Maj Gen Antonio Taguba, whose report into the abuse was leaked last week, told the U.S. Senate yesterday that he had found no evidence of senior officers or intelligence officers ordering the abuse.

Pte England, who is four months pregnant, has been charged with maltreating prisoners together with six other soldiers from the 372nd Military Police Company. She faces up to 15 years in prison if found guilty.

No date has been set for her hearing, but Specialist Jeremy Sivits, 24, will face a court martial in Baghdad next week.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. STUPAK) is recognized for 5 minutes.

(Mr. STUPAK addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

SUPPORT LAW ENFORCEMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. STENHOLM) is recognized for 5 minutes.

Mr. STENHOLM. Mr. Speaker, I am proud to stand here tonight in the well in personal support of our law enforcement officers, all of them all across the United States. Along with our military members serving so bravely in harm's way overseas, our law enforcement officers deserve high recognition and a special place in our hearts for their service in the name of security and safety.

With this being National Police Week and Saturday, May 15, being National Peace Officer's Memorial Day, I think it is important for us to pause to recognize the noble duty performed by our peace officers. I recognize the special difficulties that come with being both a crime fighter and a keeper of public safety. I cannot imagine the hazards faced by these brave men and women every day. Not only do law enforcement officers fight crime, they work tirelessly, night and day, to prevent crime from happening in the first place.

According to the National Law Enforcement Officers Memorial Fund, 145 law enforcement officers were killed in the line of duty in 2003. On average, more than 58,066 law enforcement officers are assaulted each year, resulting in some 16,494 serious injuries. We have all witnessed frightening scenes and events where no one else would want to go, but the first people who respond to these incidents and accidents are the police. To me that encapsulates the honorable service of our Nation's police officers. They go places that most folks want to avoid.

In fact, just today an alert in the Rayburn House Office Building notified us of a suspicious substance that was found. I admired the officers of the Capitol Police who were there to cordon off a corridor during this alert. I thank God that the alert proved negative, but the mission and duties of all law enforcement officers were brought into sharp relief, and at that moment I was thankful for the protection of us in this body of the Capitol Police.

Fighting crime is not an easy job, and I am certainly not a police officer, but I think I am safe in that assertion. It is a scary job with a lot of danger, but the brave men and women of law enforcement take up the banner of justice and safety for us all. We should be very proud of that.

Mr. Speaker, a tremendous amount of our homeland security falls on the shoulders of local police officers. Our police are the ones who investigate and apprehend suspects who would unleash terror in our homeland. They are the ones we look to for protection and safety against the tragedy of crime and disaster.

Mr. Speaker, any investment that we make in public safety is a winning proposition. There is a great need to support law enforcement not only through our words but through our actions.

Coming from a rural area, I know all too well the challenges faced by people who do not live in or near major cities. There is a unique set of circumstances that confront our rural law enforcement officers every day. That is why I am pleased to join my friend, the gentleman from Oklahoma (Mr. CARSON)

by cosponsoring H.R. 4276, the Rural Safety Law Enforcement Improvement Act. This is good legislation that not only goes a long way to making rural communities safer, but helps to heal some of the damage caused by drug abuse. Rural areas suffer from the same problems that urban and suburban areas do, but the rural areas must make do with fewer resources.

Mr. Speaker, I am fully committed to honoring and providing for our law enforcement officers from all regions of our Nation. I am hopeful that we all remember them not just during National Police Week but year around. They provide immeasurable service to us and I hope that we remember them when it really counts.

To all law enforcement officers, I thank you and may God continue to bless you and your families.

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The SPEAKER pro tempore (Mr. CHOCOLA). Under a previous order of the House, the gentleman from Louisiana (Mr. ALEXANDER) is recognized for 5 minutes.

(Mr. ALEXANDER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. DAVIS) is recognized for 5 minutes.

(Mr. DAVIS of Tennessee addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Utah (Mr. MATHESON) is recognized for 5 minutes.

(Mr. MATHESON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

(Mr. CONYERS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

IRAQ

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. HOEFFEL) is recognized for 5 minutes.

Mr. HOEFFEL. Mr. Speaker, we should have no more talk about resignations. We should not talk about Donald Rumsfeld resigning his office. We should not let him resign his office. He ought to be fired. He ought to be fired, and George Tenet ought to be fired. I do not know that there has ever been two Cabinet Secretaries in the history of this Nation that have given their President more bad information, more bad intelligence, more bad advice than Don Rumsfeld and George Tenet. And while the President is at it, he ought to clean house at the Pentagon. He ought to get rid of Paul Wolfowitz and Doug Feith, all of the architects of this failed policy in Iraq.

It is astonishing to me that the President is so loyal to people who have given him such bad advice. If you look back on the failures in Iraq, and I speak as one who voted in favor of the military authority that the President sought a year and a half ago, I voted ''yes'' because I believed we had to disarm Saddam Hussein of weapons of mass destruction. I am now convinced that I was misled, that the Congress was misled, that the people of this country were misled.

And you look back on the failures of intelligence and planning and advice from George Tenet and Don Rumsfeld and the list is very long. The weapons of mass destruction have not been found. The intelligence was bad coming from George Tenet, and the intelligence was hyped by Don Rumsfeld and the other civilian leadership of the Pentagon. Don Rumsfeld tried to do this war on the cheap. We did not send enough troops over there. General Shinseki said we needed several hundred thousand troops. He was virtually run out of the Army for saying so. He was right. We have got 135,000 troops in Iraq today, and we have not secured the country. The country is not secure. Clearly more security is needed. We tried to do this on the cheap without enough troops, without enough armor.

The troops left their armor at home, and our soldiers have been sitting ducks killed by roadside bombs that armored personnel carriers and tanks would not have to worry about but unprotected Humvees, which is what our troops have been given, do have to worry about.

There was no plan to deal with the looting. There was no plan to deal with the violent insurgency that has come up. We were told by Don Rumsfeld we would be greeted as liberators. Instead, we have become occupiers. Donald Rumsfeld believed Ahmed Chalabi and the other leaders of the Iraqi National Congress. Chalabi, one of the great four-flushers of all time. You ask me what a four-flusher is. I am not sure. It is a phrase my grandfather used to use. I think it has something to do with having four cards to a flush and that you cannot trust a guy who is a four-flusher. Well, that is Ahmed Chalabi. He is a spinner. He has not given us good advice. But our leadership believed him in the Pentagon and we have paid a heck of a price because of it. We have no notion of how long we are going to stay or any notion of how much we must pay.

And now the prison abuse scandal has come. Clearly, the privates and the sergeants were completely wrong in the steps they took and they need to be punished, but I do not think the accountability stops with them. It goes up the chain of command. Because the training was inadequate; the supervision was inadequate. There has been no accountability in the chain of command at this point. Secretary Rumsfeld did not listen to the International Red Cross who apparently started complaining about this a year ago. He did not listen to the Secretary of State who began complaining to the Pentagon and to Mr. Rumsfeld several months ago. The Secretary of Defense did not read the report that he ordered. And he did not even tell the President. He did not even tell the President.

We do not need to stay the course in Iraq, Mr. Speaker. We need to change the course in Iraq. We are not winning. We want to create a stable and peaceful Iraq with a representative self-government, hopefully a democracy. There can be no reconstruction without security. There can be no transfer of authority and government without security. There can be no elections without security. There can be no democracy without security. And there is no security in Iraq today. We cannot stay the course. We must change the course.

We have three choices. We can pull out, declare victory, or say it does not matter and pull out; and I think that would be a great mistake. We cannot leave Iraq worse than we found it. We did get rid of a murderous tyrant, and I am glad we did, but we cannot leave Iraq in shambles. We can stay the course, but we are not winning. We won the military victory, but we are not winning the peace. Or we can mobilize more troops, international troops from NATO and Arab nations preferably, our troops if necessary, in order to stabilize that country and achieve our goals.

REACTION TO CYPRUS REFERENDUM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, last month the Greek Cypriot majority on the island nation of Cyprus overwhelmingly rejected a U.N. plan that forced them to put too much faith in the government of Turkey. Mr. Speaker, let us be clear. The Greek Cypriot people did not reject reunification of Cyprus. They rejected a proposal by U.N. Secretary-General Kofi Annan, a proposal they determined was not in the best interests of their nation as it prepared to join the European Union.

After the Annan plan was defeated, Cypriot President Papadopoulos said, ''I should emphasize that the Greek Cypriots have not rejected the solution of the Cyprus problem. They are not turning their backs on their Turkish Cypriot compatriots.'' President Papadopoulos once again called upon Greek Cypriots and Turkish Cypriots to work together for a united Cyprus. Both the United Nations and the Bush administration must realize that the

Greek Cypriots are still dedicated to reunification, but they were simply not willing to accept a plan that forced them to accept the good will of the Turkish Government.

Mr. Speaker, before last month's vote, I voiced concern over some of the provisions included in the final Annan plan. I think the overall vote shows who benefited most from this plan, the Turkish Cypriot people and Turkey. I met with the Secretary-General in March to express my concerns with some of the proposals he was planning to include in his final plan. During that meeting, I strongly recommended that the United Nations maintain a presence on the island as long as the Turkish Army remained there.

The Secretary-General assured me that U.N. forces would remain on the island for a considerable amount of time, but his final plan allowed Turkish troops to stay indefinitely without an international presence. This was simply unacceptable. Like most Greek Cypriots, I was extremely worried about the actions Turkish troops would take with the absence of a neutral international presence to keep them in line. I was also concerned that Turkey would not abide by the final agreement and its troops would contribute to further instability and insecurity.

Mr. Speaker, the Annan plan should have called for the removal of all foreign troops and should have eliminated the right of foreign powers to unilaterally intervene in Cyprus. Greek Cypriots were concerned that the plan did not contain ironclad provisions for the implementation of the agreement, especially for those provisions where Turkey's cooperation was necessary. The Cypriots were forced to take the Turkish Government at its word that occupied land would be returned to its rightful owners 3 to 5 years down the line. The Cypriots were forced to take the Turkish Government at its word that the Turkish Parliament would ratify the treaty. And, as I have said, the Cypriots were forced to believe that Turkey would remove its troops according to the timetable in the Annan plan and were forced to deal with the fact that Turkish troops will remain in Cyprus forever with Turkey having the unilateral right to intervene at any time.

Greek Cypriots were also concerned that the Annan plan denied the majority of the Greek Cypriot refugees the right of return to their homes in safety. They were also concerned the plan imposed on them the liability to pay large claims for the loss of use of properties in the Turkish occupied area.

Mr. Speaker, all of these concerns led to the rejection of the Annan plan by the Greek Cypriots in the referendum. But as the Greek Cypriot President said, the Greek Cypriots are not turning their backs on the Turkish Cypriots. Greek Cypriots will continue to hold out hope that a common future for all Cypriots within the European Union will eventually be a reality, but it must happen without any third parties, like the Turkish Government, dictating that future.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

SMART SECURITY AND IRAQI PRISONERS OF WAR

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, I was absolutely outraged last week when along with the rest of the world I learned that U.S. service members and private American contractors in Iraq had abused and tortured Iraqi prisoners of war and had forced them to commit heinous sexual acts. War is devastating, it is terrifying, but even in war there is no place for actions such as these. The abuse inflicted by a few soldiers is causing much ill will around the world. What is worse, I feel it will further embolden our enemies to commit acts of terrorism against the United States and horrific acts of abuse against our own troops should they be captured.

But almost equally reprehensible was the response of our Commander in Chief to the abuses that took place at Abu Ghraib, the prison in Iraq. Instead of claiming full responsibility for the actions of members of the United States military, President Bush expressed his regrets that the abuses had occurred while distancing himself from those abuses. At another time, President Harry Truman did not try to distance himself from abuses that occurred during his watch. In his January 1953 farewell address to the American people, President Truman made an important assertion in that regard, saying, and I quote, ''The President, whoever he is, has to decide. He can't pass the buck to anybody. No one else can do the deciding for him. That's his job.'' President Truman is also the person who made famous the quote, ''The buck stops here.'' President Bush would be well served to take notice of this quotation which Harry Truman thought was so important that he kept it as a sign on his desk in the Oval Office.

Mr. Speaker, the buck does not stop with the young woman who was photographed holding an Iraqi prisoner on a leash. The buck does not stop with Brigadier General Jannice Karpinski, the U.S. general in charge of running the prisons in Iraq. The buck does not stop with Lieutenant General Ricardo Sanchez, one of the highest-ranking military officers in Iraq. The buck does not even stop with Donald Rumsfeld, the Secretary of Defense. The buck stops with the Commander in Chief. At the moment, that happens to be George W. Bush. That is where the buck stops. Remember what Harry Truman said at his 1953 farewell address. He said the President cannot pass the buck to anybody.

There has to be a better way, because the Bush doctrine of unilateralism and passing the buck within his own administration has been tried and it has failed. It is time for a new national security strategy, one that emphasizes brains instead of brawn, one that is consistent with the best American values. I have introduced legislation to create a SMART security platform for the 21st century, H. Con. Res. 392. SMART stands for ''sensible, multilateral American response to terrorism.'' SMART treats war as an absolute last resort. It fights terrorism with stronger intelligence and multilateral partnerships. It controls the spread of weapons of mass destruction with a renewed commitment to nonproliferation. And it aggressively invests in the development of impoverished nations with an emphasis on women's health and education.

Remember, the buck stops with the Commander in Chief, the President of the United States. No more passing the buck, Mr. President. Instead, let us rely on the very best of America, our commitment to peace and freedom, our compassion for the people of the world and our capacity for multilateral leadership. Let us be smart. Let us be smart about our future. SMART security is tough, it is pragmatic, it is patriotic, and it will keep America safe.

RECOGNIZING THE INVALUABLE CONTRIBUTIONS MADE BY PEOPLE OF INDIAN ORIGIN TO THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. MILLENDER-MCDONALD) is recognized for 5 minutes.

Ms. MILLENDER-MCDONALD. Mr. Speaker, I come to the House floor tonight to speak on House Concurrent Resolution 352, legislation that I am proud to have introduced which gives much deserved recognition to the many invaluable contributions made by the people of Indian origin to the United States. Since the earliest days of our Republic, citizens of Indian origin have emigrated to our Nation in the pursuit of freedom and prosperity for themselves and their families. As American citizens, they have integrated into American society, and they have made extraordinary contributions to the United States, helping to make our Nation a more efficient and prosperous country.

□ 2015

Indian Americans greatly value education and have made many significant contributions in the fields of law,

science, technology, business development, public service, literature, and the arts, just to name a few. They are our doctors; over 35,000 of them practice medicine in the United States. And they are our astronauts, professors, and business leaders.

There are over 2 million Indian Americans today who proudly call America their home, and they have become woven into the economic growth and social fabric of our Nation.

This resolution also honors the long history of democracy in India, the most populous democracy in the world; and it reaffirms our Nation's commitment to working with India towards our mutual interest of global peace, prosperity, and freedom. India and its 1 billion citizens greatly value the close relationship that exists between the United States and their country, and they continue to strengthen their ties with us based on their shared value and shared security concerns.

The United States and India are strategic partners; and as the Speaker knows, India was one of the first countries to offer the United States its support following the tragic September 11 attacks. And today India remains one of our closest allies in the war on terrorism.

We must continue to increase trade and cooperative economic efforts with India and together strive to increase prosperity among all nations of the world. As two democracies working together, we can make dreams become a reality.

I also want to recognize the efforts of Dr. Krishna Reddy, president of the Indian American Friendship Council, for his efforts in building and promoting strong bonds of friendship between Indian Americans and all Americans.

Finally, this resolution acknowledges the benefits of working together with India towards promoting global peace, prosperity, and freedom. Once again, I am proud to have introduced this resolution, and I am very pleased that the House of Representatives has passed it overwhelmingly today. I thank my colleagues for that. Doing so sends a clear message to both the United States and India that we share common values, honor contributions from both sides, and treasure our mutual friendship.

H. CON. RES. 352

Whereas India is the largest democratic country in the world and enjoys a close and mutual friendship with the United States based on common values and common interests;

Whereas people of Indian origin who have for decades immigrated to the United States have made extraordinary contributions to the United States, helping to make the United States a more efficient and prosperous country;

Whereas these contributions have spanned disciplines ranging from science, technology, business development, and public service, to social justice, philanthropy, literature, and the arts;

Whereas generations of doctors and nurses of Indian origin have attended to the sick in large cities as well as in rural regions of the United States that are otherwise underserved;

Whereas people of Indian origin have designed defense systems that protect United States naval ships while at sea, and have contributed to engineering, designing, and participating in the United States space shuttle program, at great personal sacrifice;

Whereas people of Indian origin have invented many of the technologies that power the computer and the internet, have created and directed laboratories that produced significant breakthroughs in modern medicine, and have taught at, and are leaders of, many United States institutions of higher learning;

Whereas people of Indian origin have made invaluable contributions to the vitality and viability of the United States economy through creative entrepreneurship and leadership in both large and small businesses;

Whereas people of Indian origin have shared and integrated their rich culture into the fabric of American daily life;

Whereas trade with India integrates a democratic country of more than one billion people into the flow of commerce, offering the United States a large and rapidly growing market and unlocking vast reservoirs of talent;

Whereas the United States is India's largest trading partner and a major source of foreign direct investment and foreign institutional investment in India;

Whereas United States exports to India are growing at 25 percent, making India one of the fastest growing foreign markets for United States goods and services;

Whereas India's industrial tariffs have fallen from 150 percent in 1988 to a peak rate of 20 percent today;

Whereas United States exports to India will accelerate as India continues reducing tariffs and instituting liberalization measures in its trade and investment regime, thereby expanding the trade relationship of the two countries and bringing mutual benefits;

Whereas India has been a key partner in the war against terrorism;

Whereas India and the United States have agreed to increase cooperation in the areas of nuclear activities, civilian space programs, high-technology trade, and missile defense;

Whereas multi-faceted cooperation between India and the United States will strengthen the bonds of friendship and commerce between the two countries, lead to the peaceful use of space technology, and increase global stability and security; and

Whereas United States efforts, whether in combating global HIV/AIDS, pursuing nuclear non-proliferation, promoting democracy, enhancing stability of the world economy, eliminating poverty, fighting terrorism, and expanding and strengthening global trade, will be more effective and successful with India as a strategic partner: Now therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

(1) honors the contributions of people of Indian origin to the Untied States, and

(2) is committed to working together with India towards promoting peace, prosperity, and freedom among all countries of the world.

The SPEAKER pro tempore (Mr. CHOCOLA). Under a previous order of the House, the gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

(Ms. JACKSON-LEE of Texas addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. ETHERIDGE) is recognized for 5 minutes.

(Mr. ETHERIDGE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

THE MURDER OF EMMETT TILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. RUSH) is recognized for 5 minutes.

Mr. RUSH. Mr. Speaker, I rise this evening to speak on the Justice Department's recently announced initiative to partner with the State of Mississippi in investigating the brutal murder of Emmett Till in the sham Jim Crow trial that subsequently acquitted the perpetuators of this heinous crime.

Given the significance of this tragedy in American history, I accepted the Justice Department's announcement with mixed feelings. On the one hand, I felt relief. But on the other hand, I thought to myself it is about time. This investigation should have been conducted at least 49 years ago.

On August 28, 1955, in Money, Mississippi, Roy Bryant and his half brother J.W. Milam kidnapped 14-year-old Emmett Till from his uncle's home where he was staying for the summer. Bryant and Milam brutally beat Emmett Till, took him to the edge of the Tallahatchie River, shot him in the head, fastened a large metal fan used for ginning cotton to his neck with barbed wire, and pushed the body into the river. Emmett Till's body washed ashore some 3 days later.

Emmett's mother, Mamie Till, insisted on leaving her dead son's casket open at the funeral on the south side of Chicago. She did not let the coroner alter Emmett's deformed face, and for 3 days his casket lay open for anyone and for everyone to see. Photographs of Emmett's body were published in newspapers and magazines around the world. And after an all-white, all-male jury acquitted Bryant and Milam for the murder, the world became outraged.

Two years later, Milam and Bryant subsequently and candidly, and truthfully I might add, admitted their crime to Look Magazine and went into exact detail on how they committed their heinous crime.

A hundred days after the murder of Emmett Till, Rosa Parks refused to give up her seat on a bus in Montgomery, Alabama, and the American civil rights movement was born. In the aftermath of the trial, Mamie Till begged the Justice Department and President Eisenhower to investigate her son's death, but her pleas were ignored.

Almost 50 years later, on February 10, 2004, I introduced a bipartisan congressional resolution, H. Con. Res. 360, calling upon the Justice Department to investigate the murder of Emmett Till and the sham trial that acquitted Bryant and Milam. Fifty-four Members of

the House of Representatives, including the entire Congressional Black Caucus, cosponsored my resolution with the hopes that Ms. Mamie Till-Mobley, who died in January of last year, could finally realize her profound wish that Emmett's murder be investigated. It is too bad that she is not alive today to see the commencement of this investigation.

The facts of this case are beyond dispute. The murder of Emmett Till has been the subject of numerous historical accounts, including a high-profile documentary on PBS's ''American Experience'' series, a recently published book on Mamie Till-Mobley, and a yet-to-be-released documentary by a young African American film-maker who has been working on this project for some 9 years. Many of us regard the cruel and senseless tragedy of Emmett Till as the spark that ignited the civil rights movement. However, notwithstanding the facts in the history books, the official account of the murder of Emmett Till delineates Bryant and Milam as innocent men who were acquitted in a fair trial. Worse, it is still possible that other co-conspirators in this crime are still alive.

Mr. Speaker, I call upon the Justice Department to do a thorough job and leave no stone unturned. If there was official misconduct by Federal or local officials, they should not be immune to any possible prosecution. Not only was Emmett Till's senseless and savage murder a crime, but the subsequent official trial that freed Milam and Bryant was also a crime.

According to yesterday's edition of the Chicago Tribune, witnesses are now surfacing that suggest others may have been involved in the murder. Though Milam and Bryant were the two criminals on trial, some witnesses say they saw up to five men with flashlights and guns at the scene of the crime. It is important that the Justice Department investigate these possible leads and others as they go forward with Mississippi and county officials.

Bryant and Milam have since died, but justice is never too late. While we will never be able to erase this inhumane and cruel episode from the annals of American history, we can certainly set the record straight. Not only may coconspirators to the crime and trial still be alive, we can also have an official public account of what exactly happened. Reopening an investigation of a civil rights era murder is hardly unprecedented: the murder of Medgar Evers and the bombing of the 16th Street Baptist Church in Birmingham, AL, where four innocent young, black girls were killed are two cases upon which federal authorities reopened investigations resulting in arrests, prosecutions and convictions. Emmett Till deserves no less.

I call upon the Justice Department to do a thorough job and leave no stone unturned. If there was official misconduct by federal and/or local officials, they should not be immune to any possible prosecution. Not only was Emmett Till's senseless and savage murder a crime, but the subsequent official trial that freed Milam and Bryant was also a crime. Everyone and anyone who was involved in this criminal injustice should be fair game under a quality criminal investigation.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) is recognized for 5 minutes.

(Mrs. CHRISTENSEN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

IRAQ AND BRINGING JOBS BACK TO AMERICA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Kansas (Mr. TIAHRT) is recognized for 60 minutes as the designee of the majority leader.

Mr. TIAHRT. Mr. Speaker, tonight I am going to spend a little bit of time talking about how we are going to bring jobs back into America. But before I get to that topic, I want to mention a little bit about Iraq and the situation over there currently.

There has been a lot of handwringing in Washington, D.C. over what has happened in the Abu Ghraib prison. It was a horrible scandal that was wrong, it was sick, and we must hold those people who are responsible accountable. Court martials are currently going on. They will be open public prosecutions. There will be quick and severe punishment, and I think it is necessary that we get all of those responsible.

Recently in a hearing, I was able to listen to Major General Tagabu, who underwent the investigation; and he found that there is no documented approval of these actions. Quite the opposite. Everything that is documented within the Department of Defense says just the opposite. The Geneva rules and conventions will be followed. Proper procedures of handling prisoners will be followed. But yet in that prison, and it is an isolated case, there was a lack of training, there was lack of supervision, there was poor discipline among the troops; and the result was what we have seen in the media recently, including photos and videotapes that are available. But this situation will be corrected, and there is no coverup.

I think there is a silver lining in this dark cloud, though, that has been surrounding Iraq. The 130,000-plus troops that are in Iraq have been doing exemplary work. They have been carrying out their duty with great respect to the Iraqi people, and they have focused on the enemies of those people who hate democracy in the Middle East. They have done their job without shame, and they have conducted themselves in a professional manner. The leadership in Iraq has done an excellent job, as has the leadership in the Pentagon.

It is probably likely that the Secretary of Defense does not know how many traffic tickets were issued to members of the military this past week. There is a lot going on around the globe with approximately 3 million Americans in uniform. But yet when this was discovered, he acted quickly and sternly and brought this to the forefront. I think Secretary Rumsfeld needs to continue in that position. He is the right man for this time. He is the right man for the job. We need his clear thinking and his firm leadership.

Now I would like to move on to careers for the 21st century, but I want to go into a little bit of history before we get into some specifics about how we are going to bring jobs back into America. Our economy has been suffering lately. In 1999, we suffered a tech bust, and we saw the stock market drop $7 trillion in value and money came out of our economy. In November of 2000, it was the technical start of our recession, which was one of the shortest recessions in history.

But then on September 11, 2001, terrorists attacked America, and they plunged our economy into a deeper recession. But then we responded here in Washington, D.C. with tax relief. People did one of three things when they got a little extra money in their pocket. They either spent that money, which was a demand for goods and it is helping our economy respond; or they saved that money, which allowed money available for home mortgages, and we have seen one of the biggest expansions in the home market in recent history; or they invested it.

When that money was invested, corporations have then taken that money and built new plants and now are hiring people. In fact, in the month of April, jobs increased by 288,000. Over the last 2 months, there has been an increase of 600,000 jobs. Since last September, there has been an increase of 1.1 million jobs to our economy. In fact, today there are more Americans working than ever before in the history of our Nation. Today, according to the Department of Commerce and Dr. Kathleen Cooper, who is responsible for the 7,000 employees that collect this data, she tells us that today there are more Americans working than ever before in the history of our Nation.

But we can do better. What we want in America is high-quality, high-paying jobs; and here is how we are going to get there. One of the things that I found out when I was talking to local manufacturers in the Wichita area is that it is not about wages. The problem we are having with bringing jobs back to America is not about wages. In fact, the CEO of Raytheon Corporation in Wichita, Kansas told me that after he was working on an attempt to hold our wire harness manufacturing jobs for Raytheon in Wichita, Kansas, he worked with the union that came up with the best solution possible. He finally came to the conclusion that if his wages were zero, he would still have to do something about the excessive cost that he is facing.

Today, I met with a CEO of Converge Corporation. He told me that if he was going to build a building in America or build a building in the Philippines or in India, the costs are about the same. He convinced me that what we need to do to control costs and bring jobs in America is not about overhead.

So it is not about wages. It is not about overhead. It is about costs that are out of control for the CEOs, for the people who keep and create jobs here in America.

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Now, what are these costs? Where do they come from? Well, over the last generation, Congress, with good intentions, has passed legislation that has ended up with disastrous results.

The results have been that we have increased costs that cannot be controlled by the people who keep and create jobs, by the employers, by small business employers, by large corporations. Because it is things that are controlled by Congress. The CEOs and the small businessmen and the entrepreneurs and those who hire people cannot have a vote. The votes occur right on the floor of the House of Representatives.

Well, it is time that we change that environment. We have divided these costs into eight separate issues, and this week we started the first of 8 weeks to deal with these costs so we can bring back jobs into America. The eight issues are health care security; bureaucratic red tape termination; lifelong learning; trade fairness and opportunity; tax relief and simplification; energy self-sufficiency and security; research and development; and ending lawsuit abuse and litigation management.

Health care security we will come back to, because that is the issue we are dealing with this week. But let me give you a little snippet of what we are going to deal with in weeks to come.

Next week we will be dealing with bureaucratic red tape termination. Over the last generation, Congress has put many agencies in place that have forced continuation of an increase in paperwork to be submitted, and it has become unrealistic, impractical, and an unnecessary environment that includes OSHA mandates; that is, Occupational Safety and Health Agency, OSHA mandates, and they are driving our industries and small businesses and health care systems to a grinding halt.

According to the National Association of Manufacturers, 12 percent of the cost of any product made in America is dealing with bureaucratic red tape.

Energy cost, we wonder why we have $2 gasoline today. Well, our bureaucratic red tape has imposed regulations that cause our limited oil manufacturers to try to make boutique gasolines that are being shifted through limited pipelines, so we come up with temporary shortages. This week we have $1.95 gas in Wichita, Kansas. So we have to deal with the bureaucratic red tape.

Following that, we are going to deal with lifelong learning. We are going to talk about job training and retraining so that we can have a highly skilled workforce. Now, our public school system has given generations of Americans the tools to pursue their dreams, and it can certainly help prepare boys and girls for the demands of a new century.

But we must focus on those areas that are going to be in demand for us to stay in the lead. We must concentrate on science and engineering careers. Our bachelor programs and the production rates of scientists and engineers are among the lowest in the world today in America, and we must change that.

The next issue we are going to deal with is trade, fairness, and opportunity. We need to have a fair deal in the world market. We need to make sure that our exports are treated the same as everyone else treats exports. We should have equalizing tax rates. We should ensure balanced tariffs, and we should prevent currency manipulation. And we have to stop other countries from targeting certain industries here in America.

One example in Wichita, Kansas, is a company that builds handtrucks. Right now we are encouraging the Commerce Department to take up with the nation of China their attempt to try to force out handtruck manufacturers in America by flooding the market with undercost handtrucks.

The same is with auto lift equipment, that equipment that lifts up automobiles so it can be worked on in gas stations and auto repair shops, that is being targeted by China as well. That needs to be corrected.

The next issue we are going to deal with is tax relief and simplification. Right now we do not have a fair playing field for American industries. Our tax costs end up buried in our products and it drives up the cost of our products, and there is a way we can pull out some of those costs.

We also need to encourage the right incentives, like accelerated depreciation. That concept of accelerated depreciation will in fact get more products built and sold within America and it will help bring jobs back to America.

But we need equity in our Tax Code. We ought to look at something like the fair tax that is being proposed by the gentleman from Georgia (Mr. LINDER). It is a national sales tax that would give us great trade advantages. We would eliminate income taxes. When we move a car or something built in America overseas, that tax would stop at the border and we would make ourselves 22 to 25 percent more competitive.

The week following that, we are going to deal with energy self-sufficiency and security. We are going to talk about why we have $2 gas. We are going to talk about stabilizing our energy system. We are going to talk about creating 700,000 jobs in America and strengthening our businesses.

Following that we are going to deal with research and development. America has always been in the lead. It has a history of attracting the brightest minds in the world and creating some of the best concepts and ideas. But we are seeing a reduction in the number of papers submitted about research. We are seeing less money being available for research and development in America, and we need to change that around by providing incentives so we can apply knowledge into the public market and disseminate the technology that we develop.

The last week, the eighth week, we are going to deal with ending lawsuit abuse and litigation management. We have become a litigious society.

Our Nation was built on justice and our courts were structured to protect Americans, but that objective has become warped over the years. It has warped to the point where our legal system actually attacks our citizens and our way of life.

We have come to the point where the United States Congress has had to step in and prevent food companies from being sued, and distributors and restaurants from being sued, so that they are not liable for somebody eating too many cheeseburgers. It is amazing that we have come to this point, but litigation has turned against us and turned against our economy. It has driven up costs and it has driven jobs overseas.

If we could make some simple changes, a drastic change would be loser pays. It is the system that is prevalent in Europe today. They do not have the same high cost of litigation we have in America. Loser pays would be the obvious solution. If that is not achievable, then we ought to outlaw frivolous lawsuits and return the court's attention to upholding the laws of the land.

One commonsense change that is part of our history is the statute of repose that was put in place in 1994 by Congress. The result in the aircraft industry, what it did basically was limit liability for single-engine aircraft to 18 years. In other words you could not sue them for design flaws after 18 years. For heavy jets it was 23 years. You could not sue the manufacturers for design flaws after 23 years. I mean, if an airplane can fly for 18 years, you would think all the design flaws would be out of it. I do.

But anyway, the statute of repose created 4,000 jobs in south central Kansas. It increased the working population of aerospace manufacturing in that area by 15 percent, and it restarted a single-engine production line in Independence, Kansas. That same concept can be applied to other manufacturing in America, and it can see a parallel increase in jobs.

So, let us go back to health care security, the issue we are dealing with this week. I have got some charts that I think illustrate very closely the point we are dealing with.

In this first chart, we have a lady standing at the door and we have a stork delivering a pizza. He says, ''I used to deliver babies, but the insurance got too expensive.'' So he can no longer deliver babies anymore, he is delivering pizza.

This chart shows the States in America where a medical liability crisis exists, sort of a national view. The white States are the six States that have taken care of their medical malpractice laws and are currently in a pretty good situation. The 19 States in trouble are the ones in red. That is where health care costs have dramatically gotten out of control.

Here is a good example between a yellow State, which is showing some problem signs but not there yet, and a red State. We have Kansas, where I am from, the Fourth District of Kansas, and then we have Missouri right next door, a red State, or a State in crisis.

In that State, in Kansas City, where we have Kansas City, Missouri, and Kansas City, Kansas, the physicians in Kansas City, Missouri, had a white-coat flight day, where they walked across the State line to emphasize the point that if you do not deal with medical liability costs, you are going to lose physicians. And physicians have been migrating, closing their offices in Kansas City, Missouri, and opening them up in Overland Park and other places on the Kansas side where they have better protection for the liability crisis in medical malpractice.

Time magazine, they emphasized the problem in one of their issues. It shows a physician's white coat with a tie, and no one inside the shirt or the jacket. It says, ''The doctor is out. Why so many patients are losing their doctors to the rising cost of malpractice.''

It gives how much it costs. For a neurosurgeon, the annual cost for medical malpractice is $71,200. How many surgeries does he have to perform just to pick up the cost of his insurance? For OB-GYN, the average is $56,546. How many babies have to be delivered just to pay the liability insurance? Emergency physicians, $53,500; orthopedic surgeon, $38,000; general surgeon, $36,354. It has become a crisis in America, and what we are seeing, because that crisis is signs like this where at Phoenix Memorial Hospital the emergency room was closed.

It has also has found its way into our manufacturing process, and, again, it is part of the problem that is driving jobs overseas. You know, in America today, we have seen some jobs come in, insourcing jobs. For example, BMW is now manufacturing automobiles in America and exporting them to Germany. Honda builds automobiles here; Toyota, Mazda, a lot of other companies build cars, like GM, Ford and Saturn. But this is a typical, average automobile in America.

Well, how much of that car does it take to cover the cost of health care for the auto manufacturers? Again, this is just a typical auto manufacturer.

If you look at the cost, the cost buried into the cost of every automobile is about $1,300 on an average and up. Thirteen hundred dollars. Now, that is the cost of the wheels and the tires and the frame of the automobile. So, this much of an automobile showed in the lower left-hand corner, right-hand corner on your television screen, to those here in the House floor, that frame which is the outside of the car and the wheels and the tires, that is the costs that are buried into health care.

If you extracted the health care costs, you would have the frame left over with the motor and the undercarriage and the seats and the dashboard and all of that, but you would not have the outside of the car and you would not have the tires. It is an expensive proposition to cover the cost of health care. And that is part of the reason why it has been excluded, or it has been driving up costs and driving jobs overseas.

The Kansas Hospital Association tells me that if we cannot revise some of the problems they are having with paperwork, today the costs they are absorbing are the equivalent of what they provide in health care. In other words, for every hour of health care they provide, it requires an hour of paperwork to comply with all these health care burdens that have been placed on them.

We have also been seeing a lot of escalating jury awards that have been very difficult in providing, and we talked about that with the Time magazine article. It has required a lot of additional costs for physicians, and that has increased the cost of health care. And there has been very little means for us to control those costs.

The problems have been, financially, percentage-wise they have increased just in 2003 by 12 percent or more. That is the fifth consecutive year of double-digit increases, and it has doubled the health care costs for employers since 1999.

By decreasing these costs, we could see an increase in jobs in America. With each percentage point rise in health care insurance costs, it increases the number of uninsured people in America by 300,000 people, according to the Congressional Budget Office. That means that if we can hold down costs, we will see less uninsured people in America.

Medical liability insurance premiums have increased 505 percent since 1976, and that has driven many doctors out of the profession, closing some specialty practices in entire regions and placing an unnecessary financial burden on the Nation and its employers.

The average jury award now is $3.5 million, which is up by more than 70 percent since 1995. The increasing cost of insuring doctors against petty lawsuits is severely reducing the quality and access of America's top-rate health care.

We have got a lot of problems to deal with here. One of the statistics I wanted to bring out here is the National Association of Manufacturers. They have calculated the benefit it costs for American companies, and it puts us at a 5.5 percent disadvantage compared to our nine largest trading partners.

Not only is the United States spending more on health care annually, but 7.7 percent of our gross domestic product goes into health care from our private sector. That is effectively matched by the public sector, so it is now 14 percent of our gross domestic product.

We have been blessed with the best health care system. We must make it affordable and available to all of us.

So we have come up with three specific pieces of legislation this week. I have joining me this evening the gentleman from Minnesota (Mr. KENNEDY), and he is going to talk to us about his view of the issues that we are facing to make health care more affordable and help us to bring jobs back.

I yield to the gentleman from Minnesota.

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Mr. KENNEDY of Minnesota. Mr. Speaker, I thank the gentleman from Kansas; and I thank him for his passion for keeping jobs here in America, for growing jobs in America, for understanding what it takes to have that happen.

As I go around my district and talk to businesses that are growing those jobs, health care costs are one of the top issues that they talk about to us. The gentleman has hit right on many of the key issues of medical malpractice driving doctors out of practice, getting them to do what they would tell you is unnecessary practices, just to make sure that they are covered in case something happens. We are going to get into talking about health savings accounts and flexible savings accounts and how we can really help individuals better control costs, and how association health plans can help associations of businesses that do not really have a good program available to them provide that to their many, many employees.

Mr. Speaker, there are two different ways that people think about how do we control costs long term. Some would suggest that we need to move towards a single-payer plan where one government entity is paying all of the health care costs across the country. We know what that looks like. That looks like government rationing. That looks like standing in a queue and waiting forever to get a basic procedure. We see that up in Canada. Canadians come down here to America to get their health care because they know what that looks like.

What we are talking about here is empowering individuals, putting individuals and their relationship with their doctor in charge of their health care, having them control the decision, having them have the say and the knowledge and the ultimate give-and-take on how to move forward. I look forward to talking about how each of the things we are talking about here really addresses that issue.

Mr. TIAHRT. Mr. Speaker, if the gentleman would continue to contribute

here, the gentleman is from Minnesota, up there bordering Canada. I have heard reports from our northern cities like Seattle, Minneapolis, Detroit, Buffalo, that we see an influx of Canadians coming in to get the health care coverage that has been denied them in Canada because their socialized health care system is rationed. They have to wait too long for procedures, or that procedure simply is not available because of their age or weight restrictions.

Has the gentleman noticed that occurring in Minnesota?

Mr. KENNEDY of Minnesota. Mr. Speaker, that is absolutely the case. Health care will be allocated by some means. If it is totally free, totally available in a single-payer plan, then the government will come up with restrictions. We have too much today, even in this country, of government deciding to ration what they are going to pay for health care, ration the procedures, and having businesses make too many of those decisions.

One of the most beautiful things that we have done to advance health care empowerment of individuals is the health savings accounts that we passed as part of the Medicare reform last year. What this does is if you have a high deductible plan, a minimum of $1,000 per person, $2,000 per couple, it can be up to over $2,500 per person, $5,000 per couple, you can put that amount away, tax-free, into an account, use it for health expenditures tax-free. If you do not use it, you can roll it over, earn interest on it tax-free, and build up a nest egg that you can use in your senior years. But what this means is that rather than some impersonal party getting the bill that you never see for your health care costs, you can know what it costs, shop for the best price, and make decisions.

The best example I have is the young woman that helps me in my office on health care matters said that she once twisted her knee, and they had an MRI done. That MRI costs $1,500, and they found nothing. And she said, you know, if I had a health savings account and that was my $1,500 being spent, I might have had a simple x-ray done; and if nothing was broken, I would walk on it for a week before I decided I was going to spend another $1,500.

It is those types of decisions made over and over again that will affect health care costs; and we have seen when these types of programs have been put in place in businesses, they have dramatically reduced costs while, at the same time, they are giving individuals better care and better control over their care.

Mr. TIAHRT. Mr. Speaker, I think that the gentleman would agree that we need to have more transparency in the cost of health care so that consumers can make better decisions; also, so that physicians can make better decisions.

One of the gentlemen that I spoke with is a physician who has retired from running a surgical group. He said when he was just a surgeon, he would order a lot of tests because he thought they were good data points for him to sort of mull over and make a decision, and he gave me the example of an x-ray and an MRI. He said, quite often, you need one or the other and occasionally, you need both; but for most information, especially in his type of work, he thought that an MRI is the most productive for him, but on occasions, x-rays. He said that it was very difficult for him to determine where these costs were going until he started looking down as the manager of this surgical group and saying, what are driving my costs? He realized that all his doctors did the same thing that he used to do. They would order every possible test as data points whether they were necessary or not, and that transparency for him made him tighten up his procedures and lower the costs of health care. I think if consumers had good, clear transparency in the costs that were involved, they also would make good decisions, and health savings accounts would help consumers have more control over their health care.

Before we go on to these three bills that we are going to deal with this week as part of this Health Care Security Act, I wanted to mention my firsthand experience and how it relates to why I think socialized medicine or a single-paid plan would not be right for this country, because it does end up in the rationing of health care.

My father is 85 years old. I am very proud of him. He is a World War II veteran. He served in Heiwajima during World War II. A year ago January he had trouble with his heart and went in for open heart surgery. It was a difficult month. He spent 3 weeks in the hospital. It was touch-and-go for a couple of weeks. We worried about it a great deal. But he came out very strong, and we still have him today. He is very active, and he travels still frequently and is a productive member of our society. But he would not have received that health care treatment had he lived in Canada. He would have been above the age of eligibility for open heart surgery. Even if he was within the age requirements, right now the wait is 6 to 8 months for open heart surgery in Canada. Can my colleague imagine somebody who has had a borderline heart condition or even a heart attack and they say, well, yes, we know you had a heart attack and if you can hold on for another 6 months, we will get you right in.

That is why they have people crossing the border and coming to America to get health care, because it is the only place that it can be provided. And because of that, because of our excellent health care system we have today, I still have my father. I get to talk with him on the phone, I get to see him on holidays, and I get to gain the wisdom that he is passing on to me and on to my children. It is because of our health care system that I still have him.

Mr. KENNEDY of Minnesota. Mr. Speaker, I can tell my colleague that the health savings accounts let your father and your family be in control.

If a young person starts out and they are putting away the maximum amount you can into a health savings account and they live a healthy life and they spend their money frugally for health care costs, they can build up a pretty significant nest egg by the time they get to be your father's age. When you talk to people approaching their senior years, making sure they can have that control over their medical life and make the medical decisions that they want to are vitally important to them.

That is what I think these health savings accounts will do, ultimately. If they can build up $100,000 or $200,000 of a nest egg over a lifetime, they can make the decisions and have the resources for whatever the health care plan is saying to get that kind of treatment. If they have to go into some type of senior care rather than being forced to spend their way to poverty before we do anything in terms of long-term care, they can work with their children and say, hey, listen, I have this nest egg, so that you can buy the services I need, buy home health care and take care of me, and here is the resources for it.

So I think the flexibility, combined with the market-based services availability we have here in America, is vitally important.

I would also say, if you look to controlling costs, which is what we are talking about here with growing jobs and getting these costs under control, if you look at the growth in costs that we have experienced, whether you are a public or private plan, they are straight up. But if you look at what it is for cosmetic surgery, which is about the most personal and invasive surgery there is, those costs are almost flat.

Now, why are they flat? They are flat because the market is involved. If you look at Lasik eye surgery, the costs are down, because you have both the combination of the market and technology bringing that down. That makes everyone's costs more affordable. That makes our jobs more competitive here in America, and it makes whatever surgery you or your father are going to be having later on in life something that is more likely to be within their means. It is a great move forward, and a step that we are building on with the steps we are taking this week.

Mr. TIAHRT. Mr. Speaker, the gentleman makes a very good point about where the free market is involved we see no increase in health care costs. Dr. Greg Ganske, who was elected in 1994 to the United States House of Representatives from Iowa and now is back in private practice, told one of our other classmates from the class of the 104th Congress that right now, when somebody has selective surgery, and he is a plastic surgeon, when they have selective surgery, they call around to get

three or four quotes. He said, we all know in Des Moines, Iowa, who is charging what because we hear it from our customers. And because of that, the growth in costs for plastic surgery has been flat over the years. If you compare that to the health care costs that are managed by these big insurance companies, by Medicare, by Medicaid, which is managed by the government, then we see a continual increase in costs.

So we have a situation where health care costs that are available for small businesses, for example, are going up 12 percent per year for the last 6 years. They have doubled since 1999, and it is a continuous increase, much faster than the rate of inflation; and yet where the free market is involved, then we see a reduction in the growth and sometimes it is very flat.

Mr. KENNEDY of Minnesota. Mr. Speaker, we have also added other things in the Medicare bill that we just passed to get us going in this direction. We have strong incentives and encouragement for health care providers to do electronic prescriptions so that we not only have quality because we cannot always read the doctor's signature, but we have the ability to have a travelocity.com approach to getting that prescription. We also have strong incentives and requirements for increased quality reporting; and what we ultimately need to get to is, like you would with any other kind of product you are buying, where you can see it, call it up on the Internet: I am looking for this type of procedure, here is the ranking of the providers in my area, here is what each of them is costing, here is what the quality ratings are on them. Because if I were to look for this podium and want to buy a podium, the market offers me an endless variety of podiums and sizes, colors, styles, shapes, materials in every single product category imaginable except where we try to keep the market out, such as in education, in transportation, frankly, and in health care.

We have got to take away the barriers to providing quality, affordable services to our people, and that is exactly what we have done with the reforms that were part of the Medicare prescription drug bill. It is exactly what we are talking about in the additional reforms we are going to be passing this week in the House.

Mr. TIAHRT. Mr. Speaker, to illustrate the transparency that we have been talking about and what impact it has and the free market on prices, we have some places where you can buy drugs over the Internet and elsewhere and the prices they were on selected prescriptions.

This chart that I am holding in my hand is based on prices as of May 4. We can see some of these red lines very clearly where they extend out here for about $1,400 per year is the cost of those prescriptions.

After 1 week of having transparency and visibility in the marketplace, the shift is very dramatic. The same set of companies, Walgreen, Costco.com, drugstore.com, et cetera, what the free market has done is reduced the prices on the top line, which is the Primary Care Alliance, the costs were nearly $1,400. Now, because of transparency in the free market system, it is down to $1,000, a 40 percent reduction. We can see all of the costs are now coming into line, and that is the impact of transparency and the impact of the free market system.

I think that what we can say safely is that when we have the ability for people to make market decisions, they will make good decisions.

□ 2100

They will bring costs down. In this case, it is prescription drugs, but also it occurs in health care costs. I think that is very important.

Mr. KENNEDY of Minnesota. Mr. Speaker, I would just compare this to how you get your auto insurance. When you buy auto insurance, your auto insurance does not cover filling up with gas. It does not cover the oil change. It does not cover the car wash. It does not cover a whole lot of things.

It covers when you have a major accident and you have a major expenditure, and because of that car insurance, although when you have four teenagers like myself it can be pretty steep, it still has not had the type of increases that we have seen in health care.

We need to have a similar type of approach with what the health savings accounts provide which is basically saying we have catastrophic coverage. You and your employer, either one of you, or your family members, can contribute to the health savings account. You are going to spend those dollars. You are going to shop for the cheapest place for nonemergency service for health care, just like you would shop for the cheapest place for gas which, oh, by the way, if we got this energy bill passed, as my colleague mentioned, would be lower, and this is the type of thing that we need do.

I would just say that one of the things we are doing this week is loosening up the restrictions on flexible savings accounts, and flexible savings accounts are similar to a health savings account, but they are employer offered. They allow cafeteria plans, put in their pretax, but they are not really used because it is a use it or lose it.

We have allowed the rollover option in health savings accounts. Why was it use it or lose it? It is use it or lose it because those that want to have a single-payer government plan know how powerful this approach can be, wanted to limit that. So we are allowing people that have flexible savings accounts offered through their employer. If they do not use it all, be able to roll over $500 to the next year or take $500 out and invest it in their own personal health savings account that they can carry with them wherever they go, and given that the average 32-year-old has been at seven or nine different employers in their life, having that portable plan that is with you always should be a great comfort and a great benefit to them.

Mr. TIAHRT. We have under our Health Security Act this week three phases. It is a 3-point plan.

The first part of the plan is called the Small Business Health Fairness Act. It allows for consolidated risk pools. The House plan allows small businesses to create these association health care plans, and it gives them the opportunity to join together, through existing trade associations, to purchase health care insurance for their workers at a lower cost, and that is because 60 percent of the nearly 44 million uninsured Americans are employed at small businesses today and/or they are dependent on someone who is employed by one of the small businesses.

By allowing the creation of association health plans, we will significantly decrease the number of uninsured in America. The plan establishes eligibility requirements so that all AHPs, or association health plans, are required to offer fully insured or self-insured benefits certified by the U.S. Department of Labor. It encourages broad participation and coverage by prohibiting discrimination against any kind of certain high-risk individual.

It increases the bargaining power. Small businesses will see increased bargaining power with health care providers, more freedom from costly State-mandated packages and lower overhead costs by as much as 30 percent.

Insurers selling directly to small employers typically incur administrative costs of 20 to 25 percent. Under the plan that the Republicans have here in the House, AHPs will save small businesses an average of 13 percent on their employee health care costs.

AHPs also cover specific diseases, maternal and newborn hospitalization, and mental health issues. It requires that AHPs be financially responsible and have strong reserves, strong enough to fund any potential costs and other obligations.

So, one of the first things we are dealing with the short version is AHPs as they are known by, but really, it is the Small Business Health Fairness Act.

Mr. KENNEDY of Minnesota. These AHPs, or association health plans, are a critical link in lowering the uninsured. Just repeating what you said, 60 percent of the uninsured are employed by companies that really have a hard time getting availability of health insurance. By the time you sell to that small company, it is, as you mentioned, a very high overhead cost.

So many of these would want to pool together, provide a plan that is tailored for the type of employees they have, and lower their cost in a bargaining pool.

Who would these associations be? These associations are like we just had

the Realtors in visiting us today. The major issue they spoke to me about, saying Realtors are a lot of times independent contractors with some umbrella firm. They need to have negotiated lower prices that can combine this with the health savings accounts very nicely, but they need it to be able to offer insurance to Realtors.

Look at restaurants that have a wide variety of full-time and part-time employees. They could tailor a plan specifically for those, again meshed with a health savings account.

So these are the types of plans that are going to really help to let more small businesses offer insurance.

One of the things that is important to point out is I know the gentleman from Kansas represents a rural State and has significant parts of his district which are rural, just as I have. A lot of times in those rural areas, they do not really have options. In our State in Minneapolis-St. Paul, there are multiple health plans available, and there are three or four or five, or significant options and several other smaller options; but if we get out into small-town U.S.A, you do not have a lot of options.

This really has even a stronger benefit for those small businesses operating in the rural areas that can combine themselves with an association health plan that goes across State borders, pools businesses of character. And it just does not need to be businesses; this could be a religious organization, a nonprofit organization, a community service organization. The Lion's Club, of which I belong, could do an association health plan for Lion's Club members.

It opens up the amount of people participating, thinking about how can we offer services to those with a commonality. Having more options is exactly what we need if we are going to really grab control of these health care costs and reduce the number of people that are uninsured.

Mr. TIAHRT. Mr. Speaker, the second point of our plan and the way we are going to help reduce health care costs in America is called flexible spending accounts. That allows an employee to have some flexibility in his health care. It allows workers to direct their employers to deduct money from their paychecks to be placed in a flexible spending account. It is tax free, and it is to pay for health care expenses that they may incur during the year.

Employers are not restricted based on the size of their business on whether or not they offer FSAs as their choice interpreted so that employees are restricted by whether or not their employer offers the option. There are no health insurance requirements for the workers to open up an FSA. There is no minimum or maximum contribution limits. Money can be drawn from an FSA to pay most medical expenses. That money may not be used for long-term care or health insurance premiums, but it is a tax benefit to the employees. Workers could save on their taxes because the amount committed to an FSA is subtracted from their wages before taxes are applied.

There are long-term coverage advantages. Thirty-seven million employees in America have access to FSAs, but few take advantage of them today because they have a use-it-or-lose-it rule. Currently, if you do not use the money that an employee puts into an FSA, that money is forfeited to an employer, and it is a huge disadvantage or two disadvantages. Quite often we will see employees will not get into it because of that.

Number two, they will get to the end of the year and they will see that money going back to the employer so they will have selective surgeries or they will have botox or something they do not really need, and again, it is driving up health care costs.

But under the plan, up to $500 of unused funds in this new plan can be carried forward each year on an FSA and allow them to continue to invest in their future. If they do not use it, it is available for them in the future. Alternatively, up to $500 of unused funds can be rolled over to a health savings account for eligible individuals.

So there are some real advantages to these FSAs. Because employees will have their money at stake, they will be more selective on the health care they receive. We will have less frivolous visits to emergency rooms or to physicians. I think people will start to use home remedies a little more. Right now, there is a tremendous amount of information on the Internet. All you have got to do is put in health care into some of the search engines on the Internet and you can find a lot of Internet Web sites that you can get information on. And I think people will start to use those to reduce their health care costs, save money, lower their taxes; and again, this is part of our plan to lower the cost of health care so we can attract jobs back into America.

The last of the 3-point plan is medical liability reform. This includes a speedy resolution of claims. Instead of having health care claims drag on and on, there is a fair accountability. The plan waives the degree of fault so that a person with 1 percent of the blame is not forced to pay 100 percent of the damages. This component eliminates the incentives to look for deep pockets, making one party unfairly responsible for another party's negligence.

This also has maximum patient recovery. It empowers the courts to maximize patient awards by ensuring that an unjust portion of the patient's recovery is not misdirected to his or her attorney. The plan prohibits attorneys from pocketing large percentages of an injured patient's award. The award is to go to the patient, not the attorney.

Full compensation for patients' injuries are allowed. There are reasonable limits on punitive and noneconomic damages. There are flexibility for States that already have enacted damage caps. It respects those States' ability to enact these caps and enforce the damage caps.

It also has experts predict significant positive change from the reform. The plan would decrease premiums for medical malpractice insurance by an average of 25 to 30 percent according to the Congressional Budget Office.

The Joint Economic Committee study asserts that the number of Americans with health insurance would increase by 3.9 million if medical liability reform is passed. Specifically, the plan places reasonable limits on malpractice that would save from $60 to $100 billion each year and that would not have to be buried back into the rates.

It would allow American business to expand their operations through hiring, and it enacts sensible liability reform that would save American taxpayers at least $30 billion annually by reducing the Federal health care spending.

I showed you the map earlier of the States. The white States, again, who are currently okay on this map, and California is one of the white States. They have enacted medical liability reform. They are a great model for it. The Nation's medical liability premiums have increased by 505 percent since 1976. California's has only increased by 167 percent since it passed its medical malpractice reforms in 1975.

An OB–GYN in California pays about $57 annually for liability insurance while OB–GYNs in the crisis States, like Pennsylvania shown in the red over here, and Florida and Ohio, all in red, they pay about $100,000 a year annually.

What it means to be a medical liability crisis State, these 19 States that are depicted in red, in Pennsylvania, Philadelphia's Methodist Hospital announced it would stop delivering babies and discontinue its prenatal program for low-income women.

In Florida, women are facing waiting lists for 4 months before being able to get an appointment for a mammogram because at least six mammogram centers in south Florida alone have stopped offering the procedure as a result of increased medical liability insurance premiums. This trend is troubling. There are a growing number of older people and less and less people are being provided with mammograms, according to Jolean McPherson, a Florida spokeswoman for the American Cancer Society.

In Arizona, a baby was born on the side of the road after a mother had passed her community hospital where the insurance crisis had closed the maternity ward.

In Nevada, more than 30 Las Vegas obstetricians have closed their practices in recent months, leaving the city with about 85 obstetricians to deliver more than 23,000 babies in the next year. Kathryn Moore, the director of

the State Legislation for the American College of Obstetricians and Gynecologists said, ''If I was a woman planning a family in Las Vegas, I'd be very concerned. I would certainly think twice about starting a family.''

Well, we want families to start in Las Vegas, and we think it is unfair that 85 obstetricians are going to have to handle approximately 23,000 births next year.

We need to do something about that, and what we have passed tonight, as a matter of fact, in the House is medical liability reform, and it is the first step on the road to lowering health care costs and bringing jobs back into America.

I think it is very clear that if you cannot support these three measures, you are turning your back on the people who want jobs in America, high-quality, high-paying jobs. The only way we are going to bring them back is lower health care costs. We cannot do it by socialized medicine. We know that does not work. We can do it by our Health Care Security Act, by lowering the costs, bringing jobs back into America.

□ 2115

Mr. KENNEDY of Minnesota. Mr. Speaker, I would also say to my colleague that, unfortunately, what we see here too much on this floor and what we hear is anger and complaining about health care costs going up, they are being harder for the average family to afford. We agree, but we do not hear very often, unfortunately, except with the great dialogue we have had here tonight, about what the solutions are. And I would like particularly my fellow Members from the other side of the aisle to talk about what their solutions are, talk about how you are going to control costs.

The uninsured is a huge issue. Besides growing jobs, each one of these proposals reduces the level of the uninsured. This is really the most effective way for us to reduce the uninsured.

I would also suggest one more piece in the puzzle, which includes my Fair Care Act, which I have introduced and am pleased to have 127 other Members joining me on. And if we think about it, right now, the uninsured can go into a hospital and get care; but it is through the most expensive vehicle possible, the emergency room, through the EMTALA law. We could provide for that service at one-fifth the cost in a community clinic, if we had an individual on some base level of insurance at least, and probably address the underlying problem of that cost much more efficiently, and let people live a healthier life by letting us also do a better job of controlling costs.

Because what happens when an uninsured comes into a hospital and is not paying for it? It ultimately layers onto the premiums for the insured and increases their costs. As my friend from Kansas mentioned, when the cost goes up more on the insured, it creates a vicious, vicious cycle. My bill, to allow for a $1,000 credit per person, $500 per child, up to $3,000 for a family, refundable tax credit so they can get that insurance, pay for that insurance policy directly, is another piece of this puzzle.

And as we think about the uninsured side, we need to recognize that we have, just as we have in education, left too many of the disadvantaged behind. Thirty-five percent of Hispanic households are uninsured; 18 percent of African American households, with only 11 percent of white. There is a disparity in who is hurting, and we need to address them.

While we address the uninsured, we also get control of costs. By getting control of costs, we make American jobs more competitive, and we keep American jobs here. And I think it is also important as we look off on the horizon at how do we control the long-term deficit, how do we control the long-term liabilities that we have, the unfunded liabilities in Medicare and Medicaid are significant. The number one variable that will determine how we control those will be to help control health care costs.

These measures that we have proposed, that we have talked about tonight will not just lower the uninsured, will not just grow jobs here in America, but will get long-term costs under control so we can control that deficit, which again will help make for a stronger economy now and in the future.

So I thank my friend from Kansas for bringing this very important topic to the floor.

Mr. TIAHRT. In summary, Mr. Speaker, we have over the last generation watched Congress continually raise barriers for us to keep and create jobs in America. We have found out by investigating this that we could develop these problems into eight categories, eight issues that we are going to deal with.

The problem is not Benedict Arnold CEOs. They only have a couple of costs they can control, and that is wages and overhead. And the problem is not the wages, because most of them want to have high-quality employees they want to pay high wages to. They want to attract the best and the brightest. The problem is not overhead. We found out it costs the same to build a building in India, in the Philippines, or in America. It is Congress. The problem is in Congress and what we have done over the last generation to continually put barriers in the way for people to keep and create jobs.

We have started with these eight issues. We are starting this week with health care security. We talked about the three plans that we are dealing with this week, including medical malpractice reform, association health plans, and what was the other one?

Mr. KENNEDY of Minnesota. The flexible savings accounts and the ability to roll those over.

Mr. TIAHRT. Flexible savings accounts, correct. Next week we are moving on to bureaucratic red tape termination, because we found out that the cost of complying with bureaucratic red tape in America is about 12 percent of every manufactured product. If we can cut that in half, we would be 5 percent more competitive.

We are going to deal with life-long learning so that we have high-skilled, high-trained workers. We need to get more science and technical and engineering graduates.

Then we are going to deal with trade fairness and opportunity. We must have fairly applied trade agreements. We must open up new markets, but we have to overcome monetary manipulations by other countries and by unfair trade practices by other countries. And we are going to deal with that.

Then we will move on to tax relief and simplification and figure a way to pull the cost of taxes that are buried into our products out of it so that we are more competitive.

Then we will deal with energy self-sufficiency and security. We are going to present legislation that will create 700,000 jobs in America. We are going to deal with research and development so that we can continue to be innovative and bring new ideas to the world and more jobs to America.

Then we are going to deal with ending lawsuit abuse and litigation so that we can lower the cost of liability insurance, limit liability so we can create new jobs, and, again, bring workers back into America.

The lines are very clear. Congress over the last generation has created these barriers. The people who employ workers cannot vote on this. They cannot reduce these barriers. They cannot remove these barriers. Only the Members of Congress can remove these barriers, and so we must deal with them.

This is the debate we should be having today. This is the debate we need to have so that we can remove the barriers and bring workers back into America, bring jobs back into America, high-quality, high-paying jobs. We call it ''Careers for the 21st Century'' because we want people to be able to pursue their dreams, pursue the career that they desire the most.

So we are going to complete health care security this week and next week move on to bureaucratic red tape. And if you cannot support these issues, it is my firm belief that you cannot support bringing jobs back into America, because these are clearly the barriers to bringing jobs back. They are barriers faced by every small businessman I talk to. They are barriers faced by even the large employers. They know this is what is controlling their costs. They want to pay high wages and build buildings and have their plants here in America, but they cannot reduce these costs: health care security, bureaucratic red tape, life-long learning, trade fairness and opportunity, tax relief, energy self-sufficiency, research and development, and ending lawsuit abuse.

If we can overcome these barriers, we will bring jobs back into America. That is the plan the Republicans have in the House.

Mr. Speaker, I want to thank the gentleman from Minnesota (Mr. KENNEDY) for joining me this evening. I think we have covered some good territory. We have covered the topic, I think, very well, and next week we will move on to bureaucratic red tape.

PETROLEUM PRICES AND THE TRADE DEFICIT

The SPEAKER pro tempore (Mr. CHOCOLA). Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, today the United States Department of Commerce announced a record U.S. trade deficit of over $46 billion for just the month of March as imports coming into our country swamped our exports going out. That means more good U.S. jobs are being off-shored to China, to India, to Latin America, jobs everywhere but here in the United States.

Since this President took office, 2,740,000 more people in this country have lost their jobs; and we have record trade deficits, as these numbers indicate today, record budget deficits, unemployment, people who cannot get unemployment benefits, and soaring gas prices at the pump. It sounds to me like we are trading away America's economic independence.

This chart describes the trade deficits keep growing year after year after year as we keep losing our good jobs. This year it is projected over one-half trillion dollars in trade deficit. The numbers today confirm this.

One of the interesting aspects of the numbers today is the trade deficit related to petroleum, imported petroleum, which has grown by $1.3 billion more imports into our country since February, with rising prices. In fact, the new record trade deficit increased by one-third due to our trade deficit related to petroleum. Every time an American goes to the gas pump and spends one dollar, 54.5 cents goes out of this country. Saudi Arabia gets 7.5 cents, Mexico gets about 6.5 cents, Canada gets 6.5 cents, Venezuela 6.25 cents, Iraq gets nearly 5 cents, and a penny goes to Kuwait.

Over years and months, this totals billions of dollars of wealth draining out of this economy. Today, our trade deficit for petroleum is over $12.5 billion a month. Imagine if we were investing those dollars in ourselves here at home in new energy industries, which we are not.

Becoming energy independent at home could yield the strongest impetus to job creation that this Nation has seen since we began to move to launch a Moon shot nearly 40 years ago.

This evening, I would like to insert into the RECORD an excellent editorial done by Paul Craig Roberts entitled ''Disaster Lurks in April Jobs Numbers.'' He says there is no good news in the April payroll data because disaster lurks in the job numbers. The U.S. Labor Department is becoming Third World in character. He says the troubling pattern is that despite a massive trade deficit that pours $500 billion of our money into foreign pockets, the U.S. economy cannot create jobs in the export or import competitive sectors. The U.S. economy is creating domestic service jobs only, and that cannot create real wealth.

The 280,000 private sector jobs created in April break out as follows: over half were in temporary work. As the prior Special Order had to do with health insurance, believe me, there are no health benefits associated with temporary work. There were 34,000 American hired, but as waitresses and bartenders, lucky to make the minimum wage and lucky if they have any health insurance at all.

Since January 2001, the United States has lost nearly 3 million jobs. We can tick them off, and we will submit them for the record: in wood products, 50,000 lost jobs; in computer and electronic products, which was supposed to save us, over 536,000 jobs; in transportation equipment, similar losses; in petroleum and coal products, another 10,000 more lost jobs. And the service jobs that are partly trying to replace them simply cannot replace the hundreds and hundreds of thousands of jobs lost in tradeable services, including telecommunications, computer services, bookkeeping, architecture, and engineering. This leaves the U.S. economy with 2.2 million fewer private sector jobs at the end of April, this year than existed 3 years ago.

Once free trade was a reasoned policy, hopefully based on sound analysis. But today it is an ideology that hides labor arbitrage. Because of the low cost of foreign labor, U.S. firms produce offshore for U.S. customers, bring their products in here, and then wipe out U.S. jobs. Where does this leave Americans? It leaves them in the lowest paid domestic service jobs.

Mr. Speaker, these types of trade deficits are sapping America's wealth and our strength. It is time to change the policies, starting here in Washington, D.C., and begin to move free trade into fair trade, or the American people are going to continue to suffer the hemorrhage of wealth and jobs out of this society.

So, here we go again. Sometimes it feels like a broken record. The administration touts trade deals. The president negotiates more deals in secret. The Congress gets an up or down vote. The agreement goes into effect. Trade surpluses turn to deficits. More good jobs are lost. Small deficits reach record deficits. When are we going to learn?

The American people have learned and, unfortunately, they are paying the price. Since this President took office, 2.74 million people have lost their jobs. Not many of those are corporate executives. When THEY go, they go with massive severance packages. What are we giving to America's working families? Record trade deficits, budget deficits, unemployment and soaring prices at the gas pumps. That does not sound like a fair trade. Sounds like we are trading away our economic independence.

Let's just take a look at three of our trading partners. Before NAFTA we had a trade surplus with Mexico and a small deficit with Canada. After the signing of NAFTA, companies skipped town from U.S. cities to exploit the workers across the border. Who wins? Not the working families of the U.S. with little hope for the future. Not the families forced off their land in Mexico only to crowd into the cities and maquiladora zone. In fact, companies are skipping right over the Mexican workshops for the next lowest common denominator—China.

Boy did we hear great promises about the Chinese marketplace and its one billion consumers. Strangely enough, the most recent trade statistics put China's trade deficit for one month at over $10 billion. That is just for one month. What is the administration doing to shore up our economic security? Are they pursuing limits on China's manipulation of currency? No. Are they willing to stand up for workers in the U.S. and China by officially pressing the government of China to address atrocious workplace conditions? No. They have grand plans of talking to the Chinese. All of that talking has taken us to record setting deficits. That is not what most Americans would call a plan for economic independence.

When it comes to oil, there is not much of a difference—unless you count the media reports that the Saudis have promised to lower the price of oil in time for the elections. Are we going to stake our energy independence on the whims of the Saudis? Does not sound like a good idea to me.

The Department of Commerce today issued a release that announced ''The deficit increased $3.8 billion from February to $46 billion in March as imports increased more than exports.'' Fairly typical jargon from this Administration. What they fail, and I repeat fail to mention is that the trade deficit related to petroleum has grown by $1.3 billion since February. The new record trade deficit increased by one third due to our trade deficit related to petroleum. Let me repeat myself because this is the key, the new record trade deficit increased by one third due to our trade deficit related to petroleum. That is $1.3 billion more that was drained out of our nation and sent to the nations of OPEC.

The $5.6 billion trade deficit with oil-producing countries, including Saudi Arabia and Venezuela, is the highest on record. For every dollar that an American spends at the gas pump 54.49 cents goes out of the country, Saudi Arabia gets 7.35 cents of that dollar, Mexico 6.57 cents, Canada 6.52 cents, Venezuela 6.26 cents, Iraq 4.96 cents, and 1.03 cents go to Kuwait.

Today our trade deficit for petroleum is over $12.5 billion a month. That is an increase of over $1.3 billion from the previous month. The average price of imported crude oil rose to $30.64 a barrel in March, the highest since February 1983, today the price of crude peaked at $40.92, this is only 23 cents less than the all time record.

The United States annually consumes roughly 7,171,885,000 barrels of petroleum. (164 billion gallons of vehicle fuels and 5.6 billion gallons of heating oil) In 2001, 55.4 percent of these fuels were imported, part of a

total $358.2 billion trade deficit with the rest of the world. Since 1983, the United States importation of petroleum and its derivatives has nearly quadrupled, rising from 1.21 billion barrels in 1983 to 4.65 billion barrels in 2003.

In 2003 the total deficit for trade of petroleum between the United States and the rest of the world totaled $120.5 billion. Our total trade deficit for 2003 was only $489.9 billion. That means if we as a nation were energy independent we would cut our trade deficit by one quarter annually. If we were truly energy independent it would mean we would have the creation of jobs, be a step closer to a trade surplus, real urban revitalization and rural development, and wealth being generated right here at home as opposed to increasingly exporting our jobs, capital and wealth.

Becoming energy independent here at home would yield the strongest job creation this Nation has experienced since we landed a man on the moon. Just focusing more effort in agricultural fuels production would produce growing economic security here at home.

Continued dependence upon imported sources of oil means our Nation is strategically vulnerable to disruptions in our oil supply. Renewable biofuels domestically produced directly replace imported oil.

Increased use of renewable biofuels would result in significant economic benefits to rural and urban areas and also reduce the trade deficit.

According to the Department of Agriculture, a sustained annual market of 100 million gallons of biodiesel alone would result in $170 million in increased income to farmers.

Farmer-owned biofuels production has already resulted in improved income for farmers, as evidenced by the experience with State-supported rural development efforts in Minnesota where prices to corn producers have been increased by $1.00 per bushel.

Biofuels hold the potential to address our dependence on foreign energy sources immediately. With agricultural surpluses, commodity prices have reached record lows; concurrently world petroleum prices have reached record highs and are expected to continue rising as global petroleum reserves are drawn down over the next 25 years. It also is clear that economic conditions are favorable to utilize domestic surpluses of biobased oils to enhance the Nation's energy security.

In the short term, biofuels can supply at least one-fifth of current United States fuel demand using existing technologies and capabilities. Additional plant research, newer processing and distribution technologies, and placing additional acres under cultivation can yield even greater results.

Biofuels can be used with existing petroleum infrastructure and conventional equipment.

The use of grain-based ethanol reduces greenhouse gas emissions from 35 to 46 percent compared with conventional gasoline. Biomass ethanol provides an even greater reduction.

The American Lung Association of Metropolitan Chicago credits ethanol-blended reformulated gasoline with reducing smog-forming emissions by 25 percent since 1990.

Ethanol reduces tailpipe carbon monoxide emissions by as much as 30 percent. Ethanol reduces exhaust volatile organic compounds emissions by 12 percent. Ethanol reduces toxic emissions by 30 percent. Ethanol reduces particulate emissions, especially fine-particulates that pose a health threat to children, senior citizens, and those with respiratory ailments.

Biodiesel contains no sulfur of aromatics associated with air pollution.

The use of biodiesel provides a 78.5 percent reduction in CO2 emissions compared to petroleum diesel and when burned in a conventional engine provides a substantial reduction of unburned hydrocarbons, carbon monoxide, and particulate matter.

Mr. Speaker, I submit herewith for the RECORD the article I referred to earlier:

DISASTER LURKS IN APRIL JOBS NUMBERS

(By Paul Craig Roberts)

There is no good news in the April payroll data released last Friday by the Bureau of Labor Statistics. Disaster lurks in the jobs numbers: the U.S. labor market is becoming Third World in character.

The April jobs data show a continuation of the troubling pattern established in recent years. Despite a massive trade deficit that pours $500 billion annually into foreign hands, the U.S. economy cannot create jobs in the export or import-competitive sectors of the economy. The U.S. economy can only create jobs in non-tradable domestic services-jobs that cannot be located offshore or performed by foreigners via the Internet.

The 280,000 private sector jobs created in April break out as follows: 104,000 were hired as temps and in administrative and waste services, 34,000 were hired as waitresses and bartenders, 30,000 were hired in health care and social assistance, 29,000 in wholesale and retail trade, 21,000 in manufacturing (half of which are in fabricated metal products), 20,000 plumbers, electricians and specialty contractors, 10,000 hired by membership associations, 10,000 in legal, architectural and engineering services, 8,000 in management and technical consulting, and 4,000 in real estate.

The vast majority of these jobs do not require a college degree. One can only wonder what will become of the June graduating class.

Since January 2001, the U.S. has lost 2.7 million manufacturing jobs. Job loss by sector: wood products 50,000, nonmetallic mineral products, 61,000, primary metals, 145,000, fabricated metal products, 272,000, machinery 300,000, computer and electronic products, 536,000, electrical equipment and appliances 136,000, transportation equipment 209,000, furniture and related products 97,000, misc. manufacturing 79,000, food manufacturing 53,000, beverages and tobacco products 13,000, textile mills 128,000, textile product mills 33,000, apparel 172,000, leather and allied products 18,000, paper and paper products 90,000, printing and related support activities 137,000, petroleum and coal products 10,000, chemicals 79,000, plastics and rubber products 125,000.

Since January 2001, financial activities created 247,000 jobs, and nontradable domestic services (education services, healthcare and social assistance, leisure and hospitality, and membership associations) created 2,026,000 jobs.

These service jobs were offset by 302,000 lost jobs in retail, 261,000 lost jobs in transport and warehousing, 124,000 lost jobs in management of enterprises, and 1,222,000 lost jobs in tradable services such as telecommunications, ISPs, search portals, and data processing, accounting and bookkeeping, architecture and engineering, computer systems design, and business support services.

That leaves a net increase of 488,000 jobs in domestic services created during the past 3 and one quarter years. Offsetting these jobs with 2.7 million lost manufacturing jobs, leaves the U.S. economy with 2.2 million fewer private sector jobs at the end of April 2004 than existed in January 2001.

Once free trade was a reasoned policy based in sound analysis. Today it is an ideology that hides labor arbitrage. Because of the low cost of foreign labor, U.S. firms product offshore for their U.S. customers. The high speed Internet permits people from all over the world to compete against Americans for knowledge jobs in the U.S. Consequently, the ''New Economy'' is being outsourced even faster than the old manufacturing economy.

Where does this leave Americans? It leaves them in low-pay domestic services. As the BLS 10-year job forecast made clear, 7 of the 10 areas that are forecast to create the most jobs do not require any university education—definitely not the picture of a high-tech economy.

Why then will Americans attend universities? Will Wal-Mart require an MBA to stock its shelves? Will nursing homes want their patients bathed by engineers?

Obviously, education and retraining are not answers to job loss from US employers substituting foreign labor for American labor.

One does not have to be an economic genius to understand what is happening. Capital is most productive where labor is most abundant, and labor is most productive where capital is most abundant.

Thus, we see US capital flowing to Asia where labor is cheapest, and Asian labor flowing via the Internet to the US where capital is abundant.

US labor loses both ways. Products Americans used to make are now made offshore, and the Internet lets foreigners compete against Americans in the US labor market.

An engineer in Boston, Seattle, Atlanta, or Los Angeles cannot compete with an Internet hire in India, China, or Eastern Europe, because the cost of living in the US is much higher. The Boston engineer cannot work for the Indian salary, because his mortgage debt and grocery prices will not adjust downward with the salary.

The man in the street has no difficulty comprehending this simple fact, but for ideologues, free trade is a virtue—regardless of the harm done to American labor and the US economy.

NATIONAL COVER THE UNINSURED WEEK

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentlewoman from Wisconsin (Ms. BALDWIN) is recognized for 60 minutes as the designee of the minority leader.

GENERAL LEAVE

Ms. BALDWIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on the subject of this Special Order.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Wisconsin?

There was no objection.

Ms. BALDWIN. Mr. Speaker, I rise today in the midst of National Cover the Uninsured Week to draw attention to the 43.6 million Americans who do not have health insurance and the millions more who are underinsured.

□ 2130

Ms. BALDWIN. Mr. Speaker, our Nation is in the midst of an escalating health care crisis. As health care costs soar, it becomes increasingly difficult for Americans to obtain comprehensive and affordable health care. Our current health care system is failing not only the 43.6 million Americans who are uninsured, but also the millions more who do not receive comprehensive health care. We can no longer turn our backs while millions more lose access to health care. The lack of comprehensive and affordable health care affects every single congressional district in every State.

To highlight this issue this evening and its real impact that Americans are experiencing, I have invited my colleagues to join me in sharing letters and thoughts, but letters particularly from our constituents who have had difficulty obtaining and affording comprehensive health care. I think it is really important that their voices are heard in this debate.

I would like to begin with just a few letters from my district in Wisconsin that express real people's difficulties in dealing with the ever-rising cost of health care.

Jen, from Oregon, Wisconsin, starts, ''Please help. I cannot find affordable health insurance. My husband works for a small employer that cannot afford to provide medical insurance. We have a tiny 2-bedroom home, a car payment and a 2-month-old baby. We choose to live very modestly in order to provide the margin to pay for health insurance, but the cheapest premium I could find was $200 per month with a $3,350 deductible, and there are no maternity benefits. The amount is heartbreaking. There is no money to pay for clothes, let alone emergencies. If I worked full time for the health insurance, there would not be enough to pay for day care and somebody else would be raising my baby.

''It simply is not right that people in our society lack medical coverage when every other First World country provides for all of their citizens. Plus, how many people are underinsured? Also, our businesses are starting to go bankrupt just trying to maintain their health care benefits.

''Something has to change. Would you please help all of us as soon as possible?''

Next is from David, from Cross Plains, Wisconsin. David writes, ''My wife and I have been self-employed for over 18 years, and have paid thousands of dollars for health insurance premiums. As of a few months ago, we had to drop out and are now without health insurance. The cost is completely out of reach. In fact, it is nuts. Now that I am 50 years old, it is not a matter of if I will have health problems, it is when.

''Tammy, we will lose everything we have worked for. So much for the American dream. We now look forward to dying broke and homeless. I still work 60 hours a week at my print shop and can only hope that I drop dead in front of my press some night so I will not be a burden to society.''

Emily from Stoughton, Wisconsin writes, ''I am writing to you to express my utter frustration at the status of the United States health care system. It is my opinion that it is rapidly failing, and many, many people are finding themselves paying staggering monthly premiums and getting substantially fewer benefits every year.

''My husband runs a small business, less than 10 employees, and our family is being financially penalized for offering group health insurance to seven workers, two of which have had some significant health care needs in the last year. These two employees, just by getting illnesses not in their control, have jacked up our monthly premium by a staggering amount. It seems to us that offering health insurance is an ethical responsibility of ours as employers, yet our family still must pay a ridiculously escalating sum monthly just because of these two employees with unexpected health problems. In addition, I am routinely getting surprised upon regular visits to dentists, eye doctors, et cetera, to find we have no coverage at all from our HMO when only 1 year ago we had full coverage for these services.

''Thanks for letting me vent. I feel powerless and at times hopeless.''

Before I continue with some additional letters from my congressional district, I am delighted to be joined this evening by one of my colleagues, the gentleman from Ohio (Mr. BROWN), a member of the Committee on Energy and Commerce, a tireless advocate for health care.

Mr. BROWN of Ohio. Mr. Speaker, the gentlewoman from Wisconsin has fought as hard as anybody in this body for universal health care for people who play by the rules, pay their taxes, most of whom have jobs and simply have been left out of this system, left out because this Congress, this President, do not seem to care.

We had 40 million people uninsured 3 years ago; today that number is 44 million. Of those people who do have insurance, many of them are underinsured. Many do not have a decent drug benefit. Many seniors do not have a good drug benefit, and this Congress has either done nothing or moved backwards as they have tried to privatize Medicare and tried medical savings accounts and other kinds of Rube Goldberg ways to try to provide health insurance, when in fact most of what they are trying to do is enrich the drug companies and the insurance companies.

We are also joined by the gentleman from Ohio (Mr. STRICKLAND) and the gentleman from New Jersey (Mr. PALLONE). My State of Ohio has 1.2 million people without health insurance, and 85 percent of those who lose their jobs also lose their health insurance. In Ohio, as much of the Great Lakes States, particularly Wisconsin, Michigan, Pennsylvania, Minnesota, those States have suffered dramatically because of high unemployment, because of large numbers of job layoffs. In Ohio, we have lost one-sixth of our manufacturing jobs since President Bush took office. We lose 200 jobs every day, and about 170 of those people lose their health insurance, yet this Congress sits on its thumbs and does nothing about it.

But these are numbers, and I want to share some stories of people to put life situations to these numbers so people really see what this means.

Joseph from North Ridgeville writes, ''Something has to be done about health care. We are going in the wrong direction. I cannot even think about retirement because of the cost of health insurance in Ohio. I am in Local 546, and a lot of us feel the same way. I am not sure how long I am going to have a job, to make matters worse. Sorry to complain.''

Mr. Speaker, he writes, ''Sorry to complain.'' This is a gentleman who works hard, plays by the rules, pays his taxes. He does not have the health insurance he needs. His employer, it sounds like, is doing the best they can, and Joseph says sorry to complain. If people are playing by the rules, this society needs to do better. Joseph also does not want to be a burden on society.

Judith from Medina writes, ''We are currently without any health care coverage because the company where my husband works raised the monthly premium so high we could not afford it. It was either health care or food. So many people are finding themselves in this predicament now that something must be done on a national level.

''Surely Congress can come up with some kind of help for those of us in this situation before it is too late and before something tragic happens to us. We could lose our home and be out on the street if a catastrophic disease hit one of us. Please, please make this a priority. So many need help. What will the insurance companies do when so few can afford their coverage that most cancel? What will happen to the health care system in this country then? Please give this top priority. I believe it is vital to this Nation. Thank you.'' That letter was from Judith of Medina, Ohio.

Again, this family plays by the rules. They are working hard, and our government simply has not stepped up and fulfilled its obligation to them to make health care a right, not just a privilege.

Thomas from Cuyahoga Falls in my district writes, ''Representative BROWN, I have a question. I have a full-time job, a wife and children. My employer does not offer health care benefits. I cannot afford to purchase coverage on my own. What can I do? Please let me know what the government is trying to do to remedy this problem. I am sure I am not the only one dealing with this. Thank you very much for your time.''

All these letters suggest, first of all, great hardship that people face, great risk people face if they get a catastrophic illness, and they underscore the point that we are the only Nation in the world, as wealthy as we are as a country, we are the only Nation in the world that does not provide health care to all of its citizens. We are the only Nation in the world that allows drug companies to charge whatever they want to charge.

Our government's response is more tax cuts for the richest people in the country. President Bush's tax program gives a person making $1 million a $123,000 tax cut, yet they cannot provide insurance to Thomas of Cuyahoga Falls, Judith of Medina, Joseph of North Ridgeville, and all of the people that the gentlewoman from Wisconsin (Ms. BALDWIN) mentioned in Wisconsin.

We give huge tax breaks to the wealthiest people, we spend $1.5 billion in Iraq setting up a health care system there, and my friends on the other side of the aisle and the President simply turn their backs on these people who are playing by the rules. These are people who work and have full-time jobs that are trying to raise their family, and we do not help.

What we ought to do is four things. First of all, we should extend unemployment benefits to the 1 million workers in this country and the 50,000 workers in the districts of the gentleman from Ohio (Mr. STRICKLAND) and my district who have lost their unemployment. They are working, they have lost their jobs and they are trying to find jobs, and their unemployment insurance expired.

Second, we should do the Medicare buy-in bill to allow people 55 to 64 who do not have insurance for whatever reason, to allow them to buy into Medicare.

Third, we need to work on the children's health insurance program. There are 8.5 million children in this country who do not have health insurance. In most cases, their parents have jobs at companies like Wal-Mart and places like McDonald's and places that do not do health insurance, even though the companies are making billions of dollars, in the case of Wal-Mart.

And then last, fourth, we need to pass the legislation we introduced today to give small businesses incentives to insure their employees.

Those three bills, the unemployment extension we have pushed and pushed and pushed. The majority and the President have stopped it dead in its tracks. The other three bills were introduced today by the gentleman from Texas (Mr. SANDLIN), the gentleman from California (Mr. STARK), the gentleman from New Jersey (Mr. PALLONE), myself, and a whole host of others. We should move quickly on those bills as the number of unemployed workers in this country who have lost their jobs is way too high and too many people who have lost their jobs have lost their health insurance.

It is discouraging, but worse than that, it is outrageous that we as a country, as rich as we are, simply will not take care of those who play by the rules, pay their taxes, contribute to their communities, and we do not do anything about their health insurance.

Ms. BALDWIN. Mr. Speaker, I thank the gentleman for sharing his constituent's words as well as his own to this critical debate. I must note that the gentleman points out that we are the only industrialized Nation in the world that does not offer health care to all of its citizens.

I was listening to the Special Order which occurred the hour before this, where Members from the majority were talking about nations with universal health care plans and berating them for rationing care. I cannot imagine how anyone believes that a system where 43.6 million people are uninsured, and many more underinsured, we are clearly rationing care here in this country and need to step up to the plate and address that.

I am delighted to be joined by another one of my colleagues whose work on the issue of health care I admire so greatly. The gentleman from New Jersey (Mr. PALLONE) is also a member of the Committee on Energy and Commerce. Day and night, the gentleman works on the issue of health care.

Mr. Speaker, I yield to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I thank the gentlewoman from Wisconsin (Ms. BALDWIN). I know that both of us are involved with the Democrats' health care task force. One of the things that we work on is trying to come up with some solutions in dealing with the problem of the uninsured. As was pointed out, the number of the uninsured continues to go up. The gentleman from Ohio (Mr. BROWN) said it was 40 million a few years ago, now it is up to 44, 45 million. The number continues to grow.

I do not like to criticize the Republican side of the aisle unnecessarily, but I am amazed by the fact that our two colleagues who were here earlier were so convinced that other countries do not have the solution. Statements were made about how national health insurance does not work, yet the reality is, as my colleague from Wisconsin mentioned, in fact it does work.

□ 2145

I am not saying that we are advocating that. I would love to see national health insurance. I know that is not realistic politically, we are not going to get it; but to suggest that somehow these other countries, whatever country you mention, France, Great Britain, Canada, Italy, all of Western Europe, every developed country really, other than the United States, has some form of national health insurance.

The one thing I would stress, too, is I think when people talk about national health insurance, they get the impression that somehow that means that the government is going to run the hospitals or salary the doctors or something like that. That is not what national health insurance is all about. National health insurance just means that everybody has health insurance. People can have thousands of different policies, but it would be wonderful if we could say that everybody has health insurance. We are not saying, I am not saying certainly that the government would run the system, but they would at least guarantee that everybody has some form of health insurance. But that is not going to happen, that is not going to happen in the near future, so I do not want to really stress that today.

I also heard my colleagues on the Republican side talk about community clinics or community health centers. The amazing thing about the Republicans is that they are in the majority and they act as if they are running for office and if they get in, they are going to implement these policies. They neglect to point out that they are in the majority, that the President is a Republican, the other body, the Senate, is majority Republican, there is a significant Republican majority here. So if they think these policies are so wonderful, why do they not pass them? The reason is because they do not have a consensus. In other words, they cannot get all the Republicans or a majority of their own party to agree on these three bills that they brought up today.

They have characterized this week as Cover the Uninsured Week. They basically have three bills that are on the House floor. One deals with associated health plans; the other Republican bill is the health savings account legislation; finally, the medical malpractice legislation. Every one of these things has already been passed in this House in pretty much the same form last year. Again, they are in the majority. I think these bills are terrible. I refuse to vote for any of them, but if they think they are so wonderful, then what is the the big holdup? Pass it here, send it over to the other Republican body, send it to the Republican President, it becomes law. That is the way we operate.

The problem is these proposals do not actually help the uninsured. They are bad proposals that will probably result in more people being uninsured, and that is why they cannot get most of the Republicans or enough Republicans to pass them. There is a certain amount of disbelief on my part when I listen to what they say.

The other thing is they talked about the community clinics. I have to go back to that. Again, if you believe that community clinics or health centers are a way of dealing with people who do not have health insurance, I do not. I think they serve an important role. I would rather see everybody have health insurance; but certainly if everyone does not, as my Republican colleagues mentioned, somebody could go

to a community health clinic or health center. These places are grossly underfunded. A few weeks ago when we had our break around Easter and Passover, I had a gathering, a forum at a community health center in Asbury Park which is in my district. They are so grossly underfunded. They try to accommodate everybody, but they cannot.

One of the things that was particularly egregious was dental care. We know how there is no dental care, and there are long lines. They do not even have the dental clinic there. It is at another location. There were long lines of people that cannot get in. The Republicans are in the majority. If they think community health clinics are the answer, why do they not just appropriate money so that they can accommodate more people or we can have more of them? I do not want to just totally discredit them, but when I hear these statements, and I hear this banter about how this is Cover the Uninsured Week, the bottom line is it is just a ruse.

I want to just talk about each of these bills that they say is going to address the problems of the uninsured. They claim that the associated health plan legislation, which I think was voted on today, that that is going to lower rates and provide greater access to insurance. The reality is that the associated health plan legislation would result in less health care access and dramatic increases in premiums for State insurance-based employers. Associated health plans would fragment and destabilize the small group market resulting in higher premiums for many small businesses. The Republican legislation would allow employers to cherry-pick, attracting younger, healthier individuals to join associated health plans while leaving older, sicker individuals in the traditional insurance market which results in increased premiums for the remaining pool.

One of the things that everyone knows about health insurance is that the more people you have in the pool and the more varied they are, young or old or sick or healthy, then the more it works. I do not want to get into all the details of that, but that is just the reality of insurance. What this associated health plan does, is break the pool and there is cherry-picking of the younger and healthier and leaving the others outside. So it just does not work. It makes the situation worse.

The second thing they mentioned is the Republican health savings account legislation. I think that is up tomorrow. That creates a tax-favored saving provision with no income limitations. The main reason Republicans want to pass this bill is to create a new tax shelter for the healthy and wealthy while at the same time threatening higher health insurance premiums for everyone else. Under this bill, basically you get a tax credit that would allow you to set aside up to $2,000 tax-free in a new health savings account to supposedly help pay for health insurance, but unfortunately it is practically impossible for someone who is uninsured, who inherently does not have a lot of money, to be able to take advantage of the program because they would have an extremely difficult time saving $2,000 a year for health care. Again, it is not practical.

The last one, and I do not want to spend a lot of time on it, was the medical liability reform. I agree that we need to address the rising cost of medical liability insurance, but what does it have to do with the uninsured? How is passing that going to do anything? The nonpartisan Congressional Budget Office concluded, and I quote, ''that even a very large reduction in malpractice costs would have a relatively small effect on total health plan premiums.'' It is not going to help the uninsured. It is not even going to reduce costs in any significant way for the patient. It is addressed to the physicians. That is certainly a good cause but it is not going to help the cost for the patient or result in any more people being insured. I later want to talk maybe a little bit about some of the Democratic proposals. I know that my colleague from Ohio did that.

Ms. BALDWIN. I too share the gentleman's passion for creating a system where everybody in this country has health insurance. I guess I agree that the short-term prospects are dim, especially given this administration, this majority. But I do have some hopefulness, because frankly I think that the voices of 44 million Americans cannot be silenced and ultimately will lead to that political change that we are seeking. Along that line, I would like to share the words of a few more of my constituents. I want to share the words of Roger from Waunakee, Wisconsin. He writes:

''I'm a baby boomer that was rejected for health care. The explanation was vague, so I'm taking efforts to address it and resolve it but I'm frustrated with the realization of flaws in our health care system. At 54 years old, I'm healthy enough to exercise year round and race competitively in triathlons but not risk-free enough for the insurance companies. My wife is also healthy but she has so many riders on her coverage that her policy is almost worthless. An issue that may haunt us is what I call use it or lose it. Our main problem appears to be that we once had insurance and used it to stay healthy. Our claims were very small, much smaller than our annual fees but the insurance companies are using the knowledge that we learned about staying healthy as a logic to reject us. I normally don't like to see government getting into private matters, but health insurance does not appear to be a private matter anymore. We could easily pay out of pocket for the health costs we've incurred. We just wanted protection for potential major losses but now we're being rejected because of that.''

Aside from frustration with the higher cost of health care, thousands of other constituents write to me about the trouble they have finding an insurer to cover them.

Susan from Baraboo, Wisconsin, writes:

''I am writing you today regarding health coverage for single people with no children. As of this time, I feel that I am left out of the loop in regards to this topic. I am 42 and last September I was diagnosed with breast cancer. In January of this year, the company I worked for informed us that they would be closing down. I was laid off in December while I was out due to my cancer treatment. I have been searching for health care elsewhere because my COBRA will be going up. I am on unemployment, and I am barely able to pay the $244.76 for coverage now. I cannot get insurance because of the breast cancer. The health insurance risk-sharing plan, HIRSP, the Wisconsin State program, is too expensive for me to get coverage since they want 4 months of premium up front and they only cover some things. What are single people supposed to do? We do not qualify for any government assistance because we are single. I cannot go without insurance. There are no programs to help us out. So when you are working on health care in the House, please remember that there are other single people out there also in my shoes. I am at a crossroads because I have no avenue for assistance when it comes to health care. Come November, I will be unable to get coverage when I need it at this point in my life.''

Florita of Madison, Wisconsin, writes:

''I am a divorced parent and am having difficulty obtaining health care coverage for my young adult son. My son, now 19, was dropped from my group HMO and this was based on his age and not being a full-time student. His employer offers a health care plan but there is a 1-year waiting period. When I tried to apply for individual coverage for him through my current HMO, my son was rejected because they needed more detailed information on his health status. When I telephoned them and discussed his recent diagnosis of high cholesterol and the medication prescribed to control it, I learned that this alone would make him ineligible for coverage. I learned from other insurers that he would have been rejected in that he had high blood pressure, migraines, obesity, et cetera. In other words, the HMOs deny applicants for the conditions that are quite common for a large segment of the population. This entire situation frustrates me. The government provides free health care for prisoners, but law-abiding, hardworking citizens are either denied health care coverage by the major HMOs, often for ridiculous reasons, or are drained financially if lucky enough to find individual coverage due to the high deductibles and premiums, coupled with dental, prescription and

optical costs that are not even covered in these plans. Health care has become a for-profit business at the expense of people's health. All citizens, regardless of their income, should not be denied full health care.''

At this point I would like to yield again to the gentleman from New Jersey to share some of the remarks from his constituents.

Mr. PALLONE. I want to thank the gentlewoman again. I actually do have two letters that I wanted to bring to your attention. By way of background, though, I did want to say, obviously many of us do believe as I do that we should have national health insurance. One of the letters actually addresses that. I would like to read it now. But I would also point out that there are ways of dealing with the uninsured in a more piecemeal fashion to expand options for the uninsured that would cover a great deal of those 44 million Americans. And so whether or not you agree, as I do, that we should have national health insurance or you want to look at this in a more piecemeal fashion, either way certainly would be better than what the Republican majority is proposing because I think that their solutions really are no solution at all. But I did want to read this one letter. I am not going to mention the names of my constituents because I did not get permission, so I am just going to read some sections. This is from a gentleman who is an advocate of national health insurance. He writes a very good letter.

He says:

''I ask that you give some thought for national health insurance to cover every American citizen. We as a Nation are ranked 37th out of 191 countries as far as medical health care. Our country is considered one of the wealthiest in the world. That being the case, why shouldn't every American citizen have medical, dental, and prescription drug coverage? A recent study by the prestigious Institute of Medicine said 18,000 Americans die each year because they don't have health insurance. Myself, I wonder how many die because they don't have adequate health coverage because they can't afford the better coverage. Some can't afford to pay for their medication, glasses and other needs. I find it disgraceful that should you fall very ill or need extended health care or have to be treated for a terminal illness, all personal property and assets you work hard for all your life will be taken away from you and your loved ones. No other industrialized nation rations out health care to the degree as the United States does.''

The letter goes on, but I think that last point is particularly apt, given what our Republican colleagues said earlier this evening and I will read that section again from this letter: ''No other industrialized nation rations out health care to the degree as the United States does.'' For those Republicans that say that other countries are rationing health care, we do it more than anybody else because we have so many uninsured.

The second letter that I have I think is particularly significant because this person is a small business owner.

□ 2200

And as we know, one of the Democratic bills that we introduced today and that we wanted to have considered as an alternative to the Republican bill is the Small Business Health Insurance Act which creates a 50 percent tax credit to help small businesses with the costs of health care, which I think would be very significant; but again I would point out that under the rules of the House with the Republican majority, we were not allowed today to bring up this bill, which is what we wanted to do. We did not have that option.

But in any case I will say this is from Christine, I will not give her full name, one of my constituents. And again I am not going to read the whole letter but I will read some parts of it.

She says: ''Dear Congressman PALLONE: I am writing to you to make you aware of the desperate situation in which my husband and I find ourselves. Included in this letter you will find a copy of a newspaper article from the Star Ledger.'' Let me explain that this newspaper article in the Star Ledger, which is the largest newspaper in the State of New Jersey, basically talks about the State License Beverage Association which had a health plan to cover member restaurants and taverns but essentially went belly up. I do not know all the details, but if people read the Star Ledger article, it simply stopped paying out benefits because it did not have the money to do so, which I think highlights again how difficult it is for small businesses to provide coverage even through their trade association.

But let me go on about what Christine says. She says: ''This is most upsetting to us, as my husband was released from the hospital, after suffering a heart attack and subsequent angioplasty the day before we read this article'' in the Star Ledger. ''I cannot imagine what his bills will be.

''For a year prior to reading this'' Star Ledger ''article, we have been trying to find out why our doctor bills and hospital bills are not being paid. We receive letters and telephone calls from collection agencies. We never got a straight answer from the New Jersey License Beverage Association. We are told to resubmit the bills. Our premiums of $868 per month were paid in full, without exception. We also pay a $500 deductible per person, per year. That amount is for the most basic coverage; no dental or eye care. In addition, our plan is a 70/30 plan, which means we pay a co-pay each visit plus 30 percent of the rest of the bill.'' We can see that this is not really the best of plans, but this is all they had. When we are seeing cardiac specialists, this 30 percent can be hundreds of dollars. Being restaurant owners, we know this amount of money is more than many people who work for large corporations pay, but we know it is what we have to pay to take care of ourselves.

''In addition to being without health coverage through New Jersey License Beverage Association, we now have to try to find a new health coverage plan. This task will not be an easy one. My husband and I are both in our 50s and have a number of health problems or, as they say, 'preexisting conditions.' Health insurance plans do not like to see these words. They are reluctant to take on customers who may cost them money right away.

''Please look into this matter. Where did our money go, if not to pay our doctor bills? How can we possibly be held responsible for over a year's worth of doctor bills when we have paid our premiums?'' And they go on.

And, again, the problem is real. The problem faces these 44 million uninsured Americans every day. And what we have proposed as Democrats here today, and I know my colleague from Ohio went into it a little bit, were three pieces of legislation which, again, are not going to cover all those 44 million uninsured but probably would cover the majority of them. And one of them, as I said, was the bill called the Small Business Health Insurance Act, which creates a 50 percent tax credit to help small businesses with the costs of health care, but I wanted to mention the other two. The second one is the Family Care Act, which essentially expands Medicaid and S-CHIP to provide affordable coverage to about 7.5 million working parents.

What we found a few years ago when we studied the 40 million uninsured was that the biggest group of uninsured were kids, and the second largest were the near elderly, those between 55 and 65 that were not eligible for Medicare, and then the third, of course, were the parents of the kids. So we tried through, as I call it, piecemeal legislation to address those problems. And then we did pass it. It was a Democratic initiative, but we did get enough Republicans; so we passed the Family Care or the S-CHIP, which gave money back to the States to provide for health insurance for kids. What this bill does that was introduced today, this Democratic initiative, the Family Care Act, basically expands Medicaid and S-CHIP to provide coverage for the parents of those kids, the 7.5 million people.

And then the third piece of legislation is the Medicare Early Access Act that provides coverage to 3.5 million people who are over the age of 55, but not yet eligible for Medicare, by allowing them to purchase Medicare coverage. These are the second largest group of uninsured, the near elderly. What happens is that when someone gets, say, 10 years prior to that, 65, when they are eligible for Medicare, they are often in a situation where they may be a spouse of a husband who may have died because he is older. I am

assuming the woman is still alive, but it could be either way. Then the other thing is that a lot of people at the age of 55 will sometimes lose their job or they will be in a position where they have an early retirement and they may think they have health care coverage, and then they do not have it or they lose it. So that is definitely a very vulnerable group, and they could be added to the Medicare program by simply paying a premium. It was estimated, I think, a few years ago, when President Clinton was in office, that it would be something like $350. I guess it was probably a month, I would imagine, $350 a month. Some people may not have been able to afford that, but it would have been an option.

So these are ways, as I said, that we can expand health coverage and cover the majority of the uninsured without having to go to the national health insurance. Again, although I would like to see national health insurance, the Democrats have a consensus that this is a way to address the problem through this, as I call, piecemeal legislation that would provide significant coverage for most of the uninsured.

Ms. BALDWIN. Mr. Speaker, I thank the gentleman for his comments.

I have several additional letters from constituents that really, I think, emphasize the crisis that we are in right now, and their voices are so powerful in this debate. This is ultimately what is going to make the difference in this debate, what will ultimately bring us to pass effective legislation, not just things with feel-good titles to them. And their voices are very powerful in this debate.

One letter, Norm from Mazomanie, Wisconsin, Norm writes: ''I had short-term coverage through COBRA, but that was cut short when my last employer reorganized. With that change came a loss of coverage, without notice. For some this would be a case of purchasing private coverage. For me it was a crisis as my medical records include treatment for skin cancer, angioplasty with two stents in my heart, and one episode of a transient ischemic attack (ministroke). I was lucky in all three cases as early detection and proper treatment left me able to work without limit and able to carry on life normally. However, it also made me uninsurable. I am grateful for living in Wisconsin as I was able to secure coverage through the Wisconsin Health Insurance Risk Sharing Plan. The coverage is expensive and has a high deductible. It is, in fact, best described as an asset insurance rather than health insurance.

''My bottom line is that if one can get the insurance, many can ill afford it. And if they can afford it, it commands such a large portion of the budget for a retiree or unemployed person that it is often a choice of insurance or having access to other normal things as well.

''Would there have been any value in saying we have a medical coverage crisis in this country and it's not only for the homeless or indigent. It has arrived for the common man. There is no place to turn. We can fund billions to defeat Iraq and will spend billions more to repair that country. We give aid to half the world and spend billions on one questionable project or another. Yet we cannot seem to find a way to provide decent, affordable health care to those of us who have faithfully paid large portions of our income to the tax system. It is time for Congress to get off their figurative and collective behinds and address this issue.'' And that is what Norm writes.

Niki from Madison, Wisconsin says: ''I'm fighting a battle right now just to get coverage. After a layoff 6 years ago, I had a year of COBRA and then found an agent and got insurance rather easily with a company the agent represented. That company'' was bought by another company and now the new company ''has decided to get out of the medical insurance business. My agent recommended switching companies and that's where the sledding has gotten tough.

One company ''turned me down for a jammed little finger and removal of a benign growth and again on appeal, despite a letter from my doctor saying I have been a perfectly healthy person all my life with no predisposition to anything uninsurable,'' a second company asked '''Have you ever been turned down for insurance?' Well, yes, just last week, for a jammed little finger and removal of a benign growth.'' That company ''gave me no specific reason for also turning me down. I have to make a request in writing to them for that information and then they won't send the information to me, only to the health provider of my choice.

''What really irks me is the years and years that I have never made a claim.''

Along with these individuals, there are millions of Americans who are fortunate enough to find an insurer willing to cover them at an affordable price. But oftentimes the coverage turns out to be inadequate, and necessary medical procedures and treatments simply are not covered.

Jean from Stoughton, Wisconsin writes: ''Please continue the fight for coverage for mental health with medical coverage. We know all too well the devastating sadness that we have endured having an immediate family member with a severe eating disorder complexed with Type I diabetes. We have fought with the insurance company for 3 years with little success. Twenty visits for mental health is all that is included with most medical plans, and this does nothing to address a severe eating disorder and very possible death being a fact at all times for our family. It takes no rocket scientist to understand that being put in the hospital every 3 weeks in intensive care for the last 3 years is not saving any money for the insurance company, and yet the company will not budge. They would rather let a patient die than to open up the door and give mental health access to get better and become healthy.''

Barbara from Madison, Wisconsin writes: ''In August, 1997, both my husband and my college-age child required major medical care. One had a disease of the kidneys and one suffered severe clinical depression. Both patients required emergency visits and extended treatment. Both patients were compliant and followed their doctor's treatment instructions. Both patients were covered under the same family policy, which had been in effect for over 25 years.

''But our insurance company paid his expenses at a rate twice as high as it paid hers, because he had kidney stones and her severe depression was 'mental illness.'

''My husband underwent three outpatient treatments to dissolve the stones, as well as the required X-rays, tests, and office visits. When these treatments failed, he underwent surgery to remove the kidney stones. He was not expected to remain in extreme pain for the next several months until the new calendar year came in order to have insurance coverage. He was not told that he had used up all of his allotted benefits.

''My daughter required an emergency room visit as the result of a depressive self-harm episode.

□ 2215

Since this was not a psychiatric visit, the insurance paid 75 percent of the cost to treat her. But when she required psychiatric hospitalization to prevent any more self-harm, the insurance paid only 44 percent. And since she has been faithful about seeing her psychiatrist regularly, her insurance would not pay anything towards future psychiatric visits because she had used up her allotted number of visits for the year. She was expected to wait several months for psychiatric care to be covered, even though she was in extreme emotional pain, since she had used her allotted number of psychiatric visits for that year. Even though she was dangerously suicidal, the insurance company would not cover her psychiatric treatment. Of course, if she had harmed herself and survived, the medical bills would have been covered. Needless to say, we are not willing to take a risk with our daughter's life, so we accumulated an exorbitant amount of medical bills.

''Was my husband's health of more value than my child's? Of course not. But our insurance company paid his expenses at a rate twice as high as hers. Justice demands parity in insurance.''

Mr. Speaker, as Cover the Uninsured Week comes to a close, I am very grateful to know that I have colleagues here fighting tirelessly for a better answer to our health care crisis in this country.

Before I close, I yield additional time to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I want to thank my colleague for not only doing this special order, but also for having all those letters and comments from her constituents, because I think that is the best way to show what the problem is. It needs to be personalized, because it is real.

This is not just some abstract theory we are operating under here. These are real people who are suffering and talk to us and approach us. Many of them are not in a position to write a letter, because maybe they are not articulate enough. But they tell you when they see you on the street or they see you at a function that they are having tremendous problems. And they are fearful. They either have no insurance or they are fearful they will not have insurance or they are under-insured.

I just want to spend a few minutes talking a little more about these three bills that we Democrats introduced today that I think will go far towards providing insurance for the majority of those 44 million uninsured Americans.

The one I mentioned before is the Small Business Health Insurance Promotion Act. This addresses small businesses trying to provide insurance for their employees.

I will not again get into all of it, but basically what it does is to provide a tax credit to help defray the costs of health insurance and encourage more employers to offer health insurance. It is available to any small employer who has 2 to 50 employees who provides coverage through a qualified pooling arrangement and who offers coverage to all employees. It is available to any self-employed individual who gets coverage through a qualified pooling arrangement. The tax credit, as I said before, is equal to 50 percent of the employer's cost of health insurance coverage.

Small businesses and self-employed individuals receive the tax credit for 4 years at least, and participating employers who increase the number of employees to over 50 after qualifying for credit continue to receive the credit for another 4 years.

The bill provides additional economic stimulus even to small employers who currently offer coverage, so it is something that those who offer coverage can take advantage of, so they do not get into a situation where they have to drop the coverage.

The second bill I mentioned is the one with the near-elderly. Actually, when I described it before, I made it sound as if you were going to have to pay all the costs of the premium. In reality, that is not the case. There is actually a subsidy in the bill. But I would like to describe it a little bit.

It again applies to those from 55 to 64. Starting in January 2005, individuals in that age bracket who have no insurance under another public or group health plan are eligible to purchase Medicare as their health insurance. They receive the full range of Medicare benefits and they are not required to exhaust employer-based COBRA before choosing the Medicare buy-in.

The way it works is the premium is set by the Centers for Medicare and Medicaid Services, and enrollees receive a 75 percent refundable advanceable tax credit to offset the premiums. So, basically the participants are only personally responsible for a 25 percent share of the monthly premiums.

The third bill I am not going to get into, because I see one of our colleagues has arrived, but it is the one for the parents of the kids who now receive funding and coverage for their kids under the SCHIP program.

Ms. BALDWIN. Mr. Speaker, I would like to now yield time to my colleague the gentleman from Rhode Island. The gentleman has distinguished himself on this issue since he joined us here in Congress.

I yield to the gentleman from Rhode Island (Mr. LANGEVIN).

Mr. LANGEVIN. Mr. Speaker, I want to thank the gentlewoman from Wisconsin (Ms. BALDWIN) and others for their leadership in organizing this special order, especially also the gentleman from New Jersey (Mr. PALLONE). The two of you deserve a great deal of credit, and I thank you for your leadership.

America's health care delivery system, Mr. Speaker, is incredibly flawed and in crisis. As premiums for employer-sponsored insurance rapidly rise, employers are struggling to maintain the same level of benefits or are offering less coverage and fewer options, and in some cases they are being forced to drop coverage altogether.

Even worse, the number of small businesses offering health insurance to their employees is rapidly declining. Existing public programs meant to reach those without access to private insurance are strained and still do not reach everyone. The challenges of the current system are affecting the health security of every American. Meanwhile, as we learned this week, the number of uninsured Americans is rising.

Mr. Speaker, we depend on coverage from a very haphazard system. If you do not qualify for a public program and do not work for an employer who is able to offer comprehensive benefits, you do not have access to affordable group coverage.

I find it staggering that over 30 percent of uninsured Americans are working and making more than $50,000 per year. Most of these individuals who make too much money to qualify for Medicaid are willing to contribute a fair share of their own income to a health insurance plan, if only they had access to a reasonably priced private plan.

The fastest growing segment of the uninsured population is young adults. There are 8 million 18 to 24-year-old Americans without health insurance. We need to find a way to pull these people into the system, which is breaking under the strain of rising costs and an aging population.

Like my other colleagues here tonight, I am going to read a letter that I received earlier this year from a young man in my home State of Rhode Island.

Mr. Speaker, it reads: ''I am a 28-year-old resident of Warwick. The cost of medical care is astronomical. I do not have a job which gives me coverage, so I was forced to pay over $400 a month to Blue Cross for my health coverage. Well, I am no longer able to afford that incredible price and they have dropped me. I then applied to the Department of Human Services in Buttonwoods for medical assistance, and I was rejected. They said my medical condition was not severe enough to warrant assistance.

''My medication and medical bills are far too expensive for me to afford more much longer. I live with my family and they have been giving me help, but it is an extreme strain. I have just recently gotten a job delivering papers, but that will not be much help.

''Are there any Federal programs which could help? Are there any State programs? There seems to be no information out there for people such as myself who are in desperate need of medical coverage. I can afford maybe $100 to $200 per month for coverage, but I do not know of any private companies in Rhode Island that provide that.

''I have heard of the Neighborhood Health Plan of Rhode Island and Right Aide, but they seemed designed for families and I was told initially I probably wouldn't qualify. What about singles such as myself?

''Do you or does anyone on my staff know how to help? Can you direct me to any government or private agencies, and can you tell me of any private health insurance companies in Rhode Island, aside from Blue Cross, that provide reasonably affordable health coverage? I have looked on the net, but most of what I see are scams and junk web sites.

''Also, I am a registered Democrat and I am aware of your work on health care, but I think that the U.S. Congress and our State could do a much better job at getting the uninsured more help and more information. Thank you.''

Mr. Speaker, my constituent sees the value of health coverage and has expressed a willingness to contribute a fair amount of his salary towards the cost of his medical care. Yet, because he does not fit into one of the categories I described earlier, there are no affordable options available to him.

Mr. Speaker, this is morally and economically wrong. We must begin a meaningful dialogue about how to reach those who have been left out of our health care system.

I am presently at work on a health care proposal that will assure a system that can include people like my constituent. The plan that I am proposing, that I am working on, uses the Federal

Health Employee Benefit Plan as a model and would make a major step forward in achieving health care for all.

Mr. Speaker, I look forward to working with my colleagues on this effort and other legislative initiatives that will extend the promise of health insurance for every American.

Mr. Speaker, again I want to thank my colleagues for organizing this special order on such a critically important issue at this time.

Ms. BALDWIN. Mr. Speaker, reclaiming my time, I thank the gentleman.

Mr. Speaker, I want to thank all of my colleagues who this evening amplified the voices of their constituents. The crisis is dire. I know that we are rededicating ourselves as Democrats, but also as Members of this body who have constituents in dire need, to work towards the day where there is no need to have a Cover the Uninsured Week because we found solutions, workable solutions, to this problem.

Again, I thank my colleagues who shared this hour.

Ms. MILLENDER-McDONALD. Mr. Speaker, I rise this evening to speak for a few moments about the almost 44 million Americans, including 8.5 million children, who are uninsured.

Mr. Speaker, this week is Cover the Uninsured Week. As part of an intense effort to highlight the state of the uninsured in this country, more than 800 national and local organizations are working together and holding events, including health and enrollment fairs for uninsured Americans and health coverage seminars for small business owners.

In a study released yesterday, the Kaiser Commission on Medicaid and the Uninsured estimates our Nation will spend $41 billion to care for the uninsured in 2004. Federal, State and local governments will bear as much as 85 percent of these costs according to the study.

This study comes on the heels of new research from the Robert Wood Johnson Foundation, the national sponsor of Cover the Uninsured Week, which found that 20 million working adults in the U.S. are uninsured.

In my home State of California, approximately 6.5 million State residents were uninsured for all or part of 2002. Mr. Speaker, the uninsured are not only the poor or unemployed. In California, 2.5 million working residents are uninsured. That's 16 percent of the working population.

According to the Kaiser Family Foundation, between 2000 and 2001, the number of the uninsured increased by 1.4 million, and low income Americans are the most likely to be uninsured.

Mr. Speaker, earlier this Congress, I introduced legislation, H.R. 1143, the Keep America Healthy Act. My bill amends title XIX of the Social Security Act (SSA) to permit States to expand Medicaid eligibility to uninsured, poor adults.

The eligibility is expanded through the creation of a new optional Medicaid eligibility group for individuals between the ages of 21 and 65 whose family income does not exceed a State-specified percentage of up to 200 percent of the applicable poverty line.

I believe that Congress must take steps to insure the health of all Americans. In addition, the working poor should be confident that unfortunate incidents would not affect their ability to provide for their families. These citizens are left vulnerable by the lack of Federal health care assistance available to them, and my bill seeks to fill that gap.

Mr. Speaker, we all are aware that there is a health care crisis in our Nation, and while there are no easy solutions, I ask my colleagues to support not only my legislation, but also the mission and goals of Cover the Insured Week.

Mr. RODRIGUEZ. Mr. Speaker, I rise today in observance of Cover the Uninsured Week.

Over 40 million people are walking the streets of America without the most basic of protections. A protection that you and I have, and one that has been afforded to our families. But for many working families, the prohibitive cost of health insurance puts it out of reach. And this can lead to tragic consequences. The uninsured are more likely to be in poor health, receive diagnoses too late, and use the emergency room for primary care.

Research also shows that being uninsured has a financial cost too. After jobs loss, being uninsured and getting sick is the most common reason people file for bankruptcy.

While the cost for solving the problem of the uninsured is high, the cost for ignoring this problem is even higher.

In Texas, a huge budget deficit led to drastic cuts in the CHIP program and optional Medicaid benefits. While some restorations were made, those cuts will undo any gains that Texas has made in the fight to increase access to care.

We must begin to thing of healthcare as an investment. It is an investment in our children, in our workforce and in creating a better quality of life that we all strive to achieve. Until we can guarantee coverage for all, then we must take measures to fill in the gaps.

Earlier today we heard spirited debate about the merits of Association Health Plans and revisited the debate on medical malpractice reform. But the bills that we considered would do little to address the problem of the uninsured.

In fact, the legislation could actually make people worse off as was the case with the Small Business Health Fairness Act, H.R. 4281. Under this plan, the CBO estimates that 80 percent of small businesses would see premium increases and as many as 100,000 of the sickest workers would lose coverage altogether. This is not the answer.

Instead, I urge my colleagues to cosponsor three bills that if enacted could provide help to over half the uninsured.

The Family Care Act will make it possible for the working parents of children who are enrolled in Medicaid or CHIP to also participate in the program. This bill will promote health for the entire family as people work their way up out of poverty.

Second, The Medicare Early Access Act is designed to assist uninsured people who are 55 and over, but not yet eligible for Medicare. The bill would allow this pool to purchase Medicare for a premium and a tax credit to help defray the cost of the premium.

Lastly, the Small Business health Insurance Promotion Act would provide tax credits to eligible small businesses, including the self-employed, to help secure affordable health insurance.

This week, Robert Wood Johnson Foundation released data showing that Texas has the highest rate of uninsured working adults at 27 percent. These are the folks that are out there working hard and paying taxes, but don't make enough to provide for their own benefits.

We must begin to tackle this problem by creating programs that will help small businesses offer health insurance to employees.

I would like to thank the Members who have worked tirelessly to promote and improve upon these bills, especially Representative DINGELL and Representative RANGEL. This three-pronged approach will help increase access to health insurance.

Again, I urge my colleagues to cosponsor these bills. Let's provide an answer to covering the uninsured.

PUTTING PEOPLE IN CHARGE OF THEIR OWN HEALTH CARE

The SPEAKER pro tempore (Mr. CHOCOLA). Under a previous order of the House, the gentleman from Texas (Mr. BURGESS) is recognized for 5 minutes.

Mr. BURGESS. Mr. Speaker, I have had the opportunity for the last hour to listen to some of the rhetoric coming from the other side. I will just have to say we have heard a lot of stuff on the floor of this House today about health care and medical liability insurance.

My firm belief is we need choices and options for the uninsured. Unfortunately, the other side chooses to characterize that as a piecemeal approach, but I believe that is an approach that is working and will continue to work, if we will simply give it the chance to do so.

There are fundamental differences between the Democrat side and the Republican side of this House. The Democrats believe that the government should be in charge of all health care and mete it out as they see fit.

Mr. Speaker, I worked for over 20 years as a private practitioner, as a physician, back in Texas, and I will just tell you I cannot imagine giving up that control over that much of my life to the Federal Government. I would much rather see people own their health insurance, be in charge of their health care themselves. I believe if you put people in charge of their health care, they will ultimately make better health decisions, and they will certainly help keep the costs of delivery of health care down.

One of the really painful things that I had to listen to over this past hour was discussion of the initiatives that were passed on this House floor today, particularly medical liability reform and the Association Health Plans. Yes, those are Republican initiatives, and a Republican House has passed both of those initiatives, well over a year ago in the case of medical liability insurance, and last June for Association Health Plans.

But, unfortunately, 440 feet away from us, we cannot get that legislation taken up; not because our Republican colleagues are opposed to this legislation, but because of the arcane rules of

the other body preventing that from even coming up to a vote on the other side. I think that is a shame.

Mr. Speaker, when the President came and addressed us in the State of the Union Address in January, he outlined three proposals that would help reduce the number of uninsured in this country. Remind you this was back in January, this was four months ago, so time is a-wasting.

What the President outlined, he said, ''We already did Health Saving Accounts in the Medicare Modernization Act that I just signed into law last month. What I think we ought to do now is provide a full deductible for a catastrophic health insurance plan, so that someone could purchase that with before-tax dollars and put those contributions for the deductible into their Medical Savings Account and build wealth with that.''

Mr. Speaker, I had a Medical Savings Account myself for 5 years before I came to Congress, and I will just tell you, that is a powerful way to build wealth in a savings account dedicated to your health care needs.

The President went on to talk about Association Health Plans. There is no aspect of Association Health Plans that involves cherry-picking. Far from it.

□ 2230

This allows a much larger group to capture the purchasing power of a large group and to disburse that purchasing power then amongst small businesses. I think that is an idea that only makes sense, and we ought to allow that to go forth. But unfortunately, again, the longest 440 feet in the world is the distances between the two Chambers here in this building.

Finally, Mr. Speaker, tax credits. I have no problem with tax credits. I believe they ought to be given to individuals and not small businesses. I believe if we provide small businesses the purchasing power of large corporations with association health plans, let us save the tax credits for the true working poor, those who otherwise would not be able to afford insurance, a prefund, if you will, that would occur at the beginning of every year to allow an individual to purchase health care or health insurance on their own, and that money would not be able to be used for any other purpose. It would not subsidize any other activity in that person's or that family's life, only expenditures for the purchase of health insurance.

Mr. Kondracke, who writes a column for Roll Call, not necessarily known as a friend of the President or a friend of the Republican Party, disparaged the President at the State of the Union address and said, my gosh, with these three proposals we would only cover about a quarter of the uninsured. Mr. Speaker, I maintain that if we have within our power, within our hands the power to cover one-quarter of the people who are right now in the ranks of the uninsured, today, without any heavy lifting, we ought to do so. I urge my colleagues on the other side to encourage their colleagues to help us get those three commonsense solutions passed.

Finally, I have just got to say a word about medical liability reform. No, it is not the cost of the doctors' liability insurance that is driving up the cost of health care. No one believes that to be true; no one has said that that is the cause of health care costs rising. It certainly can limit access, as doctors decide they cannot afford liability insurance and drop out of the market or move to a more favorable market, but that in and of itself is not going to be driving up the costs of the uninsured.

What drives up the cost of health care with the problems that we have with our medical justice system right now are the costs of defensive medicine. A patient comes into the emergency room, midnight on Friday night, the doctor is called in to see them: gosh, it is probably just a tension headache and I can treat that conservatively and send them on their way, but if I miss the opportunity to do the CAT scan and to diagnosis the more serious illness, I will have a hard time defending that in court. That drives the cost of health insurance up.

STEMMING UNCONTROLLED ILLEGAL IMMIGRATION

The SPEAKER pro tempore (Mr. CHOCOLA). Under the Speaker's announced policy of January 7, 2003, the gentleman from California (Mr. ROHRABACHER) is recognized for half the remaining time before midnight, which is approximately 44 minutes.

Mr. ROHRABACHER. Mr. Speaker, I rise to alert my colleagues to a vote that will be taken on the floor of this Congress next Tuesday. It is a vote that will mark a turning point for our country or will reflect a continued unwillingness by America's elected officials to do anything to protect us from the greatest threat to our national safety and well-being.

What am I talking about? Next Tuesday, there will be a vote on legislation that I have offered, H.R. 3722, which will attempt to protect us from a major decline in the quality of life and the quality of our health care due to the uncontrolled onslaught of illegal immigrants into our country and into our hospitals and emergency rooms. If left unchecked, illegal immigration will destroy the quality of life for many of our people.

It is unforgivable that government has refused to act when the evidence is clear: millions of people are being permitted to stay in our country illegally, and it is having a horrendous impact on the standard of living, safety, and quality of life of average Americans.

For tens of millions of Americans and legal residents, real wages have stagnated. The education of our children has been undermined, our health care resources depleted, and the safety of our streets and neighborhoods and, thus, the safety of our families compromised.

This is not a back-burner issue. It goes to the heart of what America will be like tomorrow and, in some cases, it deals with a crisis of today. Yet, elected officials have remained silent about illegal immigration. Why? The American people need to ask themselves that question, because it is clear that the overwhelming number of the American people are troubled and enormously concerned about this onslaught of this uncontrolled, massive flow of illegal immigration into the United States.

But why are our officials not acting? First and foremost, I believe that many elected officials have been intimidated from addressing this burning issue. When I say intimidation, what is that all about? Is that against the law? Well, no, one can be intimidated in a number of ways. I mean that our elected officials are afraid to address this issue because they are afraid to be called racists. They are afraid to be called hate-mongers.

Let me note for the record today that I have been called many names when addressing this issue, and I believe that I have love in my heart for all of, not just our fellow citizens and legal residents, but I have love in my heart for other people. People who are malicious, people who are doing ill and bad things to other people, of course we do not love them. But the vast majority of people, even illegal immigrants coming into this country are wonderful people, and I have nothing but love in my heart for those people. But that is not the question of the day. We can be very caring about the rest of the world, but that does not mean we do not recognize that we have limited resources and that we can deplete those resources to the point that it will be harmful to our own citizens if we do not act responsibly.

Furthermore, it is not hateful to use scarce resources to provide for one's family. If one is taking care of their family, if one works hard and has a certain amount of money, and even if there are needy people down the street, down the block, it is important to care for your family first. That does not mean you have any less love in your heart for your neighbors and the people down the street; but first and foremost, caring for your family is itself an act of charity and love.

I am committed to doing something about the threat of illegal immigration, not because I dislike people and certainly not because I dislike people from other countries. Most people who come here, as I say, even the ones who come here illegally, are wonderful people. But we cannot take care of all of the wonderful people in the world and expect that it will not hurt our fellow Americans, in the same way that we cannot, as individuals and as members of a family, give away all of the family's money to people down the street

who might need some help and not expect if we give away too many of those resources for it not to have a horrible impact on our own family and, indeed, hurt our family. We Americans, of course, are very proud that our country represents every race and religion. So it would not be that we have in some way something against people who are coming here from another country. In fact, we are all descendant from people who originated in other parts of the world, with the exception perhaps of the American Indians. Yes, we are a nation of immigrants and we are proud of it. And we are proud also that our country today permits more legal immigration into our country than all the other countries of the world combined.

One million immigrants are permitted to come here every year, along with 400,000 refugees. With a population of 280 million people, we can expect that we will absorb this responsible number of immigrants. It has worked out for us well in the past, because the immigrants who come here legally need to be healthy, they need to be honest, and they need to be self-supporting; or they are not permitted to come here. We have no such controls on people who are coming here illegally, perhaps bringing diseases, perhaps criminal elements, perhaps terrorists.

Tonight, however, I want to draw the attention of my colleagues to the dire consequences of not stemming the uncontrolled flood of illegal immigrants into our country. One can be for a responsible and a sizable legal immigration without then compromising a position that puts one totally against a flood of illegals coming into our country, especially the uncontrolled flood of illegals that we have been seeing in the last decade. Millions of illegal newcomers are arriving in our communities. Every day, tens of thousands more of them arrive. If they are sick or they are criminals or they are terrorists, we do not know. This is a catastrophe in the making. It will lead eventually, if left uncontrolled, to a destruction of the American way of life, the very way of life that has attracted all of our forefathers and -mothers here and has attracted the legal immigrants who come to our shores legally and come with respect for our law.

The American people, they see what is happening. They can see what is happening in our cities and in our communities throughout the country. The American people see this, and they are seething with anger. Every poll shows that 60 to 70 percent of the American people are outraged that nothing is being done and their country is being taken away from them by an uncontrolled flow of people from other countries. Every time it comes to a vote, the American people express this cry for help to elected officials to do something about illegal immigration. Proposition 187 was the first time that that really came to a vote; and let me say, 10 years ago, no matter what people have heard about proposition 187, it passed in a landslide. It passed in a landslide when all of the major interest groups were against it, the major news media. All the name-calling you can possibly imagine was thrown at this little band of activists who put proposition 187 on the ballot. But even though an overwhelming number of voters voted for proposition 187, it was portrayed as some sort of a loss for the Republican Party, because Republicans by and large had supported and identified with proposition 187.

Let me note that there are people in this body, such as the gentleman from California (Mr. GALLEGLY), who represents many areas in which there are Americans of Mexican descent who represent a majority of areas in his district, but the gentleman from California (Mr. GALLEGLY) tells me that many of the cities where the majority of the population are legal immigrants and where Americans of Mexican descent hold a majority, that many of those communities voted by majority in favor of proposition 187.

Many people are afraid, even with that staring them in the face, the evidence that Mexican Americans, like everyone else, feel that their way of life is being threatened and their standard of living and their families are being threatened by illegal immigration. Many people still hesitate, thinking that they might be insulting our American citizens who happen to be of Mexican descent. Well, there is no Californian that does not respect our Mexican American and Hispanic fellow citizens and legal residents.

California is, by its very name and by the names of our cities and our streets and our culture, deeply influenced by the Hispanic culture and by the Mexican American culture that has been part of our State since before it was a State, and we are proud of that as Californians. We are proud of that. And yet many people are afraid to be called a racist. They are afraid to be called racist or hate-monger; they are afraid that that might make some people who are right down the street from us, our next-door neighbors or others, feel that we have something against them.

Well, turning one group of honest citizens against another in order to keep the flow of illegal immigration into our country has worked to intimidate people, but it is a dishonest tactic; and we will hear it over and over again. I would alert my colleagues and the American people to pay no attention. The real hate-mongers and the real people who are engaged with racism are the ones who would suggest that we cannot deal with problems like illegal immigration unless we can call each other names.

Well, I would suggest that today the situation has gone so far down the road toward disaster that we have got to come to grips with this illegal immigration flow, or there is going to be irreparable damage to our country and to our people.

□ 2245

What else, of course, has prevented us from dealing with illegal immigration? It is not just a fear of being called a name and racist, et cetera; although that is a powerful factor. There is another factor involved, and that is, there are some enormously powerful interest groups who believe they are benefiting from this massive flow of illegal immigration into this country.

Who am I referring to? I am referring to big business who want to ensure that they keep wages down and suppress wages, and I am talking about the liberal left wing of the Democratic party who believes that they will exploit illegal immigrants for their own electoral purposes, that they can politically exploit them.

So we have two groups of people who want to exploit illegal immigrants: big business and the liberal left wing of the Democratic party, both trying to exploit these helpless people who come to our shores.

These powerful forces obviously do not represent the interests of the American people. First of all, let us note this. It is estimated that if illegal immigration is unchecked, and everything else being equal, the population of our country will jump from 280 million people today to 420 million people just a few decades away. Is that in the interest of any American to have that kind of crowding, that type of incredible increase in the number of people that we have to deal with and the demand on our scarce resources? That is what will happen if we leave illegal immigration, with millions of people coming in every year, and let it go unchecked. If that is going to happen we are going to end up with a half a billion people here in the United States of America.

Why are we letting it happen? There has been a lot of other things happening, and people know this is attributed to this massive flow of illegals. Yet we continue to let those things happen. Wages, for example, are being held down. There is no doubt about it; there are some people who benefit from low wages, the people who own the companies, people who want servants, et cetera. But most people, most Americans, are damaged by the product of illegal immigration, and I might add this keeping down of wages is changing the demographics in our society, thus changing the American way of life.

Let me note, it is a big lie that illegal immigrants are only taking jobs that Americans will not do. No, that is the great lie that is being used to justify this influx into our country, which is bringing down the wages of all of our people. No, no. Americans will do just about any job, but they will not do it at the pay level certain people are offering those jobs at. The pay level in our country for certain jobs, yes, Americans will not take that, but if we did not flood our country with illegal immigrants, those jobs would have to pay more money to get them done.

A good example of this is a job that I held when I was in college. When I was in graduate school, I held the job of a janitor. Yes, I cleaned toilets, and there is nothing wrong with that type of work. In fact, it is very honorable work. Any work where you are taking care of your own needs and being self-sufficient is honest work and dignified work.

During this time period after I, of course, got done with that job, that was 30 years ago, the GNP of our country has dramatically increased. We have had a tremendous increase in the GNP of our country, in the wealth of our country. This is a much richer country now than it was when I was cleaning toilets as a janitor, but if you look to see what janitors are making today in real terms, in real money, they are making almost exactly the same pay as I made when I was working as a janitor.

So why is it that the country can be so much more prosperous, there is so much more wealth here but the people working in regular jobs and more lowly jobs are not making anymore money? Where is their share of the prosperity we have enjoyed?

Their share is being gobbled up at one end of the spectrum by wealthy people and being gobbled up by government, I might add, and bureaucracy, and who is not getting it are the average working American people.

They say, well, no one would have taken that job as a janitor now. Yes, they would have taken that job had we not had a major influx of illegals in to take this janitorial work. What would have happened? They would have had to pay someone, like myself when I was in college, more money to do that job, and then you can bet that somebody would have invented a janitor machine, a toilet cleaning machine that would have cleaned the potties, maybe 100 potties. A man or a woman might be earning $50,000 a year to do a janitorial job.

There is nothing wrong with paying someone those type of wages for that type of work. As I say, any honest work is dignity, and the law of supply and demand will determine how much wages are paid, but instead of having one man working a machine, working technology to keen up our buildings and our bathrooms, we instead have opted in the society to bring in illegal immigrants, give them the jobs, but there are now five or six of those people and they are living in substandard housing with families that are deprived and are bringing the standard of living of their neighborhood down. These are people who are not living the American dream but, instead, are living the type of nightmare that they left in their home countries where there are very poor people and very rich people.

So what we have done, instead of giving working people in America an avenue of earning enough money to buy their own home, we have created a new class of poor people. Is that working for the interest of the American people of our country? Is that what we want? This is on top of, I might add, of course, the legal immigrants that we permit in, a million legal immigrants and 400,000 refugees every year.

Pressure is being felt throughout our society because of this massive flow of illegals into our country. I am suggesting millions of people are coming here every year illegally, and we are not doing anything about it, and the pressure is being felt. We can see it. The American people can see it. They can feel it, but nowhere is that more evident than in the providing of health care for our people.

Obviously we can feel it in other areas. We can feel it in the area of education. We have seen that in education, the quality of our education in California is going down. Everyone talks about class size in California. They are taking illegal immigrants out of the equation. In California, class size is not going up. You take the illegal immigrants out of the formula in California, education is doing very well, and our teachers would have time to teach our own students and give them a quality education; but no, we are permitting that to be eroded. For the average person out there who depends on educating their children in the public schools, we have permitted illegals to come in in order to help people who live in gated communities and send their kids to private schools. So education is being affected.

Our criminal justice system is being affected. We can see that throughout California as well, and health care is being affected.

Emergency health care is something that all of us depend on at one time or another. We just heard before us a few minutes ago by some of my Democratic colleagues talking about all these uninsured Americans, and there are uninsured Americans who do not have health care in this country. I have a piece of legislation aimed at trying to make sure that we do not put the status of illegal immigrants above our concerns for our own American citizens who do not have health care. My bill, H.R. 3722, will come to grips with an element that has just been put into our system unbeknownst to most American people.

What we did not know and what most people do not know is that a provision was slipped into the Medicare bill of a few months ago that passed through this House, and this provision established a $1 billion fund to compensate American hospitals for providing emergency health care to illegal immigrants. Let us make this clear: $1 billion of Federal money going to compensate hospitals for providing emergency care to illegals. Thus, we have officially opened the door to our own Treasury and to the taxpayers' money of providing services for illegal immigrants into our country.

We are providing this and it is $1 billion to start off with, and you can imagine that 10 years from now we are talking about 10s of billions of dollars, and we are talking about attracting more and more people here to the United States of America in order to get health care for their families.

We cannot spend money providing health care for people who come here illegally and not expect that we are not going to have even more people come here illegally to get that health care. It does not take a genius to figure that out. We have seen what has happened. We have seen this flow continue. We had an amnesty back in 1986. That amnesty was supposed to say there will be no amnesties after that. What happened? What happened was a dramatic increase in illegal immigration into our country.

The American Hospital Association reports that there were $21 billion in uncompensated health care services provided last year, and illegal aliens amount to 43 percent of those who do not have health insurance in this country. So 43 percent of all these people we are talking about that do not have health insurance are illegal immigrants. That is about $9 billion we are spending already for illegal alien health care. Yet we have established a fund that will provide health care for illegal immigrants' emergency health care.

What does that do? What does that mean? That means that we have created a perverse incentive for our hospitals to take care of the illegals who end up coming to their emergency center and treating the Americans and legal residents who come there, who do not have health insurance, as second class to the illegal immigrants. We have got the priorities totally backwards, but that message is not going to be lost on people overseas. They know they can come here and get that health care.

We all remember Jesica Santillan. She was an illegal alien who died after receiving not one, but two, heart and lung transplants in North Carolina. The Santillan family paid $5,000 to be smuggled across the border to get here to have care, care that they knew would take a long time to get if they could ever get it at all in Mexico.

There are American citizens who desperately need organs, and they are being knocked out of line by a family who broke the law to come here. Yes, that was a nice, little girl and that family's a very nice family. We hear stories in the newspaper every day about people who come here from China and elsewhere in order to get their families treated by America's health care providers. Yes, that touches your hearts, but let us be fair to the American people.

This is depleting our health care dollars that should be going to our own senior citizens. If we cannot provide medical care for our senior citizens, we cannot provide them medicines, how is it that we can provide $1 billion to treat illegal immigrants and then we are going to get more of them?

My bill will come to grips with this particular issue, H.R. 3722. It is meant to deal with this travesty. If passed, it will signal to the leadership that the American people no longer will stand for this type of providing services for illegal immigrants.

What does this bill do? It requires that hospitals ask questions that they are going to ask anyway. The hospitals are opposing my bill because they said it is going to add all kinds of questions that you have got to ask. No, I have got to tell you this. In order to get those funds to get compensated for treating those illegals, what we have got to do is ask questions anyway. My bill provides almost no extra paperwork. When you hear that argument, it is a lie.

□ 2300

What we have done is we have asked for a photo to be taken or a fingerprint, and one other question to be asked: Who was your last employer?

And I might add that my bill also says that if that last employer of this illegal who is now in the emergency room to get care, if he has not taken the due diligence to even make a telephone call to verify that this employee is here legally or not, and that system will be in place in 2005, well then that employer is required to pay the bill, not the taxpayers. The employer will pay that health care bill for being so arrogant as to try to hire a guy, probably not even paying his taxes and not giving him any health insurance.

So, number one, it suggests the hospitals have to take a minimum of attention to collect a fingerprint or a picture of this person, and enough information, as well as a few minor questions that they ask anyway, and that that information be provided to the Immigration and Naturalization Service and the Department of Homeland Security, and that we expedite deportation of that person who is here taking hundreds of thousands of dollars of health care away from our people.

If that person is here illegally, they should be deported; and that information should be available. But the hospitals are not required to do anything else than that which is minimal. It will not cost them time or money. And right now, by the way, these hospitals report abuse, spousal abuse, child abuse. That is all reported. They can do this. And, as I said, we require the employer then to pay for it if he has not taken due diligence.

Most importantly, this bill limits the amount of health care that we are going to provide illegal immigrants if they come to the emergency room and expect treatment. This is the all-important provision. Today, we have people coming from all over the world here illegally. They arrive at the emergency room and they say, you have got to take care of me. I just mentioned this young lady, this young girl from Mexico who we spent millions of dollars on, and then her family ended up suing the hospital for heart and lung transplants. No. Under my bill, the hospitals will not be required to do anything except treat anyone who comes in for a life-threatening condition.

If an illegal immigrant is there and they want to have leukemia treatments or treatments for genetic problems they have been carrying all their life, the hospital only has to treat that patient to the point that that patient then can get to an airport or get to a transportation system that will take them back to their home country to be treated for that disease there. That is where they should be treated, instead of having our hospitals being forced to pay hundreds of thousands of dollars for leukemia treatment, for example.

There was a fellow in my congressional district who came here from El Salvador, and he was dying of leukemia. He received $300,000 worth of treatment for leukemia. That $300,000 comes from the money available to take care of our children. It comes from the money that is available to take care of our seniors. Imagine, $300,000. It is a crime to permit someone who has come here to this country to deplete our resources like that.

Now, we are going to have a chance to vote on this next Tuesday; but it is not going to happen on its own, because H.R. 3722, which is the bill, is going to be the target of every interest group that you can imagine that wants to keep the flow of illegal immigration coming into this country. But the American people need to know that H.R. 3722, my bill, which will be on this floor next Tuesday, is going to be voted on. And the decision that is going to be made is the decision that we have limited health care dollars in this country; so are we going to spend them for illegal immigrants or are we going to try to get control of this situation so our health care dollars are going to our own legal residents and our U.S. citizens.

Is that hateful? Is that racist? Is that a horrible thing for people who care about other people to do? I say that that is the loving thing to do. I say that you can have love in your heart and try to be responsible. We know that if we try to do everything for everybody, we will end up not being able to do anything for anybody. We have seniors right now that cannot afford their medicines, yet we are talking about spending billions of dollars to take care of illegal immigrants.

Now, the only way that I got this vote to the floor, the only way that this bill, H.R. 3722, was permitted to come here to the floor for a vote was that they needed my vote. The leadership in the House needed my vote on the Medicare bill.

I voted for the Medicare bill because I felt that our health care had evolved now so that a lot of people who depended on operations and the type of things covered by Medicare in the past now took care of these problems by using pills and medicine. So we had to evolve so we could help people get those pills and medicine as they get to be older. Well, that bill only passed by one vote as it went through the House. And I voted for that and I am proud of that.

Then it went over to the Senate and that is where they stuck this provision in, this provision of a billion dollars, which is of course an installment. Ten years from now it will be $20 billion. We know that. So they stuck this provision in, and on the way back they did not have enough votes to pass the Medicare bill. That is why there is a miracle that is going to happen here next Tuesday.

They needed my vote in order to get the Medicare bill passed, and I said I cannot vote for this with this provision in here. I already voted for it when it was not in; I cannot vote with it in here. Unless it is mitigated, I cannot vote for this bill, and the bill was going to go down. The leadership said, what do you mean by mitigated. I said, I need to bring a bill to the floor that will undo the negative impact of the money that we are going to provide for illegal immigrants' health care in this bill. They said, you have a deal. We will let you bring this to the floor and the people of the United States will be able to hear the arguments and your colleagues will be able to vote up or down on the legislation that you have in mind.

That is how this bill came to the floor for a vote. The American people have to be involved in deciding this issue when this bill comes onto the floor on Tuesday. H.R. 3722 is very easy to understand. It means limited health care dollars are going to go to illegal immigrants, or it means that we are going to try in some way to restrict the use of our limited health care dollars in the servicing of illegal immigrants.

As I say, we have a situation in this bill that goes to the cost of illegal immigrants as well by making sure that our hospitals no longer feel compelled to provide extensive services, like cancer treatments and genetic engineering and bypasses and things to help people who are not in a life-threatening situation. We cannot afford to do that for illegal immigrants. We cannot afford to do it.

First of all, it is unfair to our own U.S. citizens to have a fund that will compensate hospitals for taking care of illegal aliens who do not have health care insurance, but then we are not doing that for our own citizens who do not have health care insurance. That is wrong. It is immoral, and it is wrong.

We need to make sure when the illegal immigrant is there that we do not end up spending massive amounts of money. The only money that should be spent is in case that person, his or her life is in danger at that moment. We cannot afford anything else. There are some people who believe that we can do everything for everybody. They never vote against any spending in this body.

They vote for any new government program. I do not know how they can think they are being responsible, but they do.

I can tell you right now, we cannot be the HMO of the world. If we try to be the HMO of the world, and we attract people from all over the world, which we are doing now, and taking care of all their maladies and all their health care problems, we will be doing so at the expense of the American people.

Yes, illegal immigration is out of control. It is dramatically hurting our way of life. We have wages that have been kept down so some of our people cannot afford health insurance, and now we are taking care of illegals and not their health insurance. We have people now who come to this country and will work and not pay taxes, so that means they are not getting health insurance, they are not paying taxes, and that means doubly that we end up paying for their bill.

□ 2310

Who are we really subsidizing? We are subsidizing the employers of these people who are basically not only exploiting them, they are exploiting the taxpayers. The people are getting filthy rich by hiring people who have come here illegally and not providing them any health care and not having them pay taxes to make up for the services they are consuming here. This has to be stopped. It is bringing down the wages of our people and it is destroying the American way of life.

We cannot sustain millions of people coming into this country without harming our own people. Wake up, America. We can do something about this, but we have got to take a stand.

Next Tuesday, it will be very easy to understand, except there is going to be all kinds of rhetoric about the burden of paperwork that we are going to put on the hospitals. By the way, there is no burden of paperwork unless the hospital wants to be compensated. H.R. 3722 will not require the hospitals to do anything if they do not want the Federal dollars to compensate them for taking care of that illegal immigrant.

If they want to opt out, there is no burden. But if they want compensation, they are going to have to ask certain questions to prove this person was illegal to get compensation. My legislation requires a minimal amount, maybe an extra 30 seconds, enough to snap a Polaroid shot and ask who the former employer is. That is it. All they are doing is putting this information into a computer that is available to the Immigration and Naturalization Service, and then the legislation requires our government employees at the Immigration and Naturalization Service to look at that information and they will analyze it and they will begin deportation against an illegal immigrant.

Why should we do this? First, some will say it will mean more people are not getting treated in our society. There will be more sickness in our society.

Let me note that if Members want to see sick people coming to America, let everybody in the world know if you get to America, you are going to be treated. You are going to get free health care. They are going to bring their kids here with polio and everything else because they know their family will be treated in the United States of America. If we want to spread disease in our society, let us make our society the HMO of the world, and that is what we are doing here today.

No, this is not an imposition on the hospitals. They can opt out if they want. It is no more bother than what they are already doing. For example, child abuse cases go to the police. They make a report to the police; or some spousal abuse case, they do that already. No one is complaining about that. But let us compare what illegal immigration is doing to those situation.

This illegal immigrant from El Salvador who died with leukemia and taking with him $300,000 of U.S. tax dollars with him, how bad is that? Is that awful? The girl in North Carolina, we spent $5 million on her. Why is that bad?

Today if that guy would have lived and gone into a drugstore or liquor store and stolen a couple hundred bucks, he would be in jail. If one of our people, our citizens, goes into a store and robs it of a couple hundred dollars, that person is going to jail. But instead, we are taking people who have entered the United States illegally or have overstayed their visas and are just here illegally, and we are permitting them to consume hundreds of thousands of dollars, taken directly from our pockets; and the money available for providing services, we are permitting them to take this money. They are stealing from our society, but their accomplices are the people in our government who refuse to come to grips with this grave threat to our society.

We all know that we have a threat here to the institutions, our health institutions and to our schools. We also know that with illegal immigration out of control, we do not know if these people are terrorists, if terrorists are coming here. We have to come to grips with this.

We have to look in the mirror and say we are proud to be a country that is made up of every race and every religion. We are proud to be a Nation of immigrants. We are proud that we have more legal immigration in our society than any other country in the world, but we are not going to be browbeaten and called names in light of our generosity, simply for doing things that are responsible in protecting our own citizens and legal residents.

We have got to watch out for each other. We have to care for our other fellow Americans more than people who have come here illegally. If we do not, no one is going to stand in line and go through the process of legal immigration.

This is a situation that threatens our way of life. We have to proceed with love in our hearts, but we have to proceed with determination to turn the situation around. Next Tuesday, Members of Congress have got to know that their constituents will be judging them on their vote on H.R. 3722. No one should be fooled by any smoke that is blown into the air to try to confuse people on the issue. This is the issue of using scarce health dollars for illegal immigrants versus using those dollars for American citizens and legal residents.

People need to have their voice heard in Washington, D.C. Elected officials need to come to grips on this, and we need to have more votes on this than simply those votes that are required whenever there is some type of arrangement made because votes are needed on another piece of legislation.

There are good people on all sides of this issue. There are good people who are concerned about large numbers of illegals. We have 12 million illegals in this country, but we have to be more concerned with American citizens and legal residents.

IRAQ WATCH

The SPEAKER pro tempore (Mr. CHOCOLA). Under the Speaker's announced policy of January 7, 2003, the gentleman from Washington (Mr. INSLEE) is recognized until midnight.

Mr. INSLEE. Mr. Speaker, my colleagues and I tonight have come to the floor in a continued series of discussions that we have styled as the Iraq Watch. We, unfortunately, have had to be involved in this now for several months. We do so because we believe very strongly that this situation in Iraq is of such high challenge that the U.S. Congress owes an obligation to be involved in the tough decisionmaking and not just punt to the executive branch of the United States Government. We believe that there are some serious issues that need discussing, and we intend to do so tonight.

But before we get to some of the controversial issues that need discussion, I think it is important to note the unanimity that this country has and the total bipartisanship we have in three or four very central elements in this challenge pertaining to Iraq, and I want to list four of those.

First, all of us are dismayed and appalled at the savagery of the United States contractor who was executed in a horrendous act that Americans are seeing and hearing about on their television screens tonight. I think it is important for us to recognize the sense of outrage that we need to maintain as a healthy sense, and not to give it up and say it is another act of violence. We need to retain our sense of outrage at their behavior.

Second, we have a bipartisan consensus in this country that we are dismayed and disturbed by the occurrences in our prisoner of war camps. Today, as Members of Congress, we join in a bipartisan way, unfortunately, to review the incredibly disturbing still pictures and videotapes which still have not been released of some of the things that went on in the prison camps.

□ 2320

There is a bipartisan recognition that those actions damaged our potential success in Iraq and that we in a bipartisan way want to find a way to make sure that never happens again because we have too many challenges already in Iraq to add to those challenges by self-inflicted wounds. Third, we have a national consensus that extends our feeling of loss to many of the innocent Iraqis who have found themselves in harm's way as a result of this action. Fourth, and perhaps this is the most important for us to reiterate, in any discussion of Iraq, there is absolute unanimity across this country in expressing pride and respect for the heroism and the professionalism of our troops in the field in Iraq. No matter what we say tonight about the civilian leadership who unfortunately we believe have made some very grievous errors to our soldiers' disadvantage, it is very important to realize there is total consensus in this country and in the House of Representatives respecting the dedication of our troops, notwithstanding the difficulty in the command and control structure that happened in these prisons. Those are four points of consensus and unanimity that we have in this country that we intend to make sure we note.

With that, I would like to turn to some of the challenging things that we need to talk about tonight, if I may, if the gentlemen will give me a few moments. The unfortunate truth is, however, that the professionalism of our soldiers in the field, hundreds of thousands of whom are serving with distinction, has not been matched by some of the civilian decisionmakers pertaining to the Iraqi operation. There, unfortunately, have been a series of substantial errors which have posed challenges to us that now we have to dig ourselves out of. I want to mention 10 of those very quickly in summary form to set the framework for our discussion tonight. There are 10 serious mistakes, errors, of judgment and negligence that have been made by our civilian authorities in the executive branch of this government which are now putting us in a very, very deep hole, of what was already a challenging position. I will quickly summarize those 10 that we will discuss tonight.

First, the United States Government told the American people in unequivocal terms that there was, and I think I quote from the chief executive, no doubt but that Iraq possessed and was deploying some of the most lethal weapons systems devised by man before this war. That statement unfortunately has proved to be false. It is one that we should think seriously about as we move forward in Iraq.

Second, the executive branch and the civilian authorities of our Nation told the American people in unequivocal terms that there was a clear, convincing and cogent connection between Iraq and the heinous attack on our Nation of September 11. That assertion after months and over a year of digging has not turned out one solitary shred of evidence to substantiate that assertion; and as far as we know tonight, that assertion was false. Why is it important to recognize the falsity of those two assertions preceding this war? It is important to understand both the Iraqis' response and the world's response and now our difficulty in obtaining assistance for our troops in the field because the war started on two basic falsehoods, and this is a recognition that we have to have as we form a strategy to have success in Iraq.

The third issue. We were told in very clear terms and this Congress was told in many briefings that we would be welcomed as liberators, we would be welcomed with rose petals at our feet. The savagery that our men and women who are serving in Iraq have seen was hardly a sense of liberation. Why is this important? It is important because it explains some other failures by the civilian leadership in our Nation.

It explains the fourth failure, the failure to have adequate troops on the ground at the time the Iraqi Army collapsed. We had multiple truth-tellers who told the truth to the executive branch, what was needed in Iraq; and they have all been fired. General Shinseki told the President of the United States and the Secretary of Defense that we would need several hundred thousand troops on the ground to prevent Iraq becoming an infested place of looting and anarchy the day after the Iraqi Army collapsed. He was ignored and then fired.

General Zinni essentially said the same thing. He was ignored, then he was fired. We have seen this as a consistent pattern of truth-tellers about Iraq. When Joe Wilson blew the whistle on the falsehood we heard from that Speaker's rostrum during the State of the Union, his wife had her job diminished by secretly outing her as a member of the CIA. The sad fact is advice given to the civilian authority has not been followed.

The fifth error. We knew that to bring democracy to Iraq, we need to bring democracy to Iraq. The way to bring democracy to Iraq is to have elections. The first proconsul we had, Jay Garner, said, let's have early elections; we might get the Iraqis to buy into this system. He was fired. He was let go. The successful example in southern provinces of Iraq which has had successful elections is now not being followed, and we have no idea from the plan from the administration when that may occur. We need elections in Iraq.

The next error. We have failed wholly to build an international assistance for our troops. This needs to be an international responsibility. American taxpayers should not be the only ones footing the bill in Iraq. In fact, the rest of the world footed the bill for the first Persian Gulf War under the first President Bush. Now the American taxpayer is paying this almost lock, stock and barrel both in blood and in treasure.

The next error. We consciously sent, and when I say ''we,'' I mean the executive branch in the United States, consciously sent American men and women into battle without armor. We knew we were sending people into the warren's den of RPGs, rocket-propelled grenades, improvised explosive devices; and we sent them in these little thin-skinned Humvees to drive around for a year and a half, and we have had over 700 lost Americans, many of whom because we did not have adequate armor in the field. Now, yesterday, when we went through the streets of Baghdad, we went in armored personnel carriers and we did not lose anyone, which are impervious to rocket-propelled grenades and a lot of IEDs. We ignored the clear advice that we needed a stronger, more well-armored force in Iraq, and we lost sons and daughters because of it. I will say a good thing for this administration, they are now finally beginning to rush to this battlefield as fast as they can the armor we need.

The next error we had, I think it is number seven, we did not even have body armor for these people. We did not have flak jackets.

Mr. STRICKLAND. Will my friend yield?

Mr. INSLEE. Briefly. Then I need to complete my two more.

Mr. STRICKLAND. May I, with kindness, challenge a statement my friend just made. My friend from Washington said the administration is rushing as quickly as they can to provide the armament our soldiers need. I think that is not the case. The only company that produces up-armored Humvees that the Pentagon does business with is an Ohio company from my State of Ohio. That company is located in Fairfield, Ohio. They are capable of producing up-armored Humvees at the number of about 500 per month. The Pentagon, although we desperately need them, is only buying about 300 a month. So even in this case, where they should be protecting our soldiers as quickly as possible, they are not doing what they could and should be doing and they are not doing it, certainly, as rapidly as possible.

So when it came to the body armor, and the President has actually accused his opponent for the Presidency, the Democratic nominee, of voting against body armor for our troops, I think they are talking about that $87 billion supplemental, the fact is that at the beginning of the war in Iraq, when our soldiers first went into that country, many of them went in without body

armor to protect them. That was many months before we voted on that supplemental. Many months. It was the President, it was Mr. Rumsfeld, it was this administration, this Pentagon that sent our soldiers into harm's way without adequate body armor. It took them an entire year from March when the war started until March the following year before all of our soldiers were outfitted with this body armor. Even tonight as we sit here and stand here in the safety of this House Chamber, there are soldiers in Iraq who are driving around in Humvees that are not adequately armored, and this Pentagon is not solving that problem as quickly as they can. I thank my friend for yielding.

□ 2330

Mr. INSLEE. Mr. Speaker, I thank my friend for the calculated and exact improvement of my discussion.

Mr. STRICKLAND. It is a matter of life and death.

Mr. INSLEE. It is. And, Mr. Speaker, I thank the gentleman for leading on this issue about this flak jacket failure.

I do want to make the point, though, I think the administration has made some changes in its policy that are starting to move in the right direction, but they are a year, and we have suffered dramatically as a result of that. We welcome these changes that we are seeing now. Now the President says now he wants the U.N. to come in and help us. But frankly it is very difficult, after we stuck our finger in the eye of the rest of the world, to encourage people. But we want to encourage the administration to move.

And I will just mention two other things, and then I will yield to my colleagues. Two other areas: One, this administration has not proposed a single plan on how to pay for this war. Every single dollar that is being spent in this war is coming out of the backs and the futures of our children of deficit spending. We have a $500 billion deficit, and this President was not forthright enough with Americans to even put in his budget one dollar for the Iraq War, knowing that every dollar he put in the Iraq War would be additional deficit spending.

Winston Churchill said, ''All I have to offer you is blood, sweat, toil, and tears.'' We cannot now just tell the people of America let us fight the Iraq War and then go shopping. We cannot simply have the only people sacrificing in America those in the frontlines of Iraq. This is a tough battle, and the President of the United States cannot fight it on the cheap. We need to face the difficulty in Iraq straightforward and have the tenth thing we need, and then I will yield.

We need something we have not had for 1½ years now. We need a plan for success in Iraq, and we still do not have one this late in the game. And the reason I say that is tonight, as we are sitting here, supposedly we are going to have a turnover to a sovereign government in Iraq on June 30 and no one has a clue who they will be, no one has a clue what they will do, and the sad fact is the only thing this Iraq group is going to do is issue library cards because, frankly, we are running Iraq because we are the only force that is capable of doing that right now. We need a plan. We need some fresh thinking. I have some thoughts I will describe a little later.

I yield to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Speaker, I thank the gentleman from Washington for his usual insightful review of the salient points.

I think we should welcome back the original founder of Iraq Watch. He has been unable to attend the last several conversations because of other business, but he is certainly welcome here tonight, and that is the gentleman from Pennsylvania (Mr. HOEFFEL).

The events of the past several weeks have obviously been very disturbing in terms of what has occurred in the prison facility, Abu Ghraib. And I think every American feels a sense of profound, profound shame, and there has been much talk and much criticism.

I found a story that was reported today in the Washington Times and the headline reads ''Outrage Erodes Morale of Troops.'' And there were comments by some of our colleagues from the other side of the aisle. One was made by the gentleman from Texas (Mr. DELAY), the House majority leader, which I will not even address because the gentleman from Texas (Mr. DELAY) has a proclivity to make statements that some describe as over the top. But the gentleman from California (Mr. HUNTER), the Chairman of the House Committee on Armed Services, whom I think we all respect, the report stated that he blamed Democrats who have been harshly critical of the war effort for eroding troop morale. The quote is, ''I'm concerned that a number of Members of Congress have lost their sense of balance. They think their role here is to bash the American military. It is demoralizing for the troops.''

Clearly, it has never been the intention of any individual who serves in this House, be he or she Republican or Democrat, to erode morale or to bash the military. I do not think anyone in any way wishes to denigrate the commitment and the contribution and the manner with which our military overall has conducted itself. But at the same time I think that the chairman has it wrong. It is not Democrats. There are a number of Republicans, and he should be aware of that, that have criticized the so-called post-major combat phase of this adventure for some time now. One only has to watch and observe the Monday morning TV programs.

But the reality is that morale has been low among our military for some time, not because of criticism of the civilian leadership of the Pentagon, the Department of Defense, Mr. Rumsfeld, Mr. Wolfowitz, Mr. Feith, and including the Vice President of the United States, who is described in a recent book as suffering from war fever in terms of his obsession about invading Iraq. I think it is rather interesting that this poster I have here which is back in November 2003, a Newsweek cover that states ''How Dick Cheney Sold the War.'' It is clearly true, given what we know now, that he had great influence in terms of advancing the military invasion of Iraq by the American military.

But now to go back to the morale issue, there was an interesting story, and maybe the chairman of the Committee on Armed Services is unaware of this, but it was reported last Sunday in the Washington Post, and the title is ''Dissension Grows in Senior Ranks on War Strategy.

''Deep divisions are emerging at the top of the U.S. military over the course of the occupation of Iraq, with some senior officers beginning to say that the United States faces the prospect of casualty for years, without achieving its goal of establishing a free and democratic Iraq.''

These are not Members of the Democratic Party in Congress. These are not Members of the Republican Party in Congress. This is senior military personnel.

''Army Major General Charles Swannack, Jr., the commander of the 82nd Airborne Division, who spent much of the year in western Iraq, said that he believes that at the tactical level at which fighting occurs, the U.S. military is still winning, but when asked whether he believes the United States is losing he said, 'I think strategically, we are.'

''Army Colonel Paul Hughes, who last year was the first director of strategic planning for the U.S. occupation authority in Baghdad, said he agrees with that view and noted that a pattern of winning battles while losing a war characterized the U.S. failure in Vietnam.''

These are senior members of the military establishment in this country.

□ 2340

This is not about partisanship. This is criticism coming from the military itself regarding the lack or the incompetence, if you will, of the civilian leadership that currently resides in the Department of Defense.

Colonel Hughes went on to note that he lost a brother in Vietnam. ''I promised myself when I came on active duty that I would do everything in my power to prevent that sort of strategic loss from happening again. Here I am, 30 years later, thinking we will win every fight and lose the war because we don't understand the war we are in.''

They are worried. This is the senior American military speaking. They are worried by evidence that the United States is losing ground with the Iraqi public.

Some officers say the place to begin restructuring U.S. policy is by ousting Defense Secretary Donald Rumsfeld, whom they see as responsible for a series of strategic and tactical blunders over the past year.

Several of those interviewed said a profound anger is building within the Army at Rumsfeld and those around him. A senior general at the Pentagon said he believes the United States is already on the road to defeat. His quote is, ''It is doubtful we can go on much longer like this. The American people may not stand for it, and they should not.'' This is a senior general at the Pentagon.

I hope that the Republican chair of the Committee on Armed Services has an opportunity to read this particular report that was in the Washington Post last Sunday. He should not blame Democrats or any elected official for ever eroding the morale of the troops. We stand by the troops, but we do not stand by a policy that no one can understand.

As to who is to blame, this general pointed directly at Rumsfeld and Deputy Defense Secretary Paul Wolfowitz. ''I do not believe,'' and this is his quote, ''we had a clearly defined war strategy and end-state and exit strategy before we commenced our invasion.''

Mr. INSLEE. Reclaiming my time, I just wanted to note, following the horrendous situations in our prison camps, a lot of folks thought the only reason people were calling for the Secretary of Defense's replacement was that problem. But that was only the straw that broke the camel's back. We had all these other 10 problems which I alluded to, all of which he was involved with. That is why many Members here believe that this Nation deserves better to serve our troops.

I would like to yield to the gentleman from Pennsylvania (Mr. HOEFFEL), the originator of this, who shows great leadership on being able to tackle these very great problems in Iraq.

Mr. HOEFFEL. Mr. Speaker, I compliment the gentleman on his 10 opinions that opened the Iraq Watch tonight. I think the gentleman is right on the money, and I appreciate his summarizing the problems that we face.

I want to thank the gentleman from Massachusetts (Mr. DELAHUNT), the new Chair of Iraq Watch, for his leadership and his stalwart support for what we are trying to do here.

The point that the gentleman from Massachusetts (Mr. DELAHUNT) makes is a very good one. There has been no criticism of the military in any of the comments that I have heard or read about in the papers. We are not criticizing the military. That is the one good thing about what is happening in Iraq, is the performance of our young men and women in uniform.

We are criticizing the civilian directors of the Defense Department. We are criticizing the administration, the policymakers, the politicians.

I think we should criticize not just Mr. Rumsfeld and Mr. Wolfowitz and Mr. Feith at the Department of Defense, but I would throw in George Tenet as well at the CIA. I do not think any President has ever received more bad information in our Nation's history than George Bush has received from George Tenet and Don Rumsfeld.

The information was wrong about weapons of mass destruction. I am summarizing what the gentleman from Washington (Mr. INSLEE) has already summarized. They were wrong about weapons of mass destruction. They were wrong that we could do this on the cheap. We did not send enough troops in to Iraq to stabilize the country, and General Shinseki was right and he was run out of the Army for telling the truth, that we needed several hundred thousand troops, not the 120,000 that Mr. Rumsfeld thought he could do this with.

If you will recall, in the spring of 2003 Mr. Rumsfeld said by August of 2003 we would only need 40,000 troops. There would be only 40,000 troops left four or five months after the invasion. Of course, in August of 2003 there were 120,000 troops. We are up to 135,000 troops now, and we still have not stabilized Iraq.

Look what that means. You cannot have reconstruction without security. You cannot have a transfer of government without security. You certainly cannot have elections without security. And we do not have security in Iraq. After all this time, we do not have stabilized conditions in Iraq.

Mr. DELAHUNT. If the gentleman will yield further, the much-heralded efforts to train Iraqis as far as police and a new Iraqi Army, you only have to go back two or three weeks to remember that headline that screamed out the new Iraq battalion would not accompany the U.S. Marines into combat in the City of Fallujah. So while the Secretary of Defense speaks about the training of some 70,000 personnel for security service, the truth is those that are adequately trained amount to only several thousand.

What we have here, what we have here is a failure of leadership, is a demonstration of incompetence unequaled in terms of my public life, and I have held elected office for some 30 years.

If you could bear with me for just one more moment, again, I want to come back to the military's perspective of the civilian leadership and what they are saying.

There was an editorial that appeared in the Army Times, the Marine Times, the Air Force Times and the Navy Times, and it was regarding the situation in the Iraqi prison. It is entitled ''A Failure of Leadership At the Highest Levels.''

I would remind those that are viewing our conversation this evening, this is not a partisan publication. This is a publication that covers the military that in many respects represents the majority view of the military in this country.

''Around the halls of the Pentagon, a term of caustic derision has emerged for the enlisted soldiers at the height of the furor over the prison scandal, 'the six morons who lost the war.' Indeed, the damage done to the U.S. military and the Nation as a whole by the horrifying photographs of U.S. soldiers abusing Iraqi detainees at the notorious prison is incalculable.

''But the folks in the Pentagon are talking about the wrong morons. There is no excuse for the behavior displayed by soldiers in the now infamous pictures, and an even more damning reported by Major General Anthony Taguba. Every soldier should be ashamed. But while responsibility begins with the six soldiers facing criminal charges, it extends all the way up the chain of command to the highest reaches of the military hierarchy and its civilian leadership.

''The entire affair is a failure of leadership, from start to finish. From the moment they are captured, prisoners are hooded, shackled and isolated. The message to the troops, anything goes. In addition to the scores of prisoners who were humiliated and demeaned, at least 14 have died in custody in Iraq and Afghanistan. The Army has ruled at least two of these are homicides. This is not the way a free people keeps its captives or wins the hearts and minds of a suspicious world.

□ 2350

General Richard Myers, Chairman of the Joint Chiefs, also shares in the shame. Myers asked ''60 Minutes'' to hold off reporting news of the scandal because it could put U.S. troops at risk. But when the report was aired a week later, Myers still had not read Taguba's report which was completed in March. Secretary of Defense Donald Rumsfeld had also failed to read the report until the scandal broke in the media; but by then, of course, it was too late. The Army Times, the Marine Times, the Navy Times, and the Air Force Times are correct: it is a failure of leadership at the highest level.

Mr. INSLEE. Mr. Speaker, if the gentleman will yield for just a moment, and then I want to yield to the gentleman from Pennsylvania (Mr. HOEFFEL). One of the unfortunate reasons there has been a failure here is that there is a persistent practice or habit in this administration to ignore a principle of leadership, which is to reward competence and to sanction incompetence, to reward those who are right and sanction those who are wrong, to reward those who tell the truth and sanction those who do less than that. And look what happens in this situation.

Let us compare those who were wrong to those who were right. Those who were right, General Shinseki, right about needing new troops, canned. General Zinni, who was right

about needing more armor and troops, canned. Ambassador Joseph Wilson, by the way, stood up personally to Saddam Hussein and saved hundreds of American lives to get them out of Iraq before the first Persian Gulf War, this guy has guts; he told the truth and pointed out that what the President told the American people about buying uranium from Niger was a falsehood, he told the truth, and they tried to destroy his wife's career in the CIA.

So we have three truth-tellers, all of them who were punished by the executive branch of the United States.

Now, look at the other three people. George Tenet, CIA, who, if there was a more massive failure of information in American history next to calling Benedict Arnold a good American, I do not know what it was; still on the job, has not been sanctioned. He has not lost an hour of vacation time. He does not have a pink slip, does not have a slap on the wrist, said by the President to be doing a great job, when we started a war based on false information.

Donald Rumsfeld, the man who ignored General Shinseki, ignored General Zinni, ignored the intelligence from Ambassador Joe Wilson, involved in a war where we have incompetent planning, failure of planning, and we are now in a deep morass in Iraq, called by the Vice President, and I want to quote here almost, the greatest Secretary of Defense America has ever seen.

Mr. DELAHUNT. That is just an unbelievable statement.

Mr. INSLEE. We have a different opinion. This gentleman has not been sanctioned. This gentleman has not lost an hour of overtime.

Mr. DELAHUNT. And that is leadership.

Mr. INSLEE. And if I can remember who the third one is, if I can read my notes here that I wanted to talk about. Help me out, gentlemen. Who is the third one I was thinking about here? The list goes on and on.

Mr. DELAHUNT. What the gentleman is basically saying is that loyalty is prized above competence.

Mr. INSLEE. Mr. Speaker, I wanted to make sure that we include this gentleman in this discussion: Assistant Secretary Paul Wolfowitz told this Chamber on repeated occasions he was dead right sure, not only that we would be greeted as the great liberators of the Mideast, spreading democracy through the Mideast, not only that that would happen but, bonus time, I say to my colleagues, the Iraq oil fields would pay for this whole thing. American taxpayers would not have to put out a dime for this. He came and told us he knew this was going to happen, we would not have to do anything with taxes, taxpayers would not have to pay a dime. If there has been a greater failure of analysis, I do not know what it could possibly be.

Now, what has the President done to the man who totally misled the United States Congress? On both sides of the aisle, by the way, he told this to Republicans and Democrats. Nothing. So we have the three people who have gotten us into a war based on false information with lousy planning, with incompetent preparation for our troops, people losing their lives in Iraq who are greeted as the greatest civil servants in human history, and the three guys who told us the truth were fired, lost their jobs.

I yield to the gentleman from Pennsylvania.

Mr. HOEFFEL. Mr. Speaker, I thank the gentleman. If we just focus on the prison scandal for a minute and see the failures of leadership there, as the gentleman from Massachusetts (Mr. DELAHUNT) has been talking about, there are not enough prison guards assigned to Abu Ghraib or I am sure to the other prisons that were running as a result of the Iraq war. There simply are not enough guards assigned. Those guards are not properly trained. That is abundantly clear. They are not properly supervised, and there is no accountability up the chain of command.

So we start off with a disaster waiting to happen. Then what does Secretary of Defense Rumsfeld do? Well, he ignores the Red Cross, who, apparently, for over a year, has been complaining about conditions and abusive activities in our prisons. He fails to respond. He does not read the report in a timely fashion that is finally done by his subordinate, and he does not tell his President what is at stake. He even hangs his own President out to dry who is embarrassed by the disclosure of this information to the media, rather than in the normal chain of communication between cabinet Secretary and President.

One more failure. I think we ought to stop talking about resignation. I do not think Donald Rumsfeld should be allowed to resign. He should be fired for his failures to inform and properly advise the President. And the reality is, we cannot stay the course in Iraq. We have to change the course in Iraq. We cannot keep doing what we are doing, because we are failing, and we cannot achieve our goals of creating a stable and a peaceful country with a representative form of self-government. We cannot do that with the level of insecurity and instability in Iraq today. We have to get more troops in there. There ought to be international troops, NATO, Arab nations, Western European nations. They have a bigger stake in a stable Iraq than we do. But right now, 90 percent of the troops, 90 percent of the money is American; and it is not working. We have to change our course.

Mr. DELAHUNT. Mr. Speaker, it is really time to be honest with the American people. As David Kay said, who was sent and appointed by this administration to conduct a search for the weapons of mass destruction, came back, said there are none, and implored the President, it is time to come clean with the American people. Otherwise, he had grave concerns about our credibility all over the world.

It is like this administration is incapable, incapable of dealing with the truth. I do not think they intend to lie; I just do not think they can grasp reality. It is like again going back to the morale issue. In ''Stars and Stripes,'' a magazine that is funded by the Pentagon, reported better than a year ago on the issue of morale of U.S. troops in Iraq: high-ranking visitors to the country, including Department of Defense and congressional officials, have said it is outstanding, but the ''Stars and Stripes'' itself, the magazine did a survey and concluded that some troops on the ground would beg to differ about what they call low morale on their part and on the part of their units.

So as a result, the Pentagon went and conducted a survey of troops, and it was reported again about a month ago in The Washington Post before the scandal broke out, and it concluded that a slim majority of Army soldiers in Iraq, 52 percent reported that their morale was low, and three-fourths of them said that they felt poorly led by their officers, according to a survey taken at the end of the summer and released yesterday by the Army.

Mr. INSLEE. Mr. Speaker, we have about 30 seconds, and I just wanted to wrap up and thank the gentleman for his work tonight. I just want to say one thing. One of the worst possible things that can happen to our soldiers is base the war on wishful thinking. And the failures we have been talking about tonight have largely occurred because of civilian decisionmakers who have based decisions on wishful thinking that are not in touch with the reality and the difficult situation in Iraq. We are very hopeful that this administration will start to recognize the challenges we have in Iraq and start listening to military advisers, rather than basing their decisions on the fantasy that they have that this can be done on the cheap. We have paid too dearly in blood for that misassessment, we have paid too dearly in treasure for that misassessment; and it is time for a fresh, new strategy in Iraq. Just sticking with the same old same old is a recipe for disaster.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. MCNULTY (at the request of Ms. PELOSI) for today before 2 p.m. on account of a family emergency.

Mr. SCOTT of Georgia (at the request of Ms. PELOSI) for today after 3 p.m. and May 13 on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DEFAZIO) to revise and extend their remarks and include extraneous material:)

Mr. BROWN of Ohio, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. GEORGE MILLER of California, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Mr. WYNN, for 5 minutes, today.

Mr. STUPAK, for 5 minutes, today.

Mr. STENHOLM, for 5 minutes, today.

Mr. ALEXANDER, for 5 minutes, today.

Mr. DAVIS of Tennessee, for 5 minutes, today.

Mr. MATHESON, for 5 minutes, today.

Mr. CONYERS, for 5 minutes, today.

Mr. HOEFFEL, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Ms. MILLENDER-MCDONALD, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. MCDERMOTT, for 5 minutes, today.

Mr. ETHERIDGE, for 5 minutes, today.

Mr. RUSH, for 5 minutes, today.

Mrs. CHRISTENSEN, for 5 minutes, today.

(The following Members (at the request of Mr. HENSARLING) to revise and extend their remarks and include extraneous material:)

Mr. GREEN of Wisconsin, for 5 minutes, May 13.

Mr. OSBORNE, for 5 minutes, May 13.

Mr. GARRETT of New Jersey, for 5 minutes, today.

Mr. MCCOTTER, for 5 minutes, May 13.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. BURGESS, for 5 minutes, today.

ADJOURNMENT

Mr. INSLEE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at midnight), the House adjourned until tomorrow, Thursday, May 13, 2004, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

8120. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Mississippi Sound, Pascagoula, MS [COTP Mobile-04-007] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8121. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Hathaway Highway 98 Bridge, Panama City, FL [COTP Mobile-04-008] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8122. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Bayou Teche, 2 miles south of the Nelson Bridge extending to 3 miles north of the Nelson Bridge, New Iberia, LA [COTP Morgan City-03-007] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8123. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Bayou Penchant, Amelia, LA [COTP Morgan City-03-008] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8124. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Houma Navigational Canal between the 2-Mile Board and the Cat Island Sea Buoy, Cocodrie, LA [COTP Morgan City-04-002] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8125. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; 50 feet North and South of the Burlington Northern Sante Fe (BNSF) Railroad Bridge, Morgan City Port Allen Landslide Route, Bayou Boeuf, Mile 1.5, Amelia, LA [COTP Morgan City-04-003] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8126. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Ouachita River, Mile Marker 168.0 to 168.7, Monroe, LA [COTP New Orleans-03-030] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8127. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Ouachita River, Mile Marker 109.70 to 110.20, Columbia, LA [COTP New Orleans-03-032] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8128. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Lower Mississippi River, Mile Marker 94.0 to 96.0, Above Head of Passes, New Orleans, LA [COTP New Orleans-03-033] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8129. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Security Zones; Lower Mississippi River Mile Markers 89.0 to 103.0 and 229.0 to 235.0, Above Head of Passes, LA [COTP nEw Orleans-03-035] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8130. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Treasure Chest Casino, Lake Pontchartrain, Kenner, LA [COTP New Orleans-04-001] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8131. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; South Shore, Lake Pontchartrain, Metairie, LA [COTP New Orleans-04-002] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8132. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Lower Mississippi River, Mile 430.0 to Mile 0.0, Head of Passes, LA [COTP New Orleans-04-003] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8133. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Lower Mississippi River, Mile Marker 94.0 to 96.0, Above Head of Passes, New Orleans, LA [COTP New Orleans-04-004] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8134. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Inner Harbor Navigational Canal, New Orleans, LA [COTP New Orleans-04-005] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8135. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Krewe of Choctaw Boat Parade, Lower Mississippi River, Mile 94.8 to Mile 96.8, Above Head of Passes, New Orleans, LA [COTP New Orleans-04-006] (RIN: 1625-AA00) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8136. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Boeing Model 757-200 and -200CB Series Airplanes [Docket No. 2000-NM-404-AD; Amendment 39-13551; AD 2004-07-07] (RIN: 2120-AA64) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8137. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; McDonnell Douglas Model DC-9-15 Airplane [Docket No. 2003-NM-31-AD; Amendment 39-13552; AD 2004-07-08] (RIN: 2120-AA64) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8138. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; McDonnell Douglas Model DC-9-14, DC-9-15, DC-9-15F, DC-9-31, DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-32F (C-9A, C-9B), CD-9-33F, DC-9-34, and DC-9-34F Airplanes; and Model DC-9-21, DC-9-41, and DC-9-51 Series Airplanes [Docket No. 2003-NM-58-AD; Amendment 39-13548; AD 2004-07-04] (RIN: 2120-AA64) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8139. A letter from the Paralegal Specialist, FAA, Department of Transportation,

transmitting the Department's final rule—Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd Airplanes [Docket No. 2000-CE-43-AD; Amendment 39-13536; AD 2004-06-10] (RIN: 2120-AA64) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8140. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700& 701), and CL-600-2D24 (Regional Jet Series 900) Series Airplanes [Docket No. 2004-NM-41-AD; Amendment 39-13545; AD 2004-07-01] (RIN: 2120-AA64) received April 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SENSENBRENNER: Committee on the Judiciary. House Concurrent Resolution 414. Resolution expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown (Rept. 108–485). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. MCHUGH (for himself, Mr. DAVIS of Illinois, Mr. TOM DAVIS of Virginia, Mr. WAXMAN, Mrs. MILLER of Michigan, Mr. BURTON of Indiana, Mr. SCHROCK, Mr. SHAYS, Mr. OWENS, Mrs. MALONEY, Mr. MICA, Mr. LATOURETTE, Mr. LEWIS of Kentucky, Mr. PLATTS, Mr. CANNON, Mr. PUTNAM, Mr. DUNCAN, Mr. DEAL of Georgia, Ms. WATSON, Mr. LYNCH, Ms. NORTON, Mr. MURPHY, Mr. TURNER of Ohio, Mr. CARTER, Mrs. BLACKBURN, Mr. TIBERI, and Ms. HARRIS):

H.R. 4341. A bill to reform the postal laws of the United States; to the Committee on Government Reform.

By Mr. CHABOT (for himself, Mr. ROYCE, Mr. SHADEGG, and Mr. BRADY of Texas):

H.R. 4342. A bill to protect crime victims' rights; to the Committee on the Judiciary.

By Mr. NORWOOD (for himself, Mr. SAM JOHNSON of Texas, Mr. BALLENGER, Mr. DEMINT, Mr. ISAKSON, Mrs. BIGGERT, Mr. KELLER, Mr. WILSON of South Carolina, Mr. KLINE, Mr. CARTER, Mrs. MUSGRAVE, Mrs. BLACKBURN, Mr. BOEHNER, Mr. AKIN, Mr. BARTLETT of Maryland, Mr. BURTON of Indiana, Mr. COBLE, Mr. DEAL of Georgia, Mr. DOOLITTLE, Mr. JONES of North Carolina, Mr. KING of Iowa, Mr. KINGSTON, Mr. LINDER, Mr. MILLER of Florida, Mr. OTTER, Mr. PENCE, Mr. SOUDER, Mr. VITTER, Mr. BARRETT of South Carolina, Mr. BROWN of South Carolina, Mr. FRANKS of Arizona, Mr. GARRETT of New Jersey, and Mr. BURNS):

H.R. 4343. A bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board; to the Committee on Education and the Workforce.

By Mr. FOLEY (for himself, Mr. HASTINGS of Florida, and Mr. MARIO DIAZ-BALART of Florida):

H.R. 4344. A bill to authorize water resources projects for Indian River Lagoon-South and Southern Golden Gates Estates, Collier County, in the State of Florida; to the Committee on Transportation and Infrastructure.

By Ms. GINNY BROWN-WAITE of Florida (for herself and Mrs. DAVIS of California):

H.R. 4345. A bill to amend title 38, United States Code, to increase the maximum amount of home loan guaranty available under the home loan guaranty program of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. BISHOP of Georgia (for himself, Mr. SKELTON, Mr. EVANS, Mr. EDWARDS, and Mr. MURTHA):

H.R. 4346. A bill to amend title 10, United States Code, to clarify requirements relating to predeployment and postdeployment medical exams of certain members of the Armed Forces; to the Committee on Armed Services.

By Mr. HYDE (for himself, Mr. LAMPSON, Mr. LANTOS, Mr. CHABOT, Mr. GREENWOOD, Mr. HOUGHTON, Mr. MCHUGH, Mr. WOLF, Mr. BURTON of Indiana, Ms. HARRIS, Mr. FOLEY, Mr. KING of New York, Ms. JACKSON-LEE of Texas, Mr. GREEN of Texas, Mr. BOEHLERT, Mr. SHIMKUS, Mr. BERMAN, Mr. SMITH of New Jersey, Mr. TURNER of Texas, Mr. FROST, Mr. MORAN of Virginia, and Mr. CARDOZA):

H.R. 4347. A bill to amend the International Child Abduction Remedies Act to provide that the National Center for Missing and Exploited Children and its employees, when carrying out activities delegated by the United States Central Authority under that Act, have the protections under the Federal Tort Claims Act, to amend title 28, United States Code, to give district courts of the United States jurisdiction over competing State custody determinations, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on International Relations, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BACA:

H.R. 4348. A bill to amend the Federal Credit Union Act to allow greater access to international remittance services, and for other purposes; to the Committee on Financial Services.

By Mr. BISHOP of New York (for himself and Mr. ISRAEL):

H.R. 4349. A bill to reinstate Department of Energy Order No. 202-03-2; to the Committee on Energy and Commerce.

By Mr. DINGELL (for himself, Mr. BROWN of Ohio, Mr. RANGEL, Mr. STARK, Mr. WAXMAN, Ms. PELOSI, Mr. GEORGE MILLER of California, Mr. PALLONE, Mr. ABERCROMBIE, Mr. ALLEN, Mr. BACA, Mr. BOUCHER, Mrs. CAPPS, Ms. CARSON of Indiana, Mrs. CHRISTENSEN, Mr. CROWLEY, Mr. CUMMINGS, Mr. DAVIS of Florida, Ms. DEGETTE, Ms. DELAURO, Mr. DEUTSCH, Mr. DOYLE, Mr. EMANUEL, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEPHARDT, Mr. GONZALEZ, Mr. GORDON, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HINCHEY, Mr. HOEFFEL, Ms. JACKSON-LEE of Texas, Mrs. JONES of Ohio, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Ms. LEE, Mr. LYNCH, Ms. MCCARTHY of Missouri, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCNULTY, Mr. MARKEY, Mr. MATSUI, Mr. MEEKS of New York, Mr. MENENDEZ, Mr. MOORE, Mr. MORAN of Virginia, Mr. NADLER, Mrs. NAPOLITANO, Mr. PASTOR, Mr. PAYNE, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RUSH, Mr. SANDLIN, Ms. SCHAKOWSKY, Mr. SCOTT of Virginia, Mr. SERRANO, Ms. SLAUGHTER, Ms. SOLIS, Mr. STRICKLAND, Mr. STUPAK, Mr. TIERNEY, Mr. WEINER, Mr. WYNN, Mr. JACKSON of Illinois, Mr. ANDREWS, Mr. LEVIN, Mr. KENNEDY of Rhode Island, Mr. OLVER, Mr. HOLT, Mr. KLECZKA, Ms. WATERS, Mr. BISHOP of New York, Ms. WOOLSEY, Mrs. DAVIS of California, Mr. RYAN of Ohio, Mr. VAN HOLLEN, Mr. HONDA, Mr. MICHAUD, Mr. ALEXANDER, Mr. WEXLER, Ms. LINDA T. SANCHEZ of California, Mr. DELAHUNT, Mr. CLAY, Mr. HOYER, and Mr. KUCINICH):

H.R. 4350. A bill to amend titles XIX and XXI of the Social Security Act to provide for FamilyCare coverage for parents of enrolled children, and for other purposes; to the Committee on Energy and Commerce.

By Mr. EMANUEL:

H.R. 4351. A bill to amend the Internal Revenue Code of 1986 to restrict the use of abusive tax shelters; to the Committee on Ways and Means.

By Mr. EMANUEL (for himself, Mr. BROWN of Ohio, Ms. LEE, Mr. LANTOS, Mr. MCGOVERN, Mr. ISRAEL, Mr. STARK, Ms. SCHAKOWSKY, Ms. HOOLEY of Oregon, Mr. GRIJALVA, and Ms. DELAURO):

H.R. 4352. A bill to amend the Internal Revenue Code of 1986 to deny a deduction for the portion of employer-provided vacation flights in excess of the amount of such flights which is treated as employee compensation; to the Committee on Ways and Means.

By Mr. LATOURETTE:

H.R. 4353. A bill to require the Secretary of Housing and Urban Development to provide tenant-based rental housing vouchers for certain residents of federally assisted housing; to the Committee on Financial Services.

By Mrs. MALONEY (for herself, Ms. PRYCE of Ohio, Mr. WAXMAN, Mr. GRIJALVA, Mr. SERRANO, Mrs. JONES of Ohio, Ms. MILLENDER-MCDONALD, Ms. BALDWIN, Ms. CARSON of Indiana, Mr. GEORGE MILLER of California, Ms. ROYBAL-ALLARD, Ms. NORTON, Mrs. MCCARTHY of New York, Ms. BERKLEY, Ms. LOFGREN, Mr. FROST, Mr. GONZALEZ, Mr. KILDEE, Ms. SLAUGHTER, Ms. SCHAKOWSKY, Ms. DELAURO, Ms. LEE, Mr. HINCHEY, Mr. CASTLE, Mr. LANTOS, Mr. OWENS, Mrs. CAPITO, Ms. LINDA T. SANCHEZ of California, Mr. BRADY of Pennsylvania, Mr. VAN HOLLEN, Mr. SCHIFF, Mr. CROWLEY, Mr. NETHERCUTT, Mr. FORD, Mr. HASTINGS of Florida, Ms. ESHOO, Mr. STARK, Mr. CONYERS, Ms. WATERS, Mr. TOWNS, Ms. BORDALLO, and Ms. SOLIS):

H.R. 4354. A bill to improve the health of women through the establishment of Offices of Women's Health within the Department of Health and Human Services; to the Committee on Energy and Commerce.

By Ms. LORETTA SANCHEZ of California (for herself, Mr. TURNER of Texas, Mr. MARKEY, Mr. DICKS, Ms. HARMAN, Mr. DEFAZIO, Mrs. LOWEY, Mr. ANDREWS, Ms. MCCARTHY of Missouri, Ms. JACKSON-LEE of Texas,

Mrs. CHRISTENSEN, Mr. LANGEVIN, Mr. MEEK of Florida, and Mr. CHANDLER):

H.R. 4355. A bill to strengthen port security by establishing an improved container security regime, to expand on the Maritime Transportation Security Act of 2002, to strengthen the Coast Guard port security mission, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SANDLIN (for himself, Ms. PELOSI, Mr. RANGEL, Mr. DINGELL, Mr. STARK, Mr. BROWN of Ohio, Mr. PALLONE, Mr. WAXMAN, Mr. HOYER, Mr. MENENDEZ, Mr. BERRY, Mr. GEPHARDT, Mr. ROSS, Mr. MATSUI, Mr. STENHOLM, Mr. LAMPSON, Mr. HOEFFEL, Mrs. JONES of Ohio, Mr. KILDEE, Mr. GRIJALVA, Mr. RUPPERSBERGER, Mr. MCDERMOTT, Mr. TOWNS, Ms. SLAUGHTER, Mr. MARKEY, Mr. LYNCH, Mr. CROWLEY, Ms. MILLENDER-MCDONALD, Mr. BOUCHER, Mrs. CHRISTENSEN, Mr. JACKSON of Illinois, Ms. ROYBAL-ALLARD, Mr. RODRIGUEZ, Mr. NADLER, Mr. CONYERS, Ms. DELAURO, Ms. KILPATRICK, Mr. SERRANO, Ms. LEE, Mr. EVANS, Mr. TIERNEY, Mr. ISRAEL, Ms. MCCOLLUM, Mr. LANTOS, Mr. GUTIERREZ, Ms. WATERS, Mr. ALEXANDER, Ms. WOOLSEY, Mrs. DAVIS of California, Ms. JACKSON-LEE of Texas, Mrs. MCCARTHY of New York, Mr. HINCHEY, Mr. ABERCROMBIE, Mr. VAN HOLLEN, Ms. LINDA T. SANCHEZ of California, Mr. EMANUEL, Mr. MOORE, Ms. CARSON of Indiana, Mr. STUPAK, Mr. BISHOP of New York, Mr. CASE, Mr. WEINER, Ms. SCHAKOWSKY, Ms. SOLIS, Mr. FROST, Mr. WEXLER, Mr. HOLT, Mr. CUMMINGS, Mr. CARDOZA, Mr. BISHOP of Georgia, Mr. ENGEL, Mrs. CAPPS, Mr. HONDA, Mr. SCHIFF, Mr. MICHAUD, Mr. DELAHUNT, Mr. CHANDLER, Mr. CLAY, Mr. OLVER, Mr. REYES, Mr. SCOTT of Georgia, Mr. ORTIZ, Mr. CAPUANO, and Mr. ALLEN):

H.R. 4356. A bill to amend the Internal Revenue Code of 1986 to provide tax subsidies to encourage small employers to offer affordable health coverage to their employees through qualified health pooling arrangements, to encourage the establishment and operation of these arrangements, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STARK (for himself, Mr. BROWN of Ohio, Mr. RANGEL, Mr. DINGELL, Mr. WAXMAN, Ms. PELOSI, Mr. GEORGE MILLER of California, Mr. PALLONE, Mr. ACKERMAN, Mr. ALEXANDER, Mr. ALLEN, Mr. BACA, Mr. BERRY, Mr. BISHOP of New York, Mr. BOUCHER, Mrs. CAPPS, Mr. CARDIN, Ms. CARSON of Indiana, Mr. CLAY, Mr. CROWLEY, Mrs. DAVIS of California, Ms. DELAURO, Mr. DELAHUNT, Mr. DEUTSCH, Mr. EMANUEL, Mr. ENGEL, Mr. EVANS, Mr. FARR, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEPHARDT, Mr. GORDON, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HINCHEY, Mr. HOEFFEL, Mr. HOLT, Mr. HOYER, Mr. JACKSON of Illinois, Mrs. JONES of Ohio, Ms. KAPTUR, Mr. KILDEE, Ms. KILPATRICK, Mr. KLECZKA, Mr. KUCINICH, Mr. LANTOS, Ms. JACKSON-LEE of Texas, Mr. LYNCH, Mrs. MALONEY, Mr. MARKEY, Mr. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCNULTY, Mr. MEEKS of New York, Mr. MENENDEZ, Mr. MICHAUD, Mr. NADLER, Mrs. NAPOLITANO, Mr. OLVER, Mr. OWENS, Mr. PASTOR, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. SANDERS, Mr. SANDLIN, Ms. LINDA T. SANCHEZ of California, Ms. SCHAKOWSKY, Mr. SCOTT of Virginia, Mr. SERRANO, Ms. SLAUGHTER, Ms. SOLIS, Mr. STRICKLAND, Mr. STUPAK, Mr. THOMPSON of Mississippi, Mr. TIERNEY, Mr. TOWNS, Mr. VAN HOLLEN, Ms. WATERS, Mr. WEINER, Mr. WEXLER, and Ms. WOOLSEY):

H.R. 4357. A bill to amend title XVIII of the Social Security Act and the Employee Retirement Income Security Act of 1974 to provide access to Medicare benefits for individuals ages 55 to 65, to amend the Internal Revenue Code of 1986 to allow a refundable and advanceable credit against income tax for payment of such premiums, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. MCCARTHY of Missouri (for herself, Mr. SKELTON, Mr. BLUNT, Mr. MOORE, Mr. CLAY, Mr. GRAVES, Mrs. EMERSON, Mr. GEPHARDT, and Mr. AKIN):

H. Con. Res. 421. Concurrent resolution recognizing the Liberty Memorial Museum in Kansas City, Missouri, as ''America's National World War I Museum'', and for other purposes; to the Committee on Armed Services.

By Ms. MCCOLLUM:

H. Res. 639. A resolution condemning the abuse of Iraqi prisoners at Abu Ghraib prison, urging a full and complete investigation to ensure justice is served, and expressing support for all Americans serving nobly in Iraq; to the Committee on Armed Services, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BELL (for himself, Mr. MCDERMOTT, Ms. MILLENDER-MCDONALD, Mr. STARK, Mr. NADLER, Mr. GRIJALVA, Ms. WOOLSEY, Mr. BLUMENAUER, Ms. ESHOO, Mr. BERMAN, Mr. HOEFFEL, Ms. MCCOLLUM, Ms. KAPTUR, Mr. ACKERMAN, Mr. FARR, Mr. OBERSTAR, Ms. JACKSON-LEE of Texas, Mr. TOWNS, Mr. PAYNE, Ms. CORRINE BROWN of Florida, Mr. LANTOS, Ms. SCHAKOWSKY, Mr. DELAHUNT, Ms. LEE, Mr. MARKEY, Mr. FATTAH, Mr. VAN HOLLEN, Mr. SANDERS, Mr. OLVER, Mrs. MALONEY, Mr. MCGOVERN, Mr. STRICKLAND, Ms. WATSON, Mr. WAXMAN, Mr. BRADY of Pennsylvania, Ms. MAJETTE, Mr. WEXLER, and Mr. CONYERS):

H. Res. 640. A resolution of inquiry requesting that the Secretary of Defense transmit to the House of Representatives before the expiration of the 14-day period beginning on the date of the adoption of this resolution any picture, photograph, video, communication, or report produced in conjunction with any completed Department of Defense investigation conducted by Major General Antonio M. Taguba relating to allegations of torture or allegations of violations of the Geneva Conventions of 1949 at Abu Ghraib prison in Iraq or any completed Department of Defense investigation relating to the abuse or alleged abuse of a prisoner of war or detainee by any civilian contractor working in Iraq who is employed on behalf of the Department of Defense; to the Committee on Armed Services.

By Mr. PLATTS:

H. Res. 641. A resolution supporting the goals and ideals of Pancreatic Cancer Awareness Month; to the Committee on Government Reform.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 104: Mr. SNYDER.
H.R. 284: Mr. LATHAM.
H.R. 290: Mrs. BLACKBURN and Mr. HALL.
H.R. 434: Mr. BRADLEY of New Hampshire, Mr. JENKINS, and Mr. MORAN of Kansas.
H.R. 548: Mr. ABERCROMBIE.
H.R. 571: Mr. NETHERCUTT and Mr. PASTOR.
H.R. 573: Mr. CASE.
H.R. 594: Mrs. CHRISTENSEN, Mr. TANCREDO, Mr. REGULA, and Mrs. LOWEY.
H.R. 716: Mr. RODRIGUEZ.
H.R. 745: Mr. COOPER.
H.R. 781: Mr. PETERSON of Minnesota, Mr. MICHAUD, Mr. RAMSTAD, Mr. MCGOVERN, Mr. MEEHAN, and Mr. TIBERI.
H.R. 806: Mr. SERRANO.
H.R. 821: Mr. TIERNEY.
H.R. 839: Mr. SPRATT, Ms. BALDWIN, Ms. MAJETTE, Mr. PASTOR, Mr. SENSENBRENNER, Mr. KIND, Mr. JONES of North Carolina, Ms. ROS-LEHTINEN, Mr. BOUCHER, Mr. MCINTYRE, and Mr. OSBORNE.
H.R. 857: Mr. GILLMOR.
H.R. 970: Mr. LEWIS of Kentucky.
H.R. 976: Mr. SNYDER.
H.R. 1004: Mr. OLVER.
H.R. 1051: Mr. DEFAZIO.
H.R. 1083: Mr. ADERHOLT and Mr. NETHERCUTT.
H.R. 1120: Mr. GRIJALVA.
H.R. 1155: Mr. PETERSON of Minnesota, Mr. ANDREWS, Mr. BASS, Mr. BRADLEY of New Hampshire, and Mr. MICHAUD.
H.R. 1160: Mr. CAPUANO.
H.R. 1200: Mr. JONES of Ohio.
H.R. 1205: Mr. WEINER, Mr. ORTIZ, Ms. CORRINE BROWN of Florida, Mr. LYNCH, and Mr. RUSH.
H.R. 1206: Mrs. MUSGRAVE.
H.R. 1222: Mr. ROGERS of Kentucky.
H.R. 1229: Mr. BISHOP of Utah and Mr. ISAKSON.
H.R. 1311: Mr. GALLEGLY, Mr. CLYBURN, Mr. ENGEL, Mr. DAVIS of Tennessee, BRADLEY of New Hampshire, and Mr. BARRETT of South Carolina.
H.R. 1359: Mr. STRICKLAND.
H.R. 1483: Mr. SERRANO.
H.R. 1567: Mr. MICA.
H.R. 1684: Mr. DAVIS of Florida, Mr. CASE, and Mr. HASTINGS of Florida.
H.R. 1700: Mr. WAMP, Mr. BURTON of Indiana, and Mr. HINCHEY.
H.R. 1734: Mr. LAMPSON, Mr. BOEHLERT, Mr. BARTLETT of Maryland, and Mr. BELL.
H.R. 1775: Mr. HOSTETTLER.
H.R. 1824: Mr. MCINTYRE and Mr. WELLER.
H.R. 1919: Mr. PALLONE, Mrs. MUSGRAVE, and Mr. GREENWOOD.
H.R. 2037: Ms. CORRINE BROWN of Florida.
H.R. 2042: Mr. MENENDEZ.
H.R. 2217: Mr. SERRANO.
H.R. 2379: Mr. HINOJOSA.
H.R. 2513: Mr. CHANDLER.
H.R. 2674: Mr. DOYLE, Mr. RODRIGUEZ, and Mr. GRIJALVA.

H.R. 2747: Mr. MOORE and Mr. NETHERCUTT.
H.R. 2900: Mr. BROWN of South Carolina.
H.R. 2950: Mrs. BONO, Mr. SESSIONS, and Mr. BOEHNER.
H.R. 2968: Mr. LAHOOD.
H.R. 3142: Mr. CONYERS.
H.R. 3178: Mr. UPTON, Mr. MILLER of Florida, and Mr. NADLER.
H.R. 3213: Mr. COLLINS.
H.R. 3340: Mr. HYDE, Mr. CRANE, and Mr. KIRK.
H.R. 3356: Mr. MILLER of Florida.
H.R. 3425: Mr. MATSUI.
H.R. 3441: Mr. WHITFIELD, Mr. WEXLER, Mr. TURNER of Texas, and Mr. WU.
H.R. 3458: Mr. SANDERS and Ms. NORTON.
H.R. 3473: Mr. SANDLIN and Mr. CASE.
H.R. 3476: Mr. BISHOP of New York and Mr. MEEHAN.
H.R. 3523: Mr. GREEN of Texas, Mr. STUPAK, and Mr. BRADY of Pennsylvania.
H.R. 3634: Mrs. MCCARTHY of New York, Mrs. CHRISTENSEN, Mr. MOLLOHAN, and Mr. GREEN of Texas.
H.R. 3660: Mr. RYAN of Ohio and Mr. ANDREWS.
H.R. 3705: Mr. FRANK of Massachusetts.
H.R. 3707: Mr. DOYLE, Mr. WOLF, Mrs. CAPPS, Mr. FARR, Mr. OBERSTAR, Mr. CARSON of Oklahoma, and Ms. CORRINE BROWN of Florida.
H.R. 3722: Mr. TANCREDO, Mr. JONES of North Carolina, and Mr. GARRETT of New Jersey.
H.R. 3729: Mrs. MCCARTHY of New York, Mr. MOORE, Mr. HOLDEN, Mr. ROTHMAN, Mr. NEAL of Massachusetts, Mr. LYNCH, Mr. WAMP, Mr. EHLERS, and Mr. BALLANCE.
H.R. 3763: Mr. UPTON and Mr. OSBORNE.
H.R. 3776: Mr. CARDIN.
H.R. 3802: Mr. HOLT, Mrs. JOHNSON of Connecticut, and Mr. BEREUTER.
H.R. 3831: Ms. WOOLSEY.
H.R. 3865: Mr. DEFAZIO.
H.R. 3884: Mr. RODRIGUEZ.
H.R. 3951: Mr. COSTELLO.
H.R. 3965: Mr. KUCINICH.
H.R. 4033: Mr. MILLER of North Carolina.
H.R. 4051: Mr. BOUCHER, Ms. LOFGREN, and Mr. BISHOP of New York.
H.R. 4056: Mr. BURGESS.
H.R. 4064: Mr. HEFLEY, Mr. HALL, Mr. RAMSTAD, Mr. BURTON of Indiana, Mr. JENKINS, and Mr. GUTKNECHT.
H.R. 4065: Mrs. MUSGRAVE.
H.R. 4082: Mr. FALEOMAVAEGA.
H.R. 4096: Mr. GREEN of Wisconsin and Ms. MILLENDER-MCDONALD.
H.R. 4103: Mr. WEINER.
H.R. 4111: Mr. PETERSON of Minnesota.
H.R. 4113: Mr. NETHERCUTT, Mr. OTTER, Mr. HOLT, and Mr. TERRY.
H.R. 4116: Mr. ABERCROMBIE.
H.R. 4130: Mr. GREENWOOD, Mr. BLUMENAUER, Mr. PRICE of North Carolina, and Mr. GRIJALVA.
H.R. 4143: Mr. RUPPERSBERGER.
H.R. 4175: Mr. FILNER, Mr. GUTIERREZ, Mr. HOLDEN, Mr. BRADY of Pennsylvania, Mr. GRIJALVA, and Mr. RODRIGUEZ.
H.R. 4183: Mr. BOUCHER and Mr. SKELTON.
H.R. 4190: Mr. NEAL of Massachusetts.
H.R. 4207: Mr. ISRAEL, Mr. DOGGETT, and Mr. JACKSON of Illinois.
H.R. 4214: Mr. SHIMKUS, Mrs. MUSGRAVE, Mr. CRANE, Mr. BURR, Mr. FEENEY, Mr. RENZI, and Mr. GERLACH.
H.R. 4229: Mr. PALLONE, Ms. BORDALLO, Mr. WYNN, and Mr. BOUCHER.
H.R. 4249: Mr. SHERMAN, Mr. HONDA, Mr. LANTOS, Mr. MCDERMOTT, Mrs. TAUSCHER, Ms. LEE, Ms. ESHOO, and Mr. GRIJALVA.
H.R. 4275: Mrs. JO ANN DAVIS of Virginia, and Mr. KING of New York.
H.R. 4280: Mr. MANZULLO, and Mr. PLATTS.

H.J. Res. 28: Mr. FATTAH, Ms. KILPATRICK, Ms. NORTON, Mr. SCOTT of Virginia, Ms. WATERS, and Ms. MILLENDER-MCDONALD.

H.J. Res. 29: Mr. BISHOP of Georgia, Mr. SCOTT of Virginia, and Ms. WATERS.

H.J. Res. 30: Mr. BISHOP of Georgia, Mr. FATTAH, Mrs. JONES of Ohio, Ms. KILPATRICK, Ms. NORTON, Mr. SCOTT of Virginia, Ms. WATERS, and Ms. MILLENDER-MCDONALD.

H. Con. Res. 360: Mr. CAPUANO, Ms. LOFGREN, Mr. GRIJALVA, Mr. FROST, Mr. DAVIS of Alabama, Mr. FILNER, Mr. CUMMINGS, Mr. JACKSON of Illinois, Mr. PAYNE, Ms. KILPATRICK, Mr. BISHOP of Georgia, Mr. SCOTT of Georgia, Mr. WYNN, Mr. CLAY, Ms. WATSON, Mr. KENNEDY of Rhode Island, Mr. BALLANCE, Mr. CLYBURN, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. MAJETTE, Mr. MEEK of Florida, Mr. MEEKS of New York, Ms. MILLENDER-MCDONALD, Mr. WATT, Mr. UPTON, Mr. HYDE, Mr. BRADY of Pennsylvania, Mr. MOORE, Mr. TURNER of Texas, Mr. SERRANO, and Mr. GUTIERREZ.

H. Con. Res. 378: Mr. BURR, Mr. BROWN of Ohio, Ms. BERKLEY, Ms. SOLIS, and Mr. PLATTS.

H. Con. Res. 384: Mr. WAXMAN.

H. Con. Res. 394: Mr. SCOTT of Virginia.

H. Con. Res. 414: Ms. PRYCE of Ohio.

H. Res. 466: Mr. PLATTS and Mr. PASTOR.

H. Res. 567: Mr. KILDEE, Mr. DAVIS of Tennessee, Mr. SCHIFF, Mr. CAMP, and Mr. SHAYS.

H. Res. 621: Mr. TURNER of Texas.

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PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150 WASHINGTON, WEDNESDAY, MAY 12, 2004 *No. 66*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

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

Let us pray:

Wise Creator, the One who made heaven and Earth and all that is in them, thank You for the honor of being made in Your image, personally formed by You for Your glory. Deliver us from pride or false modesty, as we give You credit for our abilities and live for Your glory.

Thank You, Lord, for our weaknesses and inadequacies and even our pain and distresses. You have allowed these in our lives that they may contribute to Your higher purposes. Please don't remove the mountains in our lives, but give us the strength to climb them.

Shower Your grace upon our Senators today and make them more than sufficient for these grand and awful times. Help them to walk humbly with You, as You bless and strengthen them. Lord, tend to the sick, give rest to the weary, and soothe the suffering. We pray this in Your wonderful name.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 12, 2004.

To the Senate:

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

TED STEVENS,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, I will take a couple of minutes to lay out the schedule for today. This morning, the Senate will have a period of morning business for up to 60 minutes. Last night's orders provided that the first 30 minutes will be controlled by the majority and the final 30 minutes will be controlled by the minority.

Following morning business, the Senate will begin consideration of IDEA, the Individuals with Disabilities Education reauthorization bill, S. 1248. We will consider that bill under a previously agreed to order, which provides for a limited number of amendments per side. Chairman GREGG will be here to manage the bill on this side.

I expect there will be votes throughout the course of the day in relation to those amendments. We should be able to complete our work on this bill either late today or early tomorrow.

This morning, I wanted to again comment on the Executive Calendar and the mounting number of nominations. It is an important issue and important to our Nation and to the way we are viewed around the world. So I want to review the process again. I mentioned yesterday morning some of the specific pending ambassadorial nominations awaiting our action, in addition to the 32 judicial nominations. I know the distinguished assistant Democratic leader mentioned these ambassador nominations later in the day yesterday. Again, I want to restate what I mentioned yesterday morning. There are eight nominations for ambassadorships that are pending on the calendar. These nominations have been presented, have gone through committee, and are simply awaiting action on the floor of the Senate. It is not one, two, three, four, or five—it is eight. That includes ambassadorships to Sweden, Brazil, Finland, Romania, South Africa, Nepal, Poland, and Northern Ireland.

I know of a concern at this time by a Member on our side of the aisle with respect to one of these eight nominees; however, I don't believe there are concerns on either side of the aisle with respect to the remaining seven nominations. So we are prepared to confirm these other nominations and allow them to begin their important work for the United States of America, the work that awaits them at their posts in the countries I mentioned. Each one of these is important and significant. We are ready to move with them.

I do want to restate the intention of bringing it to the Senate floor yesterday, and that was that we need to work together on the nominations. It is really as simple as that. Eight nominations have gone through the entire vetting process up to this point, and they are simply awaiting action here on the floor of the Senate. We are prepared to confirm seven of those eight today.

I will also mention that this is true with respect to a number of judges. We

have 32 pending judicial nominations as well. Ultimately, once we figure out some way to allow these nominations to be considered, I am confident that most, or many, are going to receive unanimous votes if this body is just given the opportunity to vote.

I guess my point is, as I look at the 8 nominations and the 32 nominations, I urge my colleagues not to take this sort of blanket or scorched earth policy of not letting anybody through at all. We need to be reasonable and we need to work together on these nominations. If there is a concern, and if there are certain nominations that are not being considered, there are a lot of different ways we can get attention to those individuals. But this sort of blanket holding things back is something we need to address.

I hope the nominations, many of which are probably cleared on both sides, are not held hostage by a few. On this side of the aisle, we are prepared to consider the ambassadors, we are prepared to consider the judges, and we are prepared to vote on the chairmen of a whole range of committees, such as the Consumer Products Safety Commission, HUD nominations, and the list goes on. It is time for good faith and it is time to do our constitutional duty. These nominations are sent to us to be voted upon.

ABUSE OF IRAQI PRISONERS

Mr. FRIST. Mr. President, I want to also mention that yesterday the Senate Armed Services Committee held a day-long hearing to learn more about the abuse of the Iraqi prisoners at the Abu Ghraib prison. Many of us did not see all of the testimony, but we were able to review it over the course of the day. The committee received detailed testimony from Major General Antonio Taguba, the senior officer who investigated and reported on the Abu Ghraib prison abuses, and from a range of other Defense Department officials.

Today, the Intelligence Committee will be holding a closed hearing to explore matters under their jurisdiction related to these incidents. As we know, both committees met last week in a similar fashion. This afternoon, from 2 to approximately 5 o'clock, in S. 407, there will be an opportunity for all Senators to review photographs and evidence related to the prisoner abuse scandal. We will have the opportunity to view them. They will be there from 2 p.m. to 5 p.m. in S–407, after which they will be returned.

As I stated yesterday, it is our expectation that the Senate will be apprised of the ongoing investigations being conducted by the Department of Defense and of all the actions being taken to ensure these incidents never occur again.

To that end, I simply wish to reflect my perspective that the Defense Department has been very responsive to our requests. Secretary Rumsfeld, General Myers, and their senior aides have updated us as events have unfolded, and they have been attentive to the Senate's requests and to their needs.

As the President said the other day, Secretary Rumsfeld—I agree with the President—has done a superb job as Secretary of Defense in very trying and challenging times. I am confident he is taking action to address these deplorable acts in a deliberate manner, in a transparent manner, and is taking all measures to ensure that these acts will never occur again.

EXTENDING CONDOLENCES TO THE FAMILY OF NICHOLAS BERG

Mr. FRIST. Mr. President, I wish to extend my condolences to the family of Nicholas Berg who, as we all know, was murdered yesterday in Iraq by kidnappers. We grieve for him, and we grieve for his family.

At the same time, the actions of his murderers are a reminder to us of what all our soldiers on a daily basis are undergoing. We must endeavor to bring these terrorists to justice as we work to bring democracy, peace, and the rule of law to Iraq.

Let us keep in mind all of this in the days and weeks ahead, which will be very challenging times for us all.

PASSAGE OF FSC/ETI

Mr. FRIST. Mr. President, I wish to comment, because I did not have the opportunity last night, on the FSC/ETI JOBS bill that was passed last night after a long time on the floor and after a number of amendments, an approximately equal number considered from the Republican and Democratic side. It is a real achievement for this body. It was passed, and it is critical to accelerating jobs and production of jobs in this country.

The bill we passed will bring our trade and tax laws into compliance with our trade agreements finally. As many of my colleagues know, the Europeans are already imposing tariffs on our exports. That Euro tax started in March at 5 percent, and until we act—we have acted in the Senate, and now the House must act, but we must act as a Congress—these will increase 1 percent each month if we do not act.

I do want to mention the energy provisions that are part of this bill that were added on the Senate floor—too many for me to refer to now but provisions such as tax credits for the production of electricity from renewable sources, such as wind and solar. It contains tax incentives to promote the production and use of alternative fuels motor vehicles using natural gas. It includes added incentives to promote the use of clean coal and advanced clean coal technology. There are important incentives to increase the supply of natural gas, and the list goes on.

The Senate has acted, and I look forward to the House passing its version of this legislation so that the House and Senate can go to conference and we can produce a conference bill without much delay and bring it back to the Senate.

There is a lot going on in the Senate both on and off the floor. I appreciate the cooperation of my colleagues as we move America forward.

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

AMBASSADORIAL NOMINATIONS

Mr. DASCHLE. Mr. President, this morning the distinguished majority leader made some comments regarding ambassadorial nominations. This is an important issue, and I thought I would take a minute to talk about it and respond to some of the concerns we heard expressed on the floor over the last several days.

Last Thursday, I was pleased the Senate confirmed 20 ambassadors, including Ambassador Negroponte for the tough assignment in Iraq after June 30. I note Ambassador Negroponte's nomination was completed with near record speed, given that he was confirmed 1 week after he was nominated by the President. The other 19 ambassadors were confirmed less than a week after they were reported out of the Foreign Relations Committee.

By confirming those 19, the Senate filled three vacant U.S. Embassies. We had hoped to confirm other career Foreign Service officers for the vacancies that exist, including the Embassy in Nepal, which has been the site of some considerable violence over the last several months. Unfortunately, I am told there is still an objection to his confirmation from the Republican side, meaning the Embassy will continue to be vacant for the foreseeable future.

At the moment, I am told the State Department has nearly 170 Embassies around the world. Eight are currently vacant, meaning they have no confirmed ambassador. Of those eight, the President has chosen not to fill two of them, and two are currently too dangerous to fill. One is awaiting action in the Foreign Relations Committee, and the Republicans are objecting to another. The last two, in Sweden and Finland, are vacant because the political appointees who previously served in those posts did not serve out the terms they were committed to serve.

Last week, several of our Republican friends noted that the vacancies send a negative signal to these countries. I hope the President will move with dispatch to fill these vacancies as soon as possible. I also hope the President will work with us to address another problem: Ambassadors pulled out of the duties for which they were confirmed so that they can assume assignments in or related to Iraq.

Here are three examples. Our Ambassador to the Philippines has not been in Manila for the last several months, even though that country, which is hosting American forces that are training Filipino forces, just went through a

tight national election. Our Ambassador to Kuwait is resident in Baghdad. And our Ambassador to the Bahrain has been in Iraq since February.

That is not to say these jobs they are performing in Iraq are not important; they are. But if we are going to come to the floor and call attention to problems filling vacancies in the diplomatic corps, we ought to be sure we are considering the whole picture.

MEDICARE PRESCRIPTION DRUG DISCOUNT CARD

Mr. DASCHLE. Mr. President, this morning in the New York Times, there was yet another reminder of the great difficulty seniors are having in dealing with the Medicare prescription drug discount card, so-called. I noticed with some amusement a number of our colleagues on the other side of the aisle came to the floor highly critical of those of us who have expressed skepticism and concern about the drug card. Some have even expressed the belief that our motivation in coming to the floor to talk about these shortcomings in the drug card and the prescription drug benefit were politically motivated.

The New York Times has an article this morning quoting people who have nothing to do with politics. The title of the article is ''73 Options for Medicare Plan Fuel Chaos, Not Prescriptions.''

I ask unanimous consent that the article be printed in the RECORD.

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

[From the New York Times, May 12, 2004]

73 OPTIONS FOR MEDICARE PLAN FUEL CHAOS, NOT PRESCRIPTION

(By John Leland)

When Mildred Fruhling and her husband lost their prescription drug coverage in 2001, they suddenly faced drug bills of $7,000 a year. Mrs. Fruhling, now 76, began scrambling to find discounts on the Internet, by mail order, from Canada and through free samples from her doctors.

''It's the only way I can continue to have some ease in my retirement,'' she said.

Last week, when the federal government rolled out a new discount drug program, Mrs. Fruhling studied her options with the same thoroughness. What she found, she said, was confusion: 73 competing drug discount cards, each providing different savings on different medications, and all subject to change.

''I personally feel I can do better on my own,'' she said. But she added, ''At this point, I don't think anyone can make an evaluation.''

Even before they go into effect on June 1, the cards—which are approved by Medicare but offered by various companies and organizations—have been the subject of heated political debate, an AARP advertising campaign about how confusing they are and anxious speculation from those they are supposed to help. Among retirees of different income groups interviewed last week, the initial reaction was incomprehension.

''Even the person who came to explain it to us didn't understand it,'' said Mary Shen, 77, at the Whittaker Senior Center on Manhattan's Lower East side. ''It's not fair to expect seniors, who have enough difficulties already, to have to figure this out.''

Shirley Brauner, 75, pushed a metal walker through the center's lunchroom. ''All I've got to say is they confuse the elderly, including me,'' she said. ''I'm furious. They're taking advantage of the seniors. How can the seniors understand it?''

The prescription drug discount cards are a prelude to the Medicare Prescription Drug, Improvement and Modernization Act, which will provide broad drug coverage starting in 2006. The federal government projects that 7.3 million of Medicare's 41 million participants will sign up for the cards.

Those who wish to do so, however, face the daunting task of choosing the right card.

''What it's like is a bunch of confusion,'' said Katharine Roberts, 77, who said she had not been to a movie in six years, in part because of her drug expenses. ''You might find you really need three cards, and you can only choose one.''

The cards are a 19-month stopgap measure to provide discounts of 10 percent to 25 percent for Medicare participants who have no other prescription drug coverage. In addition, low-income participants are eligible for subsidies of $600 a year.

The Department of Health and Human Services approved 28 companies or organization to issue cards; among them are AARP, insurance companies and health maintenance organizations. Cards cost up to $30 a year. Each card provides different discounts on different drugs, and is accepted by different pharmacies. Participants can choose only one.

To help people sort through the options, Medicare and a company called DestinationRx set up a database on its Web site, medicare.gov, that lists the prices charged under various plans for whatever medications a user types in. People can get similar help by telephone at 1–800–MEDICAR. But some providers complained that the prices on the site were inaccurate, and some cards are not listed at all.

For many retirees, it is too much.

''I'm 85, do I have to go through this nonsense?'' asked Florence Daniels, a retired engineer who said she received less than $1,000 a month from Social Security, of which she paid $179 a month for supplemental medical insurance. She gets drugs through a New York State program, which provides any prescription for $20 or less. To make ends meet and afford her drugs, she said she bought used clothing and put off buying new glasses. Some of her friends travel by bus to Canada to buy drugs; others do without, she said.

Ms. Daniels did not use the government Web site to compare drug cards, in part because she cannot afford a computer. ''I'm trying to absorb all the information, but it's ridiculous,'' she said. ''Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down—wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and can't get.''

The discount program, which is financed largely by the cards' sponsors, reflects the Bush administration's desire to open Medicare to market principles without allowing participants to import drugs from other countries, which many Democrats favored.

Mark B. McClellan, an administrator at the Center for Medicare and Medicaid Services, said the complexity of the plan encouraged competition. ''We're seeing more plans offering better benefits,'' he said, estimating that people will be able to save 15 percent or more using the cards.

But the complexity of choices will keep many people away from the program, said Marilyn Moon, director of health at the American Institutes for Research, a nonprofit research organization in Washington.

Often, the discount provided by the cards is not as good as what people can get from exiting state programs, union plans or consumer groups, said Robert M. Hayes, president of the Medicare Rights Center, a nonprofit organization that helps individuals with Medicare problems.

Sydney Bild, 81, a retired doctor in Chicago, compared the discount cards with the prices he paid ordering his drugs by mail from Canada. Dr. Bild pays $4,000 to $5,000 for year for five medications. When he checked the government Web site, he said the best plans were about 50 percent to 60 percent higher than what he was paying.

But Dr. Bild said his main objection to the new plans was that companies could change prices on drugs, or change the drugs covered. Medicare requires plans to cover only one drug in each of 209 common categories. Consumers can change cards only once a year. Committing to a card is ''like love—it's a sometime thing,'' Dr. Bild said ''What if I chose one? They could drop my drugs two weeks later.''

Companies began soliciting customers for their discount drug cards last week. When the first pamphlets arrived at Beverly Lowy's home in New York City, Ms. Lowy said, she looked at them carefully. She does not have drug coverage and last year spent about $3,000 on prescription drugs. but the more brochures she read, Ms. Lowy said, the less clear things became.

''You really have to be a rocket scientist,'' Ms. Lowy, 71, said. ''It takes time, energy, and you don't even save money. I thought, 'This one is offering this, this one is offering that.' Finally I decided this isn't for me.''

At the Leonard Covello Senior Center in East Harlem, the new cards seemed opaque. Ramon Velez, 72, a retired taxi driver, said he had watched AARP advertisements in which people read the dense language of the federal Medicare bill.

''I was laughing at the people in the ads, but it's true,'' Mr. Velez said ''Everyone's confused.''

Mr. Velez receives $763 a month from Social Security, and often skips his psoriasis medication because he cannot afford the $45 co-payment under his Blue Cross/Blue Shield plan. He wondered if the new drug cards could save him money.

''But it's very confusing,'' he said ''I'd go to the Social Security office to ask about the cards, but I don't think they'd know.''

Alejandro Sierra, 67 a retired barber, paced around the center's pool table. Mr Sierra takes six medications for diabetes and complications from cataracts and colon cancer, and sometimes skips a medication because he cannot afford it.

''I'm interested in the cards,'' he said. ''But I can't figure it out on the computer, because I can't see.''

Carlos Lopez, the director of the center, said the cards had so far produced little but anxiety. Mr. Lopez asked participants to bring any applications to him before signing them, and warned them about people selling phony cards.

''They're not nervous, but concerned,'' he said. ''They feel, why now? Why do I suddenly need a card for medications?''

Mr. DASCHLE. Mr. President, to excerpt from this article, it talks about:

Last week, when the federal government rolled out a new discount drug program, Mrs. Fruhling—

Mildred Fruhling studied her options with the same thoroughness with which she has been reviewing all of this now for some time. ''What she found,'' according to the article, ''was confusion: 73 competing drug discount cards,

each providing different savings on different medications, and all subject to change.''

Quoting Mrs. Fruhling:

''I personally feel I can do better on my own,'' she said. But she added, ''At this point, I don't think anyone can make an evaluation.''

The article goes on to say:

Even before they go into effect on June 1, the cards—which are approved by Medicare but offered by various companies and organizations—have been the subject of heated political debate, an AARP advertising campaign about how confusing they are and anxious speculation from those they are supposed to help.

Among retirees of different income groups interviewed last week, the initial reaction was incomprehensible.

It goes on to quote Mrs. Florence Daniels, a retired engineer who gets less than $1,000 a month from Social Security. She did not use the Government Web site that is currently available to compare drug cards, in part because she cannot afford a computer. She states:

I'm trying to absorb all the information, but it's ridiculous. Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down, wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and what we can't get.

Sidney Bild is another retiree quoted in the article, a retired doctor in Chicago. He compared the drug discount cards with prices he paid ordering his drugs by mail from Canada. Dr. Bild pays $4,000 to $5,000 a year for five medications. When he checked the Government Web site, he said the best plans were about 50 to 60 percent higher than he was paying.

At the Leonard Covello Senior Center in East Harlem, the article quotes another senior, Ramon Velez, a 72-year-old taxi driver who is retired. He said:

I was laughing at the people in the ads [that I have seen on television] but it's true. Everyone's confused.

That summarizes what many of us have expressed now for some time. People are confused. They are terribly frustrated. They are anxious. They do not want to have to deal with 73 different options and there is chaos as a result. Unfortunately, the Congress had an opportunity to side with seniors or side with the drug companies, and clearly this is a drug company benefit, this is a drug company program. It has nothing to do with helping seniors.

COVER THE UNINSURED

Mr. DASCHLE. Mr. President, this week is ''Cover the Uninsured Week.'' Today, and for the rest of this week, in all 50 States and the District of Columbia, Americans will take part in nearly 1,500 public events to call attention to the growing number of Americans without health insurance and the growing price they, and all of us, pay for the gaping holes in America's health care safety net.

The nonpartisan campaign is co-chaired by former Presidents Gerald Ford and Jimmy Carter and supported by a diverse coalition of organizations representing business owners, union members, educators, health consumers, hospitals, health insurers, physicians, nurses, religious leaders and others. It is also endorsed by several former Surgeons General and Health and Human Services Secretaries from both Republican and Democratic administrations.

This is the second ''Cover the Uninsured Week.'' Unfortunately, the problem has only gotten worse in the last year. Last year, nearly 44 million Americans, including 8.5 million children, had no health insurance. That is more than 15 percent of all Americans. Tens of millions more Americans were uninsured for at least part of the year. In my State, South Dakota, 12 percent of the people have no health insurance.

Most uninsured Americans go to work every day. In fact, many work two or three jobs. But their employers do not offer health coverage, or they cannot afford the premiums and other costs. And they cannot afford to buy private coverage on their own. So they, and their families, live with the daily dread that one serious illness or accident would wipe them out financially.

Last summer, I received an e-mail from a father who lives every day with that fear. He lives in South Dakota. He and his wife asked me not to use their names or the name of her employer because they do not want to risk losing her job and the very meager health benefits it provides.

This couple has two children, both in high school. When the father e-mailed me last summer, he had just spent hours in a hospital emergency room. He went to the hospital because he thought he might be having a heart attack. He ended up leaving without seeing a doctor because he was afraid he might end up with a medical bill he could not pay.

He said that his chest pains started around midnight on a Saturday night. He asked his son, the only other person at home at the time, to take him to the hospital. Before he left home, the father grabbed a file folder containing his last 5 years' worth of tax returns. Why did he do this?

Two years earlier, his son had been hit by a car, and the family ended up with $34,000 in medical bills. The father did not want anyone at the hospital to think he was trying to take advantage of them when he warned them that he would not be able to pay another huge medical bill. After they arrived at the hospital, the father sat in the waiting room for 3 hours waiting to talk to someone in the hospital's business department. Before he accepted any treatment, he wanted to be sure it was not going to bankrupt his family.

But there was no one in the business office in the middle of the night on a weekend. So he sat there for 3 hours, clutching his tax returns, and praying that he was not having a heart attack. Finally, a nurse came out, spoke to him for a few minutes, and told him he was probably just having a panic attack. So he went home. To this day, he does not know if what he suffered was a panic attack or a mild heart attack. He still has not seen a doctor.

This man and his family are not even counted among the nearly 44 million Americans without health insurance. They used to have family health coverage through his employer, but 3 years ago, that company moved out of State. He has been self-employed ever since. Now, they get their health insurance through his wife's job.

I hear, as I heard on the floor yesterday, from some of our colleagues that in this country, thank goodness, we never have to ration health insurance. If this is not rationing health care, health insurance, I do not know what is. What does one call it when a person sits at midnight on a Saturday night with 5 years of tax records to prove they do not have the ability to pay and then walk out not knowing if they had a heart attack. Tell someone today that is not rationing health care. A family income for this particular family is about $13,000.

Two years ago, this family paid $2,800 in premiums for family coverage and another $5,800 out of pocket for medical costs that weren't covered—$8,600 in all. Their family income that year was about $13,000.

This is what that father wrote to me in his e-mail last summer:

Our family hasn't seen a dentist for over 3 years. I haven't seen a dentist in nearly 10 years. Simply cannot pay the cost. My son needs glasses. My wife has a broken tooth. I haven't seen a doctor in 15 years.

We all work hard and play by the rules and cannot make ends meet. The last three years have been devastating to us. We will probably lose our house because we cannot afford to keep it up. We are a sad case and getting more depressed every day. I am embarrassed and ashamed to even talk about it. I just wanted you to know about the suffering many of us are enduring.

Recently, a woman wrote a long letter to a paper in my State, the Eagle Butte News, about her sister. As a Native American, her sister was theoretically guaranteed free health care from the United States Government, through the Indian Health Service.

Last June, the sister went to see an IHS doctor because of severe stomach pains. The doctor told her she had a bacterial infection and sent her home with an antibiotic. A month later, the pain was so intense she could no longer eat. When she went to IHS clinics, she was given a shot for pain and some antacids and told there was no money to send her to a specialist. By October, she had lost 70 pounds. Last November, she finally saw a different doctor and got an accurate diagnosis. By then, her stomach cancer was inoperable. She died on April 7.

In her letter to the editor, her sister wrote:

She was prepared to accept her fate, which she did bravely and with courage. But I am

not going to accept her death quietly because her life was cut short and I don't want to see others suffer the same fate that she did.

As terrible as these stories are, these people are technically among the lucky ones. The father who sent me that e-mail has what amounts to catastrophic health coverage through his wife's job. American Indians are promised health care by the Federal Government, even though that promise is routinely broken.

The nearly 44 million uninsured Americans have even less than that. None of us should accept this quietly.

The lack of health insurance has devastating consequences for uninsured individuals, for families, and for our Nation as a whole. According to the National Institute of Medicine:

Children and adults without health insurance are less likely to receive preventive care and early diagnosis of illness. They live sicker and die younger than those with insurance.

Eighteen thousand Americans a year die prematurely because of lack of health insurance.

Families suffer emotionally and financially when even one member is uninsured.

Communities suffer as the cost of uncompensated care is shifted onto doctors, hospitals and taxpayers.

The Nation suffers economically. The Institute of Medicine estimates that lack of health insurance costs America between $65 billion and $130 billion a year in lost productivity and other costs.

The National Institute of Medicine has called for universal health coverage for all Americans by 2010. Democrats have been leading the fight for universal health coverage in America for decades. We created Medicare.

We welcome Republicans' concern about the rising number of Americans without health insurance, and we want to work with them to find solutions. But the proposals offered by the President and congressional Republicans will not work.

A recent study concluded that the President's proposals would only reduce the number of uninsured Americans by between 2.1 and 2.4 million people out of the 44 million who have no health insurance. That is not even as many people as have lost their health coverage during his administration. We have to think bigger, for if we ''cover the uninsured'' at that rate, we will continue to lose ground.

Moreover, some of the President's ideas would actually make matters worse. According to CBO, the President's plan to create ''association health plans'' would decrease the number of uninsured Americans by only about 600,000 people—600,000 out of nearly 44 million. But it would increase premiums for 80 percent of employees of small businesses. It would also exempt ''association health plans'' from important State regulations, including solvency requirements and other protections.

The administration's proposed health care tax credit is far too low to help most people who need help. It also ignores two fundamental problems: Premiums for individual health care coverage are far too high for most Americans, and, if you are not young and in good health, you may not be able to purchase an individual health insurance policy at any price.

Health savings accounts are no solution, either. They are a tax shelter that primarily benefit the healthy and the wealthy—those who are least likely to be uninsured. A new study by an M.I.T. expert released just this week concludes that the President's health savings account proposal would actually increase the number of uninsured Americans by 350,000—and cost taxpayers $25 billion. There are better ideas.

After that father sent me that e-mail, we told him about the CHIP program. Today, his two children have health insurance through that program.

In the words of that South Dakota father;

The CHIP program is a tremendous safety net for families. At least now, when my children are sick, I can take them to the doctor. It takes some of the fear away. And, when you walk in to the doctor's office or the hospital and show them that card, they treat you like a human being.

The CHIP program is working. We should continue it—and our other successful Federal health care programs—and ensure they are adequately funded.

We recently introduced a bill that could significantly reduce the number of uninsured Americans and help small business owners create new jobs at the same time. The Small Business Health Tax Credit—S. 2245—would provide small businesses with tax credits to cover up to 50 percent of the cost of their employees' health insurance. Businesses with 36 to 50 workers would get a tax credit worth 30 percent of their employee health care costs. Companies with 26 to 35 workers would get a 40-percent tax credit. And companies with 25 or fewer employees would get the full 50-percent tax credit. This is a far more generous tax credit than what small businesses can claim now.

Business owners and entrepreneurs are working hard to make a profit—but their profits are being eaten up by out-of-control health care costs.

Finally, later this morning, my colleagues and I are going to announce a bold new commitment that will enable the Federal Government to offer every American access to quality health care at an affordable price within 2 years. We look forward to working with our Republican colleagues to make that commitment a reality.

I recently received another letter from a woman in South Dakota. She wrote:

I have noticed that gas stations continue to place spare-change jars on counters for fundraisers, and small towns often hold pancake breakfasts for the same reason. However, rather than raising money for band trips and sports, they are increasingly for a local uninsured person's health care.

There are better ways. Working together, we can tap the spirit of community and compassion those spare-change jars represent, and we can find ways to ensure that every American is able to see a doctor when he or she is sick.

We do not have to be the only major industrialized nation in the world that fails to guarantee health care for all its citizens. We can do better, and none of us should rest until we do.

I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina.) Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, the first half of the time under the control of the majority leader or his designee, the second half of the time under the control of the Democratic leader or his designee.

The Senator from Wyoming.

HEALTH INSURANCE

Mr. THOMAS. Mr. President, I would like to take the first 10 minutes of our 30 minutes and talk a little bit about the uninsured and talk a little bit about insurance, of course. I am pleased this is uninsured week, that we are focusing on that problem of uninsured folks. I think it is a great thing that we ought to be doing. There are some alternatives that we can pursue.

I have been particularly involved in the rural health care aspect, being from Wyoming where, of course, almost all of our health care is rural health care. We have had good results in our Medicare bill that was passed last year. We have equity pay for the providers in that bill. We have assistance for those serving underserved areas. We have a number of things that are very necessary. I am pleased they are there.

We have been focusing on Medicare, of course, because that is the Government's responsibility directly. We have made some good progress on that. Among other things, we seek to help seniors with pharmaceutical costs. We have a program out there. I am a little disappointed the minority leader is nothing but critical of it. It is out there and we ought to be trying to make it work now rather than trying to oppose it for political reasons. I think that is a mistake.

There are opportunities out there for the elderly to enjoy a considerable amount of assistance, particularly low-income people, with the $600 assistance in addition to a 20-percent reduction. The fact that there are 70 cards out there—all you have to do is call 1–800–Medicare and get the advice that is necessary to do it. I wish we could support something instead of totally always being critical.

In any event, we have worked on those, and I think it is time that we

look, now, at the broader aspects of health care. That includes many other things. We have a great system. We have probably the best health care system in the world. However, if that system gets in the position where access is limited by the costs, then of course we are not making it possible for everyone to participate. That is really where we are.

The costs of health care have increased substantially. There are lots of reasons for that. One of them is the new equipment that is being used, which everybody wants to take advantage of, of course, because it is the high-tech stuff.

Another reason, obviously, is the liability problem we have tried to address on the floor a number of times, and we have not been able to move past the obstructionism on the other side. The liability problem not only results in the cost of the liability insurance going up, but it also results in having more testing, more specialists, more costly health care simply to avoid the opportunities that people might have to sue. So there are a lot of things.

I had the opportunity not long ago to talk to the management of one of the largest hospitals we have in Wyoming. It was interesting when the financial officer broke down the situation with regard to the funding. First, he talked about the billing level, which, of course, is quite above the cost level because they need to bill some more than it costs to make up for those who do not pay. But the point was, they broke down the number of people who were there, the number there in Medicare, the number there on Medicaid, the number that had their own insurance, the number that were uninsured, and the emergency ones. Part of the problem is Medicare is not paying the full cost, Medicaid does not pay much of the cost at all, so then you get to the uninsured and, of course, many of them do not pay, are not able to pay at all, and you have the emergencies, so what happens? It goes to those of us who have insurance.

As I go about my State talking to people, I hear more about the cost of health insurance than anything else that you talk about in a town meeting. It is largely because of some of those shifts there.

As has been pointed out, we have over 40 million Americans who do not have health insurance, and that is unacceptable. We need to do something about that. The cost of health care—of course we ought not to forget that continues to grow almost unchecked. It has grown to $1.6 trillion in 2002, a 9.3-percent increase over the previous year. You cannot keep having a 10-percent increase in these costs and yet be able to deal with them. The health care cost portion of the gross national product in 2002 was nearly 15 percent, up from 14 percent the year before.

This is part of it that we ought not forget—the cost of health care. We ought to look at the costs as well as who is going to pay. Unfortunately, that is about all we ever talk about—who is going to pay. There is more to it than that. These rates cannot continue to grow at that rate.

We have had a considerable amount of planning in our State with respect to the uninsured. We had a group—I am glad there has been a task force here, and we have about 14 percent of our people in Wyoming who are uninsured.

It is largely because of the cost. We have a number of things, however, that have been suggested which I think we ought to take a look at. There are some important special recommendations.

We could expand public programs such as Medicaid and CHIP. The minority leader was just talking about the CHIP program and why it should be such a surprise since it has been there for a good long time. It is one that the States participate in funding. We need to do that. It needs to be funded at the full level by the States.

We need to provide a buy-in option for public programs so people have an opportunity to buy into these programs that now exist. We need to increase the reimbursement for public programs. They are not paying their share. Therefore, private insurance goes up, and those people who can't afford it or even come close to affording it are even less likely because it has gone up more.

We need to target tax credits and Federal subsidies. I think tax credits are valuable. That would allow people to take a higher crisis sort of a policy.

Community health centers that deal with people who aren't able to have insurance and need help is an excellent way to deal with this.

Of course, we need to do something to help participation of employer-sponsored programs. That is not the only answer because a lot of people are self-employed.

Of course, we also need to push for personal responsibility for health. An interesting program has been talked about in Wyoming. It is a group called the ''Be Well Program.'' They would deal with employer groups that cover their employees. The employees would sign an agreement to keep up their own health, to exercise, and do some of the things that we all talk about and which not everyone does. That would be a condition of being insured. It is already in a couple of contracts.

There are a lot of things to do, and the task force has a number of ideas. I think we need to move forward to try to do some things. Most of us I don't believe favor a socialist program where the Government runs all of the health care programs. That is evidently not the kind of thing we want to have because all of the Canadians would come here.

But, nevertheless, there needs to be a program that gives an opportunity for people to fully participate. I am delighted that we are moving forward with it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, thank you for recognizing me. I came out on the floor to talk for a few minutes about the health care task force, and particularly about association health plans or small business health plans.

I am very pleased that we are talking about the health care task force report. I want to talk a little bit about the drug discount card in part because I think it is important that we talk about it. I want my senior citizens to be aware of this benefit and to use it. I think it is something everyone ought to consider. For many of them, it is going to be the relief they have been looking for many years.

I want to say that it is hard for me to understand these attacks which are occurring on a fundamental level against the discount card. Without question, this card is going to provide relief to tens and tens of thousands of people who have been choosing between the other necessities of life and their prescription drugs.

There are 200,000 senior citizens in the State of Missouri today who are buying prescription drugs entirely out of pocket. It is not very good for them for two reasons: In the first place, they are buying entirely out of pocket. They are paying for it entirely on their own. In the second place, they are paying the highest price entirely on their own. When they walk into the pharmacy to get prescription drugs, they are facing the prescription drug companies alone. They are not part of a broader pool that has purchasing power and is able to negotiate a discount over the sticker price of the drugs. So they are paying the highest price, and they are paying it entirely out of pocket. Many of them are the poorest senior citizens. As a result, they do not get the prescription drugs. They get sick, or they take every other pill.

I have talked personally to scores of people like that over the years. I had a hearing of the Aging Committee that Senator GREGG was kind enough to let me hold in Missouri. I had senior citizens come and testify.

Everybody in the Senate is familiar with this. This discount card is going to provide relief. Seniors are going to have access to a variety of cards that will give them discounts off the prescription drugs. For lower income senior citizens, those receiving retirement of less than $1,000 a month, they will get $600 from the Government toward the price of the discounted drugs. The average price, which it is for prescription drugs, for senior citizens is about $1,400 a year for prescription drugs. That person in Missouri right now is paying the entire $1,400 out of pocket, and probably more than that since they are paying the highest price. With a card, they will go into the pharmacy, the pharmacist will swipe the card through the machine and say: For your Lipitor, which was costing you $80 a

month, under this card it costs you $65 a month. The first $600 of that this year the Government is paying for it. Instead of paying $1,400, which you couldn't pay—they get nothing, is what it comes down to—they end up getting a $200 or a $300 discount, and the Government pays $600 off of that, and they can afford not to get sick anymore.

I think that is pretty important.

I understand the concerns on the other side of the aisle that this bill isn't Government-dominated enough. I recognize that. They are saying basically this is federally subsidized, but they are buying the prescription drugs from private organizations. That is not a good thing. It is true. This is federally subsidized, but we are buying the prescription drugs from private companies.

There is a word for a Federal health care plan that pays for health care costs of senior citizens so that they can go to private companies and get health care services or goods. Do you know what the word for that is? Medicare. That is what Medicare is. When Medicare was set up in 1965, the Government could have gone on and done what it has done with the VA health care system—buy or build new hospitals, hire physicians, and run the whole thing as a Government organization. We didn't do that. What we did instead was set up a system where we would pay for the cost of Federal health care, but seniors would have a choice of private providers if they wanted. That is what this prescription drug plan is about, what it is modeled after.

It is going to help tens of thousands of people in my State of Missouri at a minimum.

I hope we can get behind it and make it work as well as we can possibly make it work.

Let me switch now to talk a little bit about the health care task force which addresses another huge problem; that is, the rising cost of health insurance premiums.

There are a number of things in this health care task force report. I recommend it to every Member of the Senate.

One of the key things about it is that it is designed to attack the trends in the system which are driving those costs up. I really like this. It is time for us to stop concentrating on how we can keep feeding this beast and start getting the beast on a leash, if you will.

It is fine to subsidize the cost of health care for people who can't afford it. I certainly support it. I just talked about prescription drug costs. But we also need to bring down the costs of health care. There are a lot of things in this report that are designed to do that.

Liability reform is one of them. Another is the emphasis in the report on the use of information technology, which is very important. Health care is behind in information technology. If we can get the same kind of architecture of technology in health care that we have in other parts of the economy, we have the potential to save tens of billions of dollars.

There is important regulatory reform in the bill that will lower cost.

I met with a bunch of nurses and nursing students at Southeastern Missouri University and asked them what their big concerns were about health care. I was really surprised. The thing that bothers them the most is the amount of time they have to spend in filling out forms to comply with the oversight of one group or another. It is very demoralizing, and it raises costs.

The task force also includes associated health plans, which I want to talk about briefly.

Of the people who are uninsured—there are about 43 million—two-thirds either own a small business, work for a small business, or are a dependent of someone who owns or works for a small business. We can ask ourselves, why is that? Is it because small businesspeople are more chintzy than big businesspeople? Small businesspeople and farmers do not care about their employees as much as the larger businesses? They do not want to buy health care? That is one possibility. But I don't think it is true.

The reason many of these people, working people who work for small businesses, are not getting health insurance is that costs for buying health insurance are higher for small businesses than they are for bigger businesses because the administrative costs cannot be spread across as big a pool. The costs of getting health insurance for someone who runs a small business are about three times per employee what they are for someone who runs a big business.

Small business health plans allow small businesspeople to pool together through a national trade association and get health insurance as part of a big national pool.

My brother owns a Little Tavern restaurant. It is a great place. I have talked about it before in the Senate. If anyone is ever in the St. Louis area and wants a good hamburger, give me a call and I will give a recommendation. My brother has a little restaurant. He could join the National Restaurant Association and become like a little division of a big company. He would get health insurance then as part of a 10,000, 20,000 or 30,000-person pool, the same as the employees of Anheuser-Busch, which is located in St. Louis, or the employees of Hallmark, which is located in Kansas City. It will lower his costs 10 to 20 percent by reducing the administrative costs. It would not cost the taxpayers anything because we are not feeding that beast with tax dollars. We are empowering people to put the beast on a leash to reduce costs that are driving up health insurance premiums without adding anything to quality or accessibility.

There is no reason we should not do this. I am pleased it was included in the task force report. We worked on it. I hope we can get it, along with the other things in this report.

We have to remember that as the Democratic leader was saying, if Americans are working and do not have health insurance, or they have health insurance and these costs continue to go up, this is the No. 1 thing employees worry about as far as their job is concerned. I have had a lot of folks in the last recession—and I am pleased we are coming out of this now—who lost jobs and said to me, We have families; we have to get our health insurance back. It is very difficult to provide it when premiums go up and up and up all the time.

We can do something about it. There are a number of different ideas out there. Many of them are in this task force report. I commend it to the Senate. It is time to get these things done. We can all come down here and talk about stories back home of people who are suffering because of this situation. We need to get something done. It would be a huge step forward if we all said we are going to sit down as a group, we will work something out, we will agree beforehand we will not filibuster everything because we do not like this particular aspect of the package or that particular aspect of the package. We are not going to take small things we disagree with in a bill and treat them as if there is some enormous attempt by people—whom we disagree with honestly—to do something that is venal or wrong. These problems are big enough to solve if we try to stick together and agree where we can agree and disagree reasonably where we do disagree. They will be impossible to solve if everything becomes a subject of some kind of a political attack.

I appreciate the time of the Senate and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I commend the Senator from Missouri for his advocacy on the part of his constituents and, indeed, all the American people, to make sure more have access to good quality health care.

I will talk about the work of the task force created by Majority Leader FRIST, which was chaired by Senator JUDD GREGG of New Hampshire. This work, over the last number of months, promised a lot in terms of new ideas and new approaches. It will help make sure health care is accessible to more Americans.

It is amazing, but we spend in this country somewhere between $1.4 trillion and $1.7 trillion on health care. That is a lot of money, even in Washington. Most people cannot even get their minds around what $1 trillion is. I promise you, I cannot. But I do know that is an enormous amount of money.

If we ask people who should know about it, they will say there is enough money in the health care delivery system in the United States of America to make sure everyone has access to

health care. The problem is what we call sometimes a ''health care system'' is not a system but a patchwork of different delivery methods. It is a local taxing jurisdiction, hospital districts, using property taxes in some States, of course supplemented by other taxes, and of course there is Federal Government-provided health care available, partially, at least, through the CHIPS Program, through Medicaid and through Medicare.

We do know there is a tremendous challenge to make sure everyone in this country has access to good quality health care. Those who do not have health insurance represent one of the biggest challenges. One of the things we have learned is this is not so much a challenge of getting everyone insurance. The real question is, How do we make sure everyone has access? Even for those who do not have health care insurance, we need to make sure they have access to health care.

Right now the irony is the Federal Government has already gotten into this area and mandated if you have nowhere else to turn for health care, you know you can always show up at the local emergency room at your hospital and get that health care provided. If you cannot pay for it, it is provided without charge to the patient. The problem is, in many major metropolitan areas on any given Friday or Saturday night, when the demands on the emergency room are great, many emergency rooms are on divert status, which means they cannot take anymore patients because they are full.

However, 80 percent of those people being treated in emergency rooms could be and should be more humanely, more efficiently, and less expensively provided health care in some other setting—in a clinic, for example.

One of the most amazing things about our health care delivery system in our country, while we do compensate—although some argue it is not as generous as it should be—we do compensate health care providers for providing health care to people after they are sick, we do a pretty lousy job of trying to give people access to what they need in order to prevent their getting sick.

We have made good strides forward with the Medicare bill we passed last year to provide prescription drugs to many seniors who did not have that. Of course, this Medicare discount drug card Senator TALENT talked about is an interim step that leads to the full implementation of that program in a couple of years when the vast infrastructure can be created to deliver that system.

For example, for someone who has not previously had access to a drug like Lipitor, one of the statin drugs—and there are a number of them; that is just one trade name—that perhaps can prevent someone from having to have more expensive, invasive, and dangerous surgery, either bypass surgery or angioplasty or perhaps placement of a stent, or something that costs a lot of money to treat if the basic cause that could be prevented is left untreated through the use of prescription drugs.

We have made a great step forward to broaden the number of people, to increase the number of people preventive measures are available to. That is smart. We ought to continue along that trend.

Mr. President, I ask to be reminded when I have 1 minute remaining of my time.

One of the things I believe is a great safety net in this country, that I have come to learn about and see used so well in my State, is federally qualified community health centers. The great thing about community health centers is they provide clinical—that is, nonemergency room—access to health care in your neighborhood, where you pay based on a sliding scale, based upon your ability to pay. These are actually designated health centers by the Federal Government. They have access to a number of important programs, for example, the Federal 340B Discount Pricing Program. This task force recommends that program be expanded to more people, so we can bring down the price of prescription drugs.

But these community health centers provide, on a sliding scale, access to care in one's local community, which I think is very important. I was told by the head of Parkland Hospital, one of the largest public hospitals in Dallas, TX, for example, that people show up in the emergency room to have a baby, where they have no health insurance. Because they have no health insurance, and may never have seen a doctor before they show up in the emergency room, the risk of injury to that baby—either it being born prematurely or some other health risk—goes up exponentially.

Even though they do not receive any income for it, Parkland Hospital routinely provides prenatal care for mothers, on a free basis, even though they do not get a penny paid by that pregnant mom. One reason is because they know the cost of 1 day in the neonatal intensive care unit at the Parkland Hospital costs about $10,000. Now, of course, I would like to say we would do that from our sheer desire to see healthy babies, but, unfortunately, money drives access.

My point is, in this instance what Parkland Hospital, in Dallas County, has decided to do in a way to help control costs is to ensure more healthy babies are born who do not need access to the neonatal intensive care unit, as they provide free prenatal care to these pregnant moms. But community health centers can make sure this pregnant mom has access to somewhere other than the emergency room of the hospital in which to get that important prenatal care.

We also would increase, as part of this task force report, the number of medical volunteers by extending critical Federal tort claims act liability coverage. This is an area that I think is very important.

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. CORNYN. That is very important because the medical liability crisis in this country does not only hurt doctors and hospitals, but it hurts patients who are denied access to health care. One of the issues we have to deal with—I know the leader has brought it up several times, and we have been unable to get 60 votes to get an up-or-down vote on the merits of the legislation—is medical liability reform.

Whether it is increasing access to specialty care, increasing the number of federally qualified community health clinics, increasing access to prescription drugs by extending the Federal 340B Program, or creating an exemption so religiously sponsored health systems can create community health systems, integrated health systems, we have to do something about this crisis in this country. It is a crisis of access, not only of insurance. But I think we are well on our way to a good start.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Mr. President, how much time is remaining on the side of the Democrats?

The PRESIDING OFFICER. There is 20 minutes.

Mr. REID. Mr. President, I yield 5 minutes to the Senator from Oregon, Mr. WYDEN, and 15 minutes to Senator STABENOW.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 5 minutes.

HEALTH CARE

Mr. WYDEN. Mr. President, I have always believed health care policy needs to be bipartisan, and needs to be ideas driven. So as we talk about health care, I come to the floor to mention an idea our colleague Senator KERRY has talked about which I think is especially promising for small business.

The reality is, a very high percentage of the uninsured work in small businesses. These small businesses are dying to cover their people. The owners of those small businesses do not get up in the morning and say: We want to be rotten to our workers in not giving coverage. They are dying to figure out ways to help their small businesses.

Senator KERRY has come up with an idea that I think is really innovative. He has said, given the fact resources are scarce, that dollars for trying to address the uninsured, the needs of our small businesses, are restricted, we ought to target those dollars where they are needed the most. He has proposed the Federal Government, with

respect to small business, concentrate on instances where there are very large bills, bills above $50,000. He would have the Federal Government step in and pick up about 75 percent of those costs. The premiums that would be charged employers and their workers could be trimmed about 10 percent in this fashion.

We know it has been documented that those who are particularly in need of assistance when they face these very high bills are a very large proportion of the health care costs in America. These health care costs are particularly punitive for the small businesses. Small businesses are always walking on economic tightropes. If one employee at a small business gets sick, this can devastate the entire budget of the company for not just health care coverage but the entire coverage of the business.

I am very pleased Senator KERRY has brought forward this idea. I think it is one that can be supported in a bipartisan way. The Congress, over the years, has tried to look at ways to strengthen the employer-based system of coverage. I think we all understand if you are talking about starting scores of new programs, that would be very difficult at this time. I also do not think it is warranted at a time when we are spending $1.7 trillion on health care. If you divide that up by 270 million Americans, it comes to more than $17,000 for a family of 4. So we are spending a lot of money.

The challenge now is to really zero in on areas where the Government can be best utilized. I think Senator KERRY's proposal with respect to trying to deal with the costs of individuals who work at small businesses with very high bills is particularly appropriate at this time. It is something I think could be built in a bipartisan way.

I will have more to say about this and other proposals in the days ahead. But as we come to the floor and talk—Democrats and Republicans—about health care, I think we ought to make our policies bipartisan. We ought to make them ideas driven. The kind of idea that has been outlined by Senator KERRY with respect to the needs of individuals who work at small businesses with very large bills is the kind of thinking that would make a difference now. It is cost effective. I think it warrants support on a bipartisan basis.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. STABENOW. Mr. President, I rise to lament the fact that we have made no progress in reducing the uninsured since 2001. This is an issue we all need to be working together on because it affects everyone we represent, every family, every business. In fact, nearly 4 million more people are uninsured today than the day this administration took office.

We need to light a fire. We need to have a sense of urgency about getting this done for people. We can do much better than we are doing. We live in the United States of America. We are the greatest, the richest country on the face of the Earth. When we have the will, we can make great things happen. That is what we need to do here.

We enacted Social Security in 1935. This program now serves as our universal retirement, life insurance, and disability insurance system for millions of people. A generation later we passed Medicare, our Nation's universal health plan for seniors and the disabled. Even though I am very concerned about the recent law that we passed and whether it is a step backward—and I believe it is—the fact is, we put in place in 1965 a policy based on a set of values that said, if you are 65 or older, if you are disabled, you are going to receive health care.

Interestingly, at that time, if we go back and read the record, this was viewed as a compromise, a first step. Originally in 1960, what was being debated was health care for everyone. Then when there was not the support to pass that, the compromise was to start with older Americans and with the disabled, to provide health care first to them and then to open it up to all of our citizens. Yet today we are not seeing that happening. It is now time to go the last mile. We need to make sure all Americans have the same access to health insurance that we do in the Senate.

As most colleagues know, approximately 80 percent of the people who don't have health insurance are working—one job, two jobs, three jobs, working very hard to care for their families. They have jobs. They go to work. They play by the rules. Unfortunately, health insurance is so expensive, they can't afford it or the business they work for can't afford it. We need to value the hard work these people are doing. We need to recognize and ensure that if they work for a living, they have the health insurance they need for themselves and their families.

Regrettably, this administration has been basically silent on the uninsured. When members of the administration do speak, they are negative and pessimistic about providing access to affordable health care for all Americans. For example, in January of this year, the National Academy of Sciences said that the President and Congress should work to achieve health insurance coverage for all Americans by 2010. That is a worthy goal, although I would argue too far into the future.

What was the response? The administration's top health official, Health and Human Services Secretary Tommy Thompson said universal health coverage is ''not realistic . . . I don't think, administratively or legislatively, it's feasible.''

Then 2 months later Secretary Thompson went on to minimize the Nation's uninsured problem by saying:

> Even if you don't have health insurance in America, you get taken care of. That could be defined as universal health care.

In other words, just go to the emergency room to get your health care coverage.

In fact, too many people are doing that now. Sometimes you can just get taken care of, but by the time an uninsured patient reaches the emergency room, it is often too late to provide lifesaving health care. Many of the uninsured forgo less costly preventative care and early treatments, getting sicker as what money they have goes for the rent, the car, the kids, and food.

Hospitals in Michigan indicate they have provided over $1 billion in health care for the uninsured, uncompensated care this last year. Think what we could do if we could capture that $1 billion and put it into a system that worked on the front end, that kept people healthy, that provided preventive care, that made sure they could see the doctor in his office or her office rather than having to wait for the emergency room.

We can do better than this in the greatest country in the world. I do not think we should throw in the towel. We should not say we can't do it, it is not feasible. It is time to create the will. The fact is, we can do it, if we pick the right priorities. We can do the same thing we did when we passed Social Security and Medicare—two great American success stories that have provided economic security for people as they grow older and retire and health care for older Americans and the disabled. In my book, that was all about values, about what is important. This certainly is equally important. We should be optimistic. We should join all other modern countries and make sure all Americans have access to affordable health insurance.

One of the reasons more and more families can't get health care is because the costs are spiraling out of control. In fact, from 2000 to 2003, the average annual cost of premiums doubled, making health insurance out of reach for more and more middle-income families and small businesses. In 3 years, the costs have doubled. Medical problems, in fact, were a factor in nearly half of all nonbusiness bankruptcy filings. Overall, health care costs have gone up nearly 14 percent last year. Meanwhile, workers' earnings increased by only 3 percent. You can see the hole people find themselves in.

This is the fifth year in a row premiums outpaced earnings. We all know that one of the reasons health care costs have escalated so fast is the spiraling price of prescription drugs. I

have talked frequently about this. I speak about it and focus on it because it is such a driver for the costs of health care and health insurance.

What has Congress done to fix this problem? Unfortunately, absolutely nothing. In fact, the new Medicare law failed to do anything to lower prescription drug prices. At the same time approximately 3 million retirees will actually lose their prescription drug coverage under this new law. This bill actually takes us backward instead of forward.

The only major health care coverage initiative this administration has proposed is actually for the Iraqi people. Our country has made a commitment to moving forward with universal health coverage for all Iraqi citizens. We have provided $950 million to build hospitals and clinics in Iraq.

Please do not misunderstand what I am saying. I certainly want to be supportive of efforts to provide health care in Iraq.

What about us? What about Americans? I also want to help American families who are working hard every day, playing by the rules in this great country, and struggling to pay their bills and care for their families. I think we can help both the people of Iraq and Americans at the same time. It is our moral obligation, I believe, to make sure we are helping American families as well as others.

Mr. President, working families deserve access to affordable care for themselves and for their families. It is going to take leadership to accomplish this. The administration has had almost 4 years to take action, and it has not.

I believe it is time for bold change. I believe that when we are looking at the price of prescription drugs, we need to take out that provision in the new Medicare law that says Medicare cannot negotiate for group discounts. That is pretty basic. We know that one of the main ways you are able to lower prescription drug prices, or the price of any product, is to be able to get a group discount. Everybody knows that. Yet, in this new Medicare law, Medicare is specifically prohibited from doing that. Who benefits from that? Certainly not the taxpayers, certainly not American seniors or the disabled, and American families certainly don't benefit from that. The prescription drug industry benefits from that. What we have seen under the new Medicare law, rather than providing lower prices for people, we have 40 million seniors who are being locked into paying top dollar, and that makes absolutely no sense.

We can do something about that. We can make changes in the Medicare law so it works for people. We can also lower prices immediately by simply allowing the local pharmacists at the local drugstores in America to be able to do business with pharmacists in Canada or other countries, where they can provide FDA-approved drugs and processes and bring the prescription drugs—actually made in America—back to America so we can get the same deal everybody else gets around the world.

We have a wonderful, bipartisan bill that has been put together. I am hopeful that we will bring it to the Senate floor as soon as possible and that we are able to pass what is called reimportation of prescription drugs and lower prices. I am very hopeful and I am proud to be a cosponsor of Senator DASCHLE's effort and vision to say that, by 2006, we are going to make a commitment that every American has access at least to the same level of health care that we receive. This is one of the few instances where employees—elected officials—have better health care and benefits than the employers. It is time to turn that around. It is time to make a commitment.

Medicare, after it was passed, was put together in 1 year. We have great American ingenuity. If we are bold and have a vision and have a right priority, we can make sure that a year from now we are talking about the implementation of health insurance for everyone that is affordable and available to every single American.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time has been yielded. Morning business is closed.

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 1248, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1248) to reauthorize the Individuals with Disabilities Education Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

S. 1248

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 ''Individuals with Disabilities Education Improvement Act of 2003''.

[TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

[SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

[Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

["PART A—GENERAL PROVISIONS

["SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

["(a) SHORT TITLE.—This Act may be cited as the 'Individuals with Disabilities Education Act'.

["(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

[''(c) FINDINGS.—Congress finds the following:

[''(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

[''(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

[''(A) the children did not receive appropriate educational services;

[''(B) the children were excluded entirely from the public school system and from being educated with their peers;

[''(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

[''(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

[''(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

[''(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

[''(5) Over 25 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

[''(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible in order to—

[''(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

[''(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

[''(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

[''(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 2001, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

[''(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

[''(E) supporting high-quality, intensive preservice preparation professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

[''(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and prereferral intervention to reduce the need to label children as disabled in order to address their learning and behavioral needs;

[''(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

[''(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

[''(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

[''(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

[''(8)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.

[''(B) America's ethnic profile is rapidly changing. In the year 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

[''(C) Minority children comprise an increasing percentage of public school students.

[''(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession.

[''(9)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

[''(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

[''(C) This poses a special challenge for special education in the referral of, assessment of, and services for, our Nation's students from non-English language backgrounds.

[''(10)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

[''(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

[''(C) African-American children are over identified as having mental retardation and emotional disturbance at rates greater than their white counterparts.

[''(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

[''(E) Studies have found that schools with predominately Caucasian students and teachers have placed disproportionately high numbers of their minority students into special education.

[''(11)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

[''(B) The opportunity for minority individuals, organizations, and Historically Black Colleges and Universities to participate fully in awards for grants and contracts, boards of organizations receiving funds under this Act, and peer review panels, and in the training of professionals in the area of special education is essential if we are to obtain greater success in the education of minority children with disabilities.

[''(d) PURPOSES.—The purposes of this title are—

[''(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment, further education, and independent living;

[''(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

[''(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

[''(2) to assist States in the implementation of a Statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

[''(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

[''(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

["SEC. 602. DEFINITIONS.

[''Except as otherwise provided, as used in this Act:

[''(1) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

[''(2) ASSISTIVE TECHNOLOGY SERVICE.—The term 'assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

[''(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

[''(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

[''(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

[''(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

[''(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

[''(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

[''(3) CHILD WITH A DISABILITY.—

[''(A) IN GENERAL.—The term 'child with a disability' means a child—

[''(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

[''(ii) who, by reason thereof, needs special education and related services.

[''(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

[''(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

[''(ii) who, by reason thereof, needs special education and related services.

[''(4) CORE ACADEMIC SUBJECT.—The term 'core academic subject' has the meaning given the term in section 9101(11) of the Elementary and Secondary Education Act of 1965.

[''(5) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency'—

[''(A) means a regional public multiservice agency—

[''(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

[''(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

[''(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

[''(6) ELEMENTARY SCHOOL.—The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

[''(7) EQUIPMENT.—The term 'equipment' includes—

[''(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

[''(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

[''(8) EXCESS COSTS.—The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

[''(A) amounts received—

[''(i) under part B of this title;

[''(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

[''(iii) under parts A and B of title III of that Act; and

[''(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

[''(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term 'free appropriate public education' means special education and related services that—

[''(A) have been provided at public expense, under public supervision and direction, and without charge;

[''(B) meet the standards of the State educational agency;

[''(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

[''(D) are provided in conformity with the individualized education program required under section 614(d).

[''(10) HIGHLY QUALIFIED; CONSULTATIVE SERVICES.—

[''(A) HIGHLY QUALIFIED.—The term 'highly qualified', when used with respect to any special education teacher teaching in a State, means a teacher who—

[''(i)(I) meets the definition of that term in section 9101(23) of the Elementary and Secondary Education Act of 1965, including full State certification as a special education teacher through a State approved special education teacher preparation program (including certification obtained through State or local educational agency approved alternative routes); or

[''(II) has passed a State special education licensing examination and holds a license to teach special education in such State,

except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's statute on public charter schools; and

[''(ii) does not have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

[''(iii) if the teacher provides only consultative services to a regular education teacher with respect to a core academic subject, the special education teacher shall meet the standards for subject knowledge and teaching skills described in section 9101(23) of the Elementary and Secondary Education Act of 1965 that apply to elementary school teachers; and

[''(iv) if the teacher provides instruction in a core academic subject to middle or secondary students who are performing at the elementary level, the teacher shall meet the standards for subject knowledge and teaching skills described in section 9101(23) of the Elementary and Secondary Education Act of 1965 that apply to elementary school teachers.

[''(B) CONSULTATIVE SERVICES.—As used in subparagraph (A)(iii), the term 'consultative services' means—

[''(i) consultation on adapting curricula, using positive behavioral supports and interventions, and selecting appropriate accommodations, and does not include direct instruction of students; or

[''(ii) teaching in collaboration with a regular education teacher or teachers who is or are highly qualified in the core academic subjects being taught.

[''(11) INDIAN.—The term 'Indian' means an individual who is a member of an Indian tribe.

[''(12) INDIAN TRIBE.—The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

[''(13) INDIVIDUALIZED EDUCATION PROGRAM.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

[''(14) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term 'individualized family service plan' has the meaning given such term in section 636.

[''(15) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability' has the meaning given such term in section 632.

[''(16) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education'—

[''(A) has the meaning given such term in section 101 (a) and (b) of the Higher Education Act of 1965; and

[''(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

[''(17) LOCAL EDUCATIONAL AGENCY.—

[''(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

[''(B) The term includes—

[''(i) an educational service agency, as defined in paragraph (4); and

[''(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

[''(C) The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

[''(18) NATIVE LANGUAGE.—The term 'native language', when used with respect to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

[''(19) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

[''(20) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[''(21) PARENT.—The term 'parent'—

[''(A) includes a legal guardian; and

[''(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

[''(22) PARENT ORGANIZATION.—The term 'parent organization' has the meaning given such term in section 671(g).

[''(23) PARENT TRAINING AND INFORMATION CENTER.—The term 'parent training and information center' means a center assisted under section 671 or 672.

[''(24) RELATED SERVICES.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school health services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

[''(25) SECONDARY SCHOOL.—The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

[''(26) SECRETARY.—The term 'Secretary' means the Secretary of Education.

[''(27) SPECIAL EDUCATION.—The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

[''(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

[''(B) instruction in physical education.

[''(28) SPECIFIC LEARNING DISABILITY.—

[''(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

[''(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

[''(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

[''(29) STATE.—The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

[''(30) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

[''(31) SUPPLEMENTARY AIDS AND SERVICES.—The term 'supplementary aids and services' means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

[''(32) TRANSITION SERVICES.—The term 'transition services' means a coordinated set of activities for a child with a disability (as defined in paragraph (3)(A)) that—

[''(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

[''(B) is based on the individual child's needs, taking into account the child's capacity, preferences, and interests; and

[''(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

["SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

[''(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

[''(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

[''(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this Act.

["SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

[''(a) IN GENERAL.—A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

[''(b) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

[''(c) EFFECTIVE DATE.—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

["SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

[''(a) IN GENERAL.—If the Secretary determines that a program authorized under this Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

[''(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

[''(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the 'Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or

[''(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

["SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

[''The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

["SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

[''(a) IN GENERAL.—The Secretary may issue such regulations as are necessary to ensure that there is compliance with this Act.

[''(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that—

[''(1) violates or contradicts any provision of this Act; and

[''(2) procedurally or substantively lessens the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

[''(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not less than 60 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

[''(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

[''(1) violate or contradict any provision of this Act; or

[''(2) establish a rule that is required for compliance with, and eligibility under, this Act without following the requirements of section 553 of title 5, United States Code.

[''(e) EXPLANATION AND ASSURANCES.—Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B of this Act shall include an explanation in the written response that—

[''(1) such response is provided as informal guidance and is not legally binding;

[''(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

[''(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

[''(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS ACT.—

[''(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

[''(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall—

[''(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

[''(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.

["SEC. 608. STATE ADMINISTRATION.

[''(a) RULEMAKING.—Each State that receives funds under this Act shall—

[''(1) ensure that any State rules, regulations, and policies relating to this Act conform to the purposes of this Act; and

[''(2) identify in writing to its local educational agencies and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this Act and Federal regulations.

[''(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this Act shall support and facilitate local educational agency and school-level systemic reform designed to enable children with disabilities to meet the challenging State student academic achievement standards.

"SEC. 609. REPORT TO CONGRESS.

[''The Comptroller General shall conduct a review of Federal, State, and local requirements to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

["PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

["SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

[''(a) GRANTS TO STATES.—

[''(1) PURPOSE OF GRANTS.—The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

[''(2) MAXIMUM AMOUNT.—The maximum amount available for awarding grants under this part for any fiscal year is—

[''(A) the total number of children with disabilities in the 2002–2003 school year in the States who received special education and related services and who were—

[''(i) aged 3 through 5, if the State was eligible for a grant under section 619; and

[''(ii) aged 6 through 21; multiplied by

[''(B) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

[''(C) the rate of change in the sum of—

[''(i) 85 percent of the change in the nationwide total of the population described in (d)(3)(A)(i)(II); and

[''(ii) 15 percent of the change in the nationwide total of the population described in (d)(3)(A)(i)(III).

[''(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

[''(1) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used—

[''(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

[''(B) to provide each of the freely associated States grants that do not exceed the level each such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

[''(2) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

[''(3) DEFINITION.—As used in this subsection, the term 'freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

[''(c) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (i).

[''(d) ALLOCATIONS TO STATES.—

[''(1) IN GENERAL.—After reserving funds for studies and evaluations under section 665, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

[''(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

[''(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

[''(A) ALLOCATION OF INCREASE.—

[''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

[''(I) to each State the amount the State received under this section for fiscal year 1999;

[''(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

[''(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

[''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

[''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

[''(i) PRECEDING YEAR ALLOCATION.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

[''(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

[''(I) the sum of—

[''(aa) the amount the State received under this section for fiscal year 1999; and

[''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

[''(II) the sum of—

[''(aa) the amount the State received under this section for the preceding fiscal year; and

[''(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

[''(III) the sum of—

[''(aa) the amount the State received under this section for the preceding fiscal year; and

[''(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

[''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

[''(I) the amount the State received under this section for the preceding fiscal year; and

[''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

[''(C) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

[''(4) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

[''(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

[''(i) the amount the State received under this section for fiscal year 1999; and

[''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

[''(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—

[''(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

[''(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

[''(e) STATE-LEVEL ACTIVITIES.—

[''(1) STATE ADMINISTRATION.—

[''(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

[''(i) each State may reserve not more than the maximum amount the State was eligible to reserve for State administration for fiscal year 2003 or $800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

[''(ii) each outlying area may reserve not more than 5 percent of the amount the outlying area receives under subsection (b) for any fiscal year or $35,000, whichever is greater.

[''(B) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

[''(C) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.

[''(2) OTHER STATE-LEVEL ACTIVITIES.—

[''(A) IN GENERAL.—For the purpose of providing State-level activities, each State may reserve for each of the fiscal years 2004 and 2005, not more than 10 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For fiscal years 2006, 2007, 2008, and 2009, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

[''(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

[''(i) For monitoring, enforcement and complaint investigation.

[''(ii) To establish and implement the mediation processes required by section 615(e)(1), including providing for the costs of mediators and support personnel;

[''(iii) To fund the State protection and advocacy system, or other legal organizations that have expertise in—

[''(I) dispute resolution and due process;

[''(II) efforts to educate families regarding due process;

[''(III) voluntary mediation; and

[''(IV) the opportunity to resolve complaints.

[''(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

[''(i) To provide technical assistance, personnel development and training.

[''(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

[''(iii) To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.

[''(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

[''(v) To support the development and use of technology, including universally designed technologies and assistive technology devices, to maximize accessibility to the general curriculum for students with disabilities.

[''(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.

[''(vii) To assist local educational agencies in meeting personnel shortages.

[''(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

[''(ix) Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

[''(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

[''(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

[''(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies) in addressing the needs of high-need children and the unanticipated enrollment of other children eligible for service under this part, each State shall reserve for each of the fiscal years 2004 through 2009, 2 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for each of the fiscal years 2004 through 2009, respectively, to—

[''(i) establish a high-cost fund; and

[''(ii) make disbursements from the high-cost fund to local educational agencies in accordance with this paragraph.

[''(B) REQUIRED DISBURSEMENTS FROM THE FUND.—Each State educational agency shall make disbursements from the fund established under subparagraph (A) to local educational agencies to pay the percentage, described in subparagraph (D), of the costs of providing a free appropriate public education to high-need children.

[''(C) APPLICATION.—A local educational agency that desires a disbursement under this subsection shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Such application shall include assurances that funds provided under this paragraph shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

[''(D) DISBURSEMENTS.—

[''(i) IN GENERAL.—A State educational agency shall make a disbursement to a local educational agency that submits an application under subparagraph (C) in an amount that is equal to 75 percent of the costs that are in excess of 4 times the average per-pupil expenditure in the United States or in the State where the child resides (whichever average per-pupil expenditure is lower) associated with educating each high need child served by such local educational agency in a fiscal year for whom such agency desires a disbursement.

[''(ii) APPROPRIATE COSTS.—The costs associated with educating a high need child under clause (i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's appropriately developed IEP.

[''(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of such child to ensure a free appropriate public education for such child.

[''(F) PERMISSIBLE DISBURSEMENTS FROM REMAINING FUNDS.—A State educational agency may make disbursements to local educational agencies from any funds that are remaining in the high cost fund after making the required disbursements under subparagraph (D) for a fiscal year for the following purposes:

[''(i) To pay the costs associated with serving children with disabilities who moved into the areas served by such local agencies after the budget for the following school year had been finalized to assist the local educational agencies in providing a free appropriate public education for such children in such year.

[''(ii) To compensate local educational agencies for extraordinary costs, as determined by the State, of any children eligible for services under this part due to—

[''(I) unexpected enrollment or placement of children eligible for services under this part; or

[''(II) a significant underestimate of the average cost of providing services to children eligible for services under this part.

[''(G) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall—

[''(i) be allocated to local educational agencies pursuant to subparagraphs (D) or (F) for the next fiscal year; or

[''(ii) be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).

[''(H) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

[''(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

[''(ii) to authorize a State educational agency or local educational agency to indicate a limit on what is expected to be spent on the education of a child with a disability.

[''(I) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

[''(J) DEFINITIONS.—In this paragraph:

[''(i) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

[''(ii) HIGH-NEED CHILD.—The term 'high-need', when used with respect to a child with a disability, means a child with a disability for whom a free appropriate public education in a fiscal year costs more than 4 times the average per-pupil expenditure for such fiscal year.

[''(K) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2003.—Notwithstanding the provisions of subparagraphs (A) through (J), a State may use funds reserved pursuant to this paragraph for administering and implementing a placement neutral cost-sharing and reimbursement program of high-need, low-incidence, emergency, catastrophic, or

extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were operative on January 1, 2003.

[''(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1), (2), and (3) without regard to—

[''(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

[''(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

[''(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe how amounts under this section—

[''(A) will be used to meet the requirements of this Act; and

[''(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

[''(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

[''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

[''(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—

[''(A) PROCEDURE.—For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

[''(i) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

[''(ii) ALLOCATION OF REMAINING FUNDS.—After making allocations under clause (i), the State shall—

[''(I) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

[''(II) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

[''(3) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

[''(g) DEFINITIONS.—For the purpose of this section—

[''(1) the term 'average per-pupil expenditure in public elementary schools and secondary schools in the United States' means—

[''(A) without regard to the source of funds—

[''(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

[''(ii) any direct expenditures by the State for the operation of those local educational agencies; divided by

[''(B) the aggregate number of children in average daily attendance to whom those local educational agencies provided free public education during that preceding year; and

[''(2) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[''(h) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

[''(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

[''(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 through 21 who are enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

[''(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as 'BIA') schools, and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools had such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

[''(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 through 21 on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

[''(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

[''(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

[''(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

[''(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A)

[''(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

[''(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

[''(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part. Section 616(a) shall apply to the information described in this paragraph.

[''(3) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—

[''(A) IN GENERAL.—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

[''(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

[''(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

[''(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

[''(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall

provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

''(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

''(4) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

''(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(20), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

''(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

''(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

''(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

''(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

''(E) provide assistance in the preparation of information required under paragraph (2)(D).

''(6) ANNUAL REPORTS.—

''(A) IN GENERAL.—The advisory board established under paragraph (5) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

''(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

''(i) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated such sums as may be necessary.

''SEC. 612. STATE ELIGIBILITY.

''(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

''(1) FREE APPROPRIATE PUBLIC EDUCATION.—

''(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

''(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

''(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

''(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

''(I) were not actually identified as being a child with a disability under section 602(3); or

''(II) did not have an individualized education program under this part.

''(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

''(3) CHILD FIND.—

''(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

''(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

''(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

''(5) LEAST RESTRICTIVE ENVIRONMENT.—

''(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

''(B) ADDITIONAL REQUIREMENT.—

''(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

''(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

''(6) PROCEDURAL SAFEGUARDS.—

''(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

''(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

''(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

''(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

''(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8).

''(10) CHILDREN IN PRIVATE SCHOOLS.—

''(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

''(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary

has arranged for services to those children under subsection (f):

[''(I) Amounts to be expended for the provision of those services (including direct services to parentally placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

[''(II) Such services may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.

[''(III) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be a child with a disability, and the number of children served under this subsection.

[''(ii) CHILD-FIND REQUIREMENT.—

[''(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.

[''(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children and an accurate count of such children.

[''(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

[''(IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local education agency has met its obligations under clause (i).

[''(V) COMPLETION PERIOD.—Such child find process shall be completed in a time period comparable to that for other students attending public schools served by the local educational agency.

[''(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—

[''(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

[''(II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;

[''(III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

[''(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

[''(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why such the local educational agency chose not to use a contractor.

[''(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

[''(v) COMPLIANCE.—

[''(I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

[''(II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

[''(vi) PROVISION OF EQUITABLE SERVICES.—

[''(I) DIRECT SERVICES.—To the extent practicable, the local educational agency shall provide direct services to children with disabilities parentally placed in private schools.

[''(II) DIRECTLY OR THROUGH CONTRACTS.—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.

[''(III) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

[''(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

[''(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

[''(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

[''(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

[''(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

[''(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

[''(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

[''(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

[''(I) if—

[''(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

[''(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

[''(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

[''(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

[''(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

[''(I) shall not be reduced or denied for failure to provide such notice if—

[''(aa) the school prevented the parent from providing such notice; or

[''(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); and

[''(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

[''(aa) the parent is illiterate and cannot write in English; or

[''(bb) compliance with clause (iii)(I) would likely have resulted in physical or serious emotional harm to the child.

[''(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

[''(A) IN GENERAL.—The State educational agency is responsible for ensuring that—

[''(i) the requirements of this part are met; and

[''(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

[''(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

[''(II) meet the educational standards of the State educational agency.

[''(B) LIMITATION.—Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

[''(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

[''(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

[''(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

[''(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

[''(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

[''(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

[''(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

[''(B) OBLIGATION OF PUBLIC AGENCY.—

[''(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy, pursuant to subparagraph (A), or pursuant to an agreement under paragraph (C), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(24) relating to related services, 602(31) relating to supplementary aids and services, and 602(32) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A).

[''(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

[''(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

[''(i) State statute or regulation;

[''(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

[''(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's plan pursuant to this section.

[''(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

[''(14) PERSONNEL STANDARDS.—

[''(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

[''(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The standards under subparagraph (A) include standards for related services personnel and paraprofessionals that—

[''(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

[''(ii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

[''(C) STANDARDS FOR SPECIAL EDUCATION TEACHERS.—The standards described in subparagraph (A) shall ensure that each special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the 2006–2007 school year.

[''(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

[''(15) PERFORMANCE GOALS AND INDICATORS.—The State—

[''(A) has established goals for the performance of children with disabilities in the State that—

[''(i) promote the purposes of this Act, as stated in section 601(d);

[''(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

[''(iii) address drop out rates, as well as such other factors as the State may determine; and

[''(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

[''(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

[''(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A).

[''(16) PARTICIPATION IN ASSESSMENTS.—

[''(A) IN GENERAL.— All children with disabilities are included in all general State and districtwide assessment programs and accountability systems, including assessments and accountability systems described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations, alternate assessments where necessary, and as indicated in their respective individualized education programs.

[''(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

[''(C) ALTERNATE ASSESSMENTS.—

[''(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (B) as indicated in their respective individualized education programs.

[''(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—

[''(I) are aligned with the State's challenging academic content and academic achievement standards; or

[''(II) measure the achievement of students against alternate academic achievement standards that are aligned with the State's academic content standards.

[''(iii) CONDUCT OF ALTERNATIVE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

[''(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in

the same detail as it reports on the assessment of nondisabled children, the following:

[''(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

[''(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

[''(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

[''(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

[''(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent possible, use universal design principles in developing and administering any assessments under this paragraph.

[''(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

[''(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

[''(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

[''(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

[''(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

[''(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

[''(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

[''(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

[''(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

[''(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

[''(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

[''(E) REGULATIONS.—

[''(i) IN GENERAL.—The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).

[''(ii) TIMELINE.—The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

[''(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

[''(20) STATE ADVISORY PANEL.—

[''(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

[''(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

[''(i) parents of children with disabilities ages birth through 26;

[''(ii) individuals with disabilities;

[''(iii) teachers;

[''(iv) representatives of institutions of higher education that prepare special education and related services personnel;

[''(v) State and local education officials;

[''(vi) administrators of programs for children with disabilities;

[''(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

[''(viii) representatives of private schools and public charter schools;

[''(ix) at least 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

[''(x) representatives from the State juvenile and adult corrections agencies.

[''(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities ages birth through 26 or parents of such individuals.

[''(D) DUTIES.—The advisory panel shall—

[''(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

[''(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

[''(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

[''(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

[''(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

[''(21) SUSPENSION AND EXPULSION RATES.—

[''(A) IN GENERAL.—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

[''(i) among local educational agencies in the State; or

[''(ii) compared to such rates for nondisabled children within such agencies.

[''(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

[''(22) INSTRUCTIONAL MATERIALS.—

[''(A) IN GENERAL.—The State adopts the national instructional materials accessibility standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of the standard by the Secretary in the Federal Register.

[''(B) PURCHASE REQUIREMENT.—Not later than 2 years after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency, when purchasing instructional materials for use in public elementary and secondary schools within the State, requires the publisher of the instructional materials, as a part of any purchase agreement that is made, renewed, or revised, to prepare and supply electronic files containing the contents of the instructional materials using the national instructional materials accessibility standard.

[''(C) DEFINITION.—For purposes of this paragraph, the term 'instructional materials' means printed textbooks and related core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by pupils in the classroom.

[''(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

[''(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

[''(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

[''(c) EXCEPTION FOR PRIOR STATE PLANS.—

[''(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

[''(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

[''(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

[''(d) APPROVAL BY THE SECRETARY.—

[''(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

[''(2) NOTICE AND HEARING.—The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State—

[''(A) with reasonable notice; and

[''(B) with an opportunity for a hearing.

[''(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

[''(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

[''(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

[''(2) PAYMENTS.—

[''(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

[''(i) the total amount received by the State under this part for such fiscal year; by

[''(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

[''(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

[''(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

[''(3) NOTICE AND HEARING.—

[''(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

[''(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

[''(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[''(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[''SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

[''(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

[''(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

[''(2) USE OF AMOUNTS.—

[''(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

[''(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

[''(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

[''(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

[''(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

[''(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

[''(ii) a decrease in the enrollment of children with disabilities;

[''(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

[''(I) has left the jurisdiction of the agency;

[''(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

[''(III) no longer needs such program of special education; or

[''(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

[''(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—

[''(i) 8 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 8 percent of the amount of funds the local educational agency receives under this part.

[''(ii) 40 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 40 percent of the amount of funds the local educational agency receives under this part, subject to clause (iv).

[''(iii) EARLY INTERVENING PREREFERRAL SERVICES.—

[''(I) 8 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (i), the 8 percent funds shall be counted toward the percentage and amount of funds that may be used to provide early intervening prereferral services pursuant to subsection (f).

[''(II) 40 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (ii), the local educational agency shall use an amount of the 40 percent funds from clause (ii) that represents 15 percent of the total amount of funds the local educational agency receives under this part, to provide early intervening prereferral services pursuant to subsection (f).

[''(iv) SPECIAL RULE.—Funds treated as local funds pursuant to clause (i) or (ii) may be considered non-Federal or local funds for the purposes of—

[''(I) clauses (ii) and (iii) of subparagraph (A); and

[''(II) the provision of the local share of costs for title XIX of the Social Security Act.

[''(v) PROHIBITION.—If a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of this subsection, then the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under clause (i) or (ii) for that fiscal year, but only if the State educational agency is authorized to do so by the State constitution or a State statute.

[''(vi) REPORT.—For each fiscal year in which a local educational agency exercises its authority pursuant to this paragraph and

treats Federal funds as local funds, the local educational agency shall report to the State educational agency the amount of funds so treated and the activities that were funded with such funds.

[''(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

[''(i) the number of children with disabilities participating in the schoolwide program; multiplied by

[''(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

[''(II) the number of children with disabilities in the jurisdiction of that agency.

[''(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 612(a)(14) of this Act and section 2122 of the Elementary and Secondary Education Act of 1965.

[''(4) PERMISSIVE USE OF FUNDS.—

[''(A) USES.—Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

[''(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

[''(ii) EARLY INTERVENING SERVICES.—To develop and implement comprehensive, coordinated, early intervening educational services in accordance with subsection (f).

[''(B) CASE MANAGEMENT AND ADMINISTRATION.—A local educational agency may use funds received under this part to purchase appropriate technology, for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is necessary to the implementation of such case management activities.

[''(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

[''(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

[''(B) provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State's charter school law.

[''(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—Not later than 2 years after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, the local educational agency, when purchasing instructional materials for use in public elementary schools or secondary schools served by the local educational agency, requires the publisher of the instructional materials, as a part of any purchase agreement that is made, renewed, or revised, to prepare and supply electronic files containing the contents of the instructional materials using the national instructional materials accessibility standard described in section 612(a)(22).

[''(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

[''(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

[''(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

[''(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

[''(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

[''(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

[''(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

[''(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

[''(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

[''(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

[''(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

[''(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

[''(1) JOINT ESTABLISHMENT.—

[''(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

[''(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

[''(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

[''(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

[''(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

[''(B) be jointly responsible for implementing programs that receive assistance under this part.

[''(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

[''(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

[''(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

[''(ii) be carried out only by that educational service agency.

[''(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

[''(f) EARLY INTERVENING SERVICES.—

[''(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount treated as local funds pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other

than education funds), to develop and implement comprehensive, coordinated, early intervening educational services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who require additional academic and behavioral support to succeed in a general education environment.

[''(2) ACTIVITIES.—In implementing comprehensive, coordinated, early intervening educational services under this subsection, a local educational agency may carry out activities that include—

[''(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;

[''(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction; and

[''(C) developing and implementing interagency financing structures for the provision of such services and supports.

[''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to either limit or create a right to a free appropriate public education under this part.

[''(4) REPORTING.—Each local educational agency that develops and maintains comprehensive, coordinated, early intervening educational services with funds made available for this subsection, shall annually report to the State educational agency on—

[''(A) the number of children served under this subsection; and

[''(B) the number of children served under this subsection who are subsequently referred to special education.

[''(5) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out comprehensive, coordinated, early intervening educational services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

[''(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

[''(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

[''(A) has not provided the information needed to establish the eligibility of such agency under this section;

[''(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

[''(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

[''(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

[''(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

[''(h) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that—

[''(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

[''(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

[''(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

[''(j) STATE AGENCY FLEXIBILITY.—

[''(1) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—If a State educational agency pays or reimburses local educational agencies within the State for not less than 80 percent of the non-Federal share of the costs of special education and related services, or the State is the sole provider of free appropriate public education or direct services pursuant to section 612(b), then the State educational agency, notwithstanding sections 612(a) (17) and (18) and 612(b), may treat funds allocated pursuant to section 611 as general funds available to support the educational purposes described in paragraph (2) (A) and (B).

[''(2) CONDITIONS.—A State educational agency may use funds in accordance with paragraph (1) subject to the following conditions:

[''(A) 8 PERCENT RULE.—A State educational agency may treat not more than 8 percent of the funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act.

[''(B) 40 PERCENT RULE.—For any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a State educational agency may treat not more than 40 percent of the amount of funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act, subject to subparagraph (C).

[''(C) REQUIREMENT.—A State educational agency may exercise its authority pursuant to subparagraph (B) only if the State educational agency uses an amount of the 40 percent funds from subparagraph (B) that represents 15 percent of the total amount of funds the State educational agency receives under this part, to provide, or to pay or reimburse local educational agencies for providing, early intervening prereferral services pursuant to subsection (f).

[''(2) PROHIBITION.—Notwithstanding subsection (a), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, then the Secretary shall prohibit the State educational agency from treating funds allocated under this part as general funds pursuant to paragraph (1).

[''(3) REPORT.—For each fiscal year for which a State educational agency exercises its authority pursuant to paragraph (1) and treats Federal funds as general funds, the State educational agency shall report to the Secretary the amount of funds so treated and the activities that were funded with such funds.

[''SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

[''(a) EVALUATIONS AND REEVALUATIONS.—

[''(1) INITIAL EVALUATIONS.—

[''(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

[''(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

[''(C) PROCEDURES.—Such initial evaluation shall consist of procedures—

[''(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within which the evaluation must be conducted, within such timeframe; and

[''(ii) to determine the educational needs of such child.

[''(D) PARENTAL CONSENT.—

[''(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

[''(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

[''(iii) REFUSAL OR FAILURE TO CONSENT.—If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the

consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child.

[''(2) REEVALUATIONS.—

[''(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

[''(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

[''(ii) if the child's parents or teacher requests a reevaluation.

[''(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

[''(i) not more than once a year, unless the parent and the local educational agency agree otherwise; and

[''(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

[''(b) EVALUATION PROCEDURES.—

[''(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

[''(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

[''(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

[''(i) whether the child is a child with a disability; and

[''(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;

[''(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

[''(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

[''(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

[''(A) tests and other evaluation materials used to assess a child under this section—

[''(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

[''(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;

[''(iii) are used for purposes for which the assessments or measures are valid and reliable;

[''(iv) are administered by trained and knowledgeable personnel; and

[''(v) are administered in accordance with any instructions provided by the producer of such tests;

[''(B) the child is assessed in all areas of suspected disability; and

[''(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

[''(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

[''(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

[''(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

[''(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

[''(A) lack of scientifically based instruction in reading;

[''(B) lack of instruction in mathematics; or

[''(C) limited English proficiency.

[''(6) SPECIFIC LEARNING DISABILITIES.—

[''(A) IN GENERAL.—Notwithstanding section 607, when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

[''(B) ADDITIONAL AUTHORITY.—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention.

[''(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

[''(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

[''(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and

[''(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

[''(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

[''(ii) the present levels of performance and educational needs of the child;

[''(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

[''(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

[''(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

[''(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

[''(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability the local educational agency—

[''(A) shall notify the child's parents of—

[''(i) that determination and the reasons for the determination; and

[''(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

[''(B) shall not be required to conduct such an assessment unless requested by the child's parents.

[''(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

[''(B) EXCEPTION.—

[''(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.

[''(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include any further recommendations on how to assist the child in meeting the child's postsecondary goals.

[''(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

[''(1) DEFINITIONS.—As used in this title:

[''(A) INDIVIDUALIZED EDUCATION PROGRAM.—

[''(i) IN GENERAL.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

[''(I) a statement of the child's present levels of academic achievement and functional performance, including—

[''(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or

[''(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

[''(II) a statement of measurable annual goals, including academic and functional goals, designed to—

[''(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum; and

[''(bb) meet each of the child's other educational needs that result from the child's disability;

[''(III) a statement of how the child's progress toward the annual goals described in subclause (II) will be measured, including through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, that delineate the progress the child is making toward meeting the annual goals;

[''(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

[''(aa) to advance appropriately toward attaining the annual goals;

[''(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

[''(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

[''(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

[''(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

[''(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

[''(AA) the child cannot participate in the regular assessment; and

[''(BB) the particular alternate assessment selected is appropriate for the child;

[''(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

[''(VIII) beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter—

[''(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

[''(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and

[''(cc) beginning at least 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

[''(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—

[''(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

[''(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

[''(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

[''(i) the parents of a child with a disability;

[''(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

[''(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;

[''(iv) a representative of the local educational agency who—

[''(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

[''(II) is knowledgeable about the general curriculum; and

[''(III) is knowledgeable about the availability of resources of the local educational agency;

[''(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

[''(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

[''(vii) whenever appropriate, the child with a disability.

[''(C) IEP TEAM ATTENDANCE.—

[''(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

[''(ii) EXCUSAL.—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

[''(I) the parent and the local educational agency consent to the excusal; and

[''(II) the member submits input into the development of the IEP prior to the meeting.

[''(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

[''(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

[''(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

[''(i) consistent with State policy; and

[''(ii) agreed to by the agency and the child's parents.

[''(3) DEVELOPMENT OF IEP.—

[''(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

[''(i) the strengths of the child;

[''(ii) the concerns of the parents for enhancing the education of their child;

[''(iii) the results of the initial evaluation or most recent evaluation of the child; and

[''(iv) the academic, developmental, and functional needs of the child.

[''(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

[''(i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;

[''(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

[''(iii) in the case of a child who is blind or visually impaired—

[''(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and

[''(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;

[''(iv) in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel, and access to the general curriculum and instruction at the child's academic level in the child's language and communication mode; and

[''(v) consider whether the child requires assistive technology devices and services.

[''(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

[''(D) AGREEMENT.—In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the remainder of the school year, and instead develop a written document to amend or modify the child's current IEP.

[''(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.

[''(4) REVIEW AND REVISION OF IEP.—

[''(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

[''(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

[''(ii) revise the IEP as appropriate to address—

[''(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

[''(II) the results of any reevaluation conducted under this section;

[''(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

[''(IV) the child's anticipated needs; or

[''(V) other matters.

[''(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

[''(5) THREE-YEAR IEP.—

[''(A) DEVELOPMENT OF 3-YEAR IEP.—The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of—

[''(i) measurable goals that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and

[''(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).

[''(B) REVIEW AND REVISION OF 3-YEAR IEP.—

[''(i) REQUIREMENT.—Each year the local educational agency shall ensure that the IEP Team—

[''(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and

[''(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.

[''(ii) COMPREHENSIVE REVIEW.—If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

[''(iii) PREFERENCE.—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

[''(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

[''(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

[''(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

[''(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).

[''(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

[''(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

[''(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

[''(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP Team meetings and placement meetings pursuant to this section, the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

["SEC. 615. PROCEDURAL SAFEGUARDS.

[''(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

[''(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

[''(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

[''(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

[''(3) written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

[''(A) proposes to initiate or change; or

[''(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child;

[''(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

[''(5) an opportunity for mediation in accordance with subsection (e);

[''(6) an opportunity for either party to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

[''(7)(A) procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

[''(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

[''(ii) that shall include—

[''(I) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

[''(II) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

[''(III) a proposed resolution of the problem to the extent known and available to the party at the time; and

[''(B) a requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii);

[''(8) a requirement that the local educational agency shall send a prior written notice pursuant to subsection (c)(1) in response to a parent's due process complaint notice under paragraph (7) if the local educational agency has not sent such a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice; and

[''(9) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

[''(c) NOTIFICATION REQUIREMENTS.—

[''(1) CONTENT OF PRIOR WRITTEN NOTICE.—The prior written notice of the local educational agency required by subsection (b)(3) shall include—

[''(A) a description of the action proposed or refused by the agency;

[''(B) an explanation of why the agency proposes or refuses to take the action;

[''(C) a description of any other options that the agency considered and the reasons why those options were rejected;

[''(D) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

[''(E) a description of any other factors that are relevant to the agency's proposal or refusal;

[''(F) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

[''(G) sources for parents to contact to obtain assistance in understanding the provisions of this part.

[''(2) DUE PROCESS COMPLAINT NOTICE.—

[''(A) IN GENERAL.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer in writing that the party believes the notice has not met the requirements of that subsection.

[''(B) TIMING.—The party sending a hearing officer notification under subparagraph (A) shall send the notification within 20 days of receiving the complaint.

[''(C) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (B), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A).

[''(d) PROCEDURAL SAFEGUARDS NOTICE.—

[''(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

[''(A) upon initial referral or parental request for evaluation;

[''(B) upon registration of a complaint under subsection (b)(6);

[''(C) at any individualized education program meeting required in accordance with subsection (k)(1); and

[''(D) upon request by a parent.

[''(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

[''(A) independent educational evaluation;

[''(B) prior written notice;

[''(C) parental consent;

[''(D) access to educational records;

[''(E) opportunity to present complaints, including the time period in which to make those complaints;

[''(F) the child's placement during pendency of due process proceedings;

[''(G) procedures for students who are subject to placement in an interim alternative educational setting;

[''(H) requirements for unilateral placement by parents of children in private schools at public expense;

[''(I) mediation;

[''(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

[''(K) State-level appeals (if applicable in that State);

[''(L) civil actions, including the time period in which to file such actions; and

[''(M) attorney's fees.

[''(e) MEDIATION.—

[''(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure

that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

[''(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

[''(A) The procedures shall ensure that the mediation process—

[''(i) is voluntary on the part of the parties;

[''(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

[''(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

[''(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

[''(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

[''(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

[''(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

[''(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

[''(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

[''(F) WRITTEN MEDIATION AGREEMENT.—An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

[''(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

[''(f) IMPARTIAL DUE PROCESS HEARING.—

[''(1) IN GENERAL.—

[''(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

[''(B) OPPORTUNITY TO RESOLVE COMPLAINT.—

[''(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the IEP Team—

[''(I) within 15 days of receiving notice of the parents' complaint;

[''(II) which shall include a representative of the public agency who has decisionmaking authority on behalf of such agency; and

[''(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

[''(IV) where the parents of the child discuss their complaint, and the specific issues that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

[''(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 15 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

[''(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is reached to resolve the complaint at such meeting, the agreement shall be set forth in a written settlement agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States and signed by both the parent and a representative of the public agency who has decisionmaking authority on behalf of such agency.

[''(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

[''(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

[''(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

[''(3) LIMITATIONS ON HEARING.—

[''(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

[''(i) not be—

[''(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

[''(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

[''(ii) possess a fundamental understanding of this Act, Federal and State regulations pertaining to this Act, and interpretations of this Act by State and Federal courts;

[''(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

[''(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

[''(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

[''(C) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

[''(D) STATUTE OF LIMITATIONS.—A parent or public agency shall request an impartial due process hearing within 2 years of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

[''(E) EXCEPTION TO THE STATUTE OF LIMITATIONS.—The statute of limitations described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

[''(i) failure of the local educational agency to provide prior written or procedural safeguards notices;

[''(ii) false representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

[''(iii) the local educational agency's withholding of information from parents.

[''(F) DECISION OF HEARING OFFICER.—

[''(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

[''(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

[''(I) compromised the child's right to an appropriate public education;

[''(II) seriously hampered the parents' opportunity to participate in the process; or

[''(III) caused a deprivation of educational benefits.

[''(iii) ENFORCEABILITY.—A decision made by the hearing officer is enforceable in any State court of competent jurisdiction or in a district court of the United States, unless either party appeals such decision under the provision of subsection (g) or (i)(2).

[''(G) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the right of a parent to file a complaint with the State educational agency.

[''(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such State educational agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

[''(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

[''(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

[''(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

[''(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

[''(4) the right to a written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

[''(A) shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records); and

[''(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(20).

[''(i) ADMINISTRATIVE PROCEDURES.—

[''(1) IN GENERAL.—

[''(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

[''(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final,

except that any party may bring an action under paragraph (2).

[''(2) RIGHT TO BRING CIVIL ACTION.—

[''(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

[''(B) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

[''(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

[''(i) shall receive the records of the administrative proceedings;

[''(ii) shall hear additional evidence at the request of a party; and

[''(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[''(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

[''(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

[''(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

[''(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

[''(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

[''(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

[''(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

[''(II) the offer is not accepted within 10 days; and

[''(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

[''(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

[''(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

[''(I) a meeting convened as a result of an administrative hearing or judicial action; or

[''(II) an administrative hearing or judicial action for purposes of this paragraph.

[''(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

[''(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

[''(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

[''(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

[''(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

[''(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

[''(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

[''(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

[''(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

[''(1) AUTHORITY OF SCHOOL PERSONNEL.—

[''(A) IN GENERAL.—School personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

[''(B) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (C), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1).

[''(C) MANIFESTATION DETERMINATION.—

[''(i) IN GENERAL.—Except as provided in subparagraphs (A) and (D), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the IEP Team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations, to determine—

[''(I) if the conduct in question was the result of the child's disability; or

[''(II) if the conduct in question resulted from the failure to implement the IEP or develop and implement behavioral interventions as required by section 614(d)(3)(B)(i).

[''(ii) MANIFESTATION.—If the IEP Team determines that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

[''(D) SPECIAL CIRCUMSTANCES.—In cases where a child carries or possesses a weapon at school or a school function, possesses or uses drugs or sells or solicits the sale of drugs while at school or a school function, or has committed serious bodily injury upon another person while at school or at a school function, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability.

[''(E) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (B) or (D) shall—

[''(i) continue to receive educational services pursuant to section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

[''(ii) receive behavioral intervention services as described in section 614(d)(3)(B)(i) designed to address the behavior violation so that the violation does not recur.

[''(2) DETERMINATION OF SETTING.—The alternative educational setting shall be determined by the IEP Team.

[''(3) APPEAL.—

[''(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement, or the manifestation determination under this subsection may request a hearing.

[''(B) AUTHORITY OF HEARING OFFICER.—

[''(i) IN GENERAL.—If a parent of a child with a disability disagrees with a decision as described in subparagraph (A), the hearing officer may determine whether the decision regarding such action was appropriate.

[''(ii) CHANGE OF PLACEMENT ORDER.—A hearing officer under this section may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

[''(4) PLACEMENT DURING APPEALS.—When a parent requests a hearing regarding a disciplinary procedure described in paragraph (1)(B) or challenges the interim alternative educational setting or manifestation determination—

[''(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(B), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

[''(B) the State or local educational agency shall arrange for an expedited hearing which shall occur within 20 school days of the date the hearing is requested.

[''(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

[''(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had

knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

[''(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

[''(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

[''(ii) the parent of the child has requested an evaluation of the child pursuant to section 614;

[''(iii) the teacher of the child, or other personnel of the local educational agency, has expressed concern about a pattern of behavior demonstrated by the child, to the director of special education of such agency or to other administrative personnel of the agency; or

[''(iv) the child has engaged in a pattern of behavior that should have alerted personnel of the local educational agency that the child may be in need of special education and related services.

[''(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child has a disability if the parent of the child has not agreed to allow an evaluation of the child pursuant to section 614.

[''(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

[''(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

[''(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

[''(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

[''(A) CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

[''(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

[''(7) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

[''(A) DRUG.—The term 'drug'—

[''(i) means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)); and

[''(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

[''(B) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.

[''(C) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

[''(1) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

[''(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

[''(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

[''(A) the public agency shall provide any notice required by this section to both the individual and the parents;

[''(B) all other rights accorded to parents under this part transfer to the child;

[''(C) the agency shall notify the individual and the parents of the transfer of rights; and

[''(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

[''(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

[''SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

[''(a) FEDERAL AND STATE MONITORING.—

[''(1) IN GENERAL.—The Secretary shall—

[''(A) monitor implementation of this Act through—

[''(i) oversight of the States' exercise of general supervision, as required in section 612(a)(11); and

[''(ii) the system of indicators, described in subsection (b)(2);

[''(B) enforce this Act in accordance with subsection (c); and

[''(C) require States to monitor implementation of this Act by local educational agencies and enforce this Act in accordance with paragraph (3) of this subsection and subsection (c).

[''(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

[''(3) MONITORING PRIORITIES.—The Secretary shall monitor, and shall require States to monitor, the following priority areas:

[''(A) Provision of a free appropriate public education in the least restrictive environment.

[''(B) Provision of transition services, as defined in section 602(32).

[''(C) State exercise of general supervisory authority, including the effective use of complaint resolution and mediation.

[''(D) Overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

[''(4) PERMISSIVE AREAS OF REVIEW.—The Secretary may examine other relevant information and data, including data provided by States under section 618, and data from the State's compliance plan under subsection (b)(2)(C).

[''(b) INDICATORS.—

[''(1) SYSTEM.—The Secretary shall implement and administer a system of required indicators as described in paragraph (2) that measures the progress of States in improving their performance under this Act.

[''(2) INDICATORS.—

[''(A) IN GENERAL.—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

[''(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number and percentage of students with disabilities who graduate with a regular diploma within the number of years specified in a student's IEP; and

[''(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared to the performance and rates for all children.

[''(B) SECRETARY'S ASSESSMENT.—Based on that review and a review of the State's compliance plan under subparagraph (C), the Secretary shall assess the State's progress in improving educational results for children with disabilities.

[''(C) STATE COMPLIANCE PLAN.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, each State shall have in place a compliance plan developed in collaboration with the Secretary. Each State's compliance plan shall—

[''(i) include benchmarks to measure continuous progress on the priority areas described in subsection (a)(3);

[''(ii) describe strategies the State will use to achieve the benchmarks; and

[''(iii) be approved by the Secretary.

[''(3) DATA COLLECTION AND ANALYSIS.—The Secretary shall—

[''(A) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this subsection is collected, analyzed, and accurately reported to the Secretary; and

[''(B) provide technical assistance to improve the capacity of States to meet these data collection requirements.

[''(c) COMPLIANCE AND ENFORCEMENT.—

[''(1) IN GENERAL.—The Secretary shall examine relevant State information and data annually, to determine whether the State is

making satisfactory progress toward improving educational results for children with disabilities using the indicators described in subsection (b)(2)(A) and the benchmarks established in the State compliance plan under subsection (b)(2)(C), and is in compliance with the provisions of this Act.

[''(2) LACK OF SATISFACTORY PROGRESS BY A STATE.—

[''(A) IN GENERAL.—If after examining data, as provided in subsection (b)(2) (A) and (C), the Secretary determines that a State failed to make satisfactory progress in meeting the indicators described in subsection (b)(2)(A) or has failed to meet the benchmarks described in subsection (b)(2)(C) for 2 consecutive years after the State has developed its compliance plan, the Secretary shall notify the State that the State has failed to make satisfactory progress, and shall take 1 or more of the following actions:

[''(i) Direct the use of State level funds for technical assistance, services, or other expenditures to ensure that the State resolves the area or areas of unsatisfactory progress.

[''(ii) Withhold not less than 20, but not more than 50, percent of the State's funds for State administration and activities for the fiscal year under section 611(e), after providing the State the opportunity to show cause why the withholding should not occur, until the Secretary determines that sufficient progress has been made in improving educational results for children with disabilities.

[''(B) ADDITIONAL SECRETARIAL ACTION.—If, at the end of the 5th year after the Secretary has approved the compliance plan that the State has developed under subsection (b)(2)(C), the Secretary determines that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving educational results for children with disabilities pursuant to the indicators described in subsection (b)(2)(A), the Secretary shall take 1 or more of the following actions:

[''(i) Seek to recover funds under section 452 of the General Education Provisions Act.

[''(ii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part pursuant to subsection (c)(5).

[''(iii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

[''(iv) Pending the outcome of any hearing to withhold payments under clause (ii), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

[''(C) SUBSTANTIAL NONCOMPLIANCE.—Notwithstanding subparagraph (B), at any time that the Secretary determines that a State is not in substantial compliance with any provision of this part or that there is a substantial failure to comply with any condition of a local agency's or State agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

[''(i) Request that the State prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

[''(ii) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

[''(iii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

[''(iv) Recovery of funds under section 452 of the General Education Provisions Act.

[''(v) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part.

[''(vi) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

[''(vii) Pending the outcome of any hearing to withhold payments under clause (v), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

[''(3) EGREGIOUS NONCOMPLIANCE.—At any time that the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary shall take such additional enforcement actions as the Secretary determines to be appropriate from among those actions specified in paragraph (2)(C), and, additionally, may impose 1 or more of the following sanctions upon that State:

[''(A) Institute a cease and desist action under section 456 of the General Education Provisions Act.

[''(B) Refer the case to the Office of the Inspector General.

[''(4) REPORT TO CONGRESS.—The Secretary shall report to Congress within 30 days of taking enforcement action pursuant to paragraph (2) (B) or (C), or (3), on the specific action taken and the reasons why enforcement action was taken.

[''(5) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraphs (2)(B)(ii) and (2)(C)(v), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to make satisfactory progress as specified in paragraph (2)(B), or to comply with the provisions of this part, as specified in paragraph (2)(C), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (2)(B) or (2)(C) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

[''(6) JUDICIAL REVIEW.—

[''(A) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

[''(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[''(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[''(d) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that—

[''(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

[''(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

[''(e) STATE AND LOCAL MONITORING.—

[''(1) IN GENERAL.—The State educational agency shall monitor and enforce implementation of this Act, implement a system of monitoring the benchmarks in the State's compliance plan under subsection (b)(2)(C), and require local educational agencies to monitor and enforce implementation of this Act.

[''(2) ADDITIONAL ENFORCEMENT OPTIONS.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the benchmarks in the State's compliance plan, the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under section 613(a)(2)(C) for any fiscal year.

["SEC. 617. ADMINISTRATION.

[''(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

[''(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

[''(A) the education of children with disabilities; and

[''(B) carrying out this part; and

[''(2) provide short-term training programs and institutes.

[''(b) RULES AND REGULATIONS.—In carrying out the provisions of this part, the

Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

[''(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to this part.

[''(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661, and 664, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that not more than 20 such personnel shall be employed at any 1 time.

[''(e) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this Act, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

[''(1) a model IEP form;

[''(2) a model form of the notice of procedural safeguards described in section 615(d); and

[''(3) a model form of the prior written notice described in section 615 (b)(3) and (c)(1) that is consistent with the requirements of this part and is sufficient to meet such requirements.

["SEC. 618. PROGRAM INFORMATION.

[''(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education on—

[''(1)(A)—the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are receiving a free appropriate public education;

[''(B) the number and percentage of children with disabilities, by race, ethnicity, and limited English proficiency status who are receiving early intervention services;

[''(C) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are participating in regular education;

[''(D) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

[''(E) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who, for each year of age from age 14 through 21, stopped receiving special education and related services because of program completion or other reasons, and the reasons why those children stopped receiving special education and related services;

[''(F) the number and percentage of children with disabilities, by race, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;

[''(G)(i) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are removed to an interim alternative educational setting under section 615(k)(1);

[''(ii) the acts or items precipitating those removals; and

[''(iii) the number of children with disabilities who are subject to long-term suspensions or expulsions;

[''(H) the incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, and disability category, of children with disabilities, including suspensions of 1 day or more;

[''(I) the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled;

[''(J) the number of due process complaints filed under section 615 and the number of hearings conducted;

[''(K) the number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings;

[''(L) the number of hearings requested under section 615(k)(3)(B) and the number of changes in placements ordered as a result of those hearings; and

[''(M) the number of mediations held and the number of settlement agreements reached through such mediations;

[''(2) the number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C; and

[''(3) any other information that may be required by the Secretary.

[''(b) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this Act.

[''(c) DISPROPORTIONALITY.—

[''(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

[''(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

[''(B) the placement in particular educational settings of such children; and

[''(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

[''(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

["SEC. 619. PRESCHOOL GRANTS.

[''(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

[''(1) to children with disabilities aged 3 through 5, inclusive; and

[''(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

[''(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

[''(1) is eligible under section 612 to receive a grant under this part; and

[''(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

[''(c) ALLOCATIONS TO STATES.—

[''(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

[''(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

[''(A) ALLOCATION.—

[''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

[''(I) allocate to each State the amount the State received under this section for fiscal year 1997;

[''(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

[''(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

[''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

[''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

[''(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

[''(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

[''(I) the sum of—

[''(aa) the amount the State received under this section for fiscal year 1997; and

[''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

[''(II) the sum of—

[''(aa) the amount the State received under this section for the preceding fiscal year; and

[''(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

[''(III) the sum of—

[''(aa) the amount the State received under this section for the preceding fiscal year; and

[''(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated under this section from the preceding fiscal year.

[''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

[''(I) the amount the State received under this section for the preceding fiscal year; and

[''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

[''(C) RATABLE REDUCTIONS.—If the amount available for allocations under this paragraph is insufficient to pay those allocations

in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

[''(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

[''(A) ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

[''(i) the amount the State received under this section for fiscal year 1997; and

[''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

[''(B) If the amount available for allocations under this paragraph is equal to or less than the amount allocated under this section to the States for fiscal year 1997, each State shall be allocated the amount the State received for that year, ratably reduced, if necessary.

[''(d) RESERVATION FOR STATE ACTIVITIES.—

[''(1) IN GENERAL.—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

[''(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

[''(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

[''(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

[''(e) STATE ADMINISTRATION.—

[''(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

[''(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

[''(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

[''(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

[''(2) for direct services for children eligible for services under this section;

[''(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) and to support implementation of the State plan under subpart 1 of part D if the State receives funds under that subpart; or

[''(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year.

[''(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

[''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

[''(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

[''(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

[''(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

[''(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

[''(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

[''(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

[''(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[''(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''PART C—INFANTS AND TODDLERS WITH DISABILITIES

[''SEC. 631. FINDINGS AND POLICY.

[''(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

[''(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development which occurs during a child's first 3 years of life;

[''(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

[''(3) to maximize the potential for individuals with disabilities to live independently in society;

[''(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

[''(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children.

[''(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

[''(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

[''(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

[''(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

[''(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

[''SEC. 632. DEFINITIONS.

[''As used in this part:

[''(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

[''(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

[''(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

[''(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

[''(A) are provided under public supervision;

[''(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

[''(C) are designed to meet the developmental needs of an infant or toddler with a disability in any 1 or more of the following areas:

[''(i) physical development;

[''(ii) cognitive development;

[''(iii) communication development;

[''(iv) social or emotional development; or

[''(v) adaptive development;

[''(D) meet the standards of the State in which the services are provided, including the requirements of this part;

[''(E) include—

[''(i) family training, counseling, and home visits;

[''(ii) special instruction;

[''(iii) speech-language pathology and audiology services;

[''(iv) occupational therapy;

[''(v) physical therapy;

[''(vi) psychological services;

[''(vii) service coordination services;

[''(viii) medical services only for diagnostic or evaluation purposes;

[''(ix) early identification, screening, and assessment services;

[''(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

[''(xi) social work services;

[''(xii) vision services;

[''(xiii) assistive technology devices and assistive technology services; and

[''(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

[''(F) are provided by qualified personnel, including—

[''(i) special educators;

[''(ii) speech-language pathologists and audiologists;

[''(iii) occupational therapists;

[''(iv) physical therapists;

[''(v) psychologists;

[''(vi) social workers;

[''(vii) nurses;

[''(viii) nutritionists;

[''(ix) family therapists;

[''(x) orientation and mobility specialists; and

[''(xi) pediatricians and other physicians;

[''(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

[''(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

[''(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

[''(A) means an individual under 3 years of age who needs early intervention services because the individual—

[''(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

[''(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

[''(B) may also include, at a State's discretion, at-risk infants and toddlers.

["SEC. 633. GENERAL AUTHORITY.

[''The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

["SEC. 634. ELIGIBILITY.

[''In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

[''(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

[''(2) has in effect a statewide system that meets the requirements of section 635.

["SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

[''(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

[''(1) A definition of the term 'developmental delay' that—

[''(A) will be used by the State in carrying out programs under this part; and

[''(B) covers, at a minimum, all infants and toddlers with—

[''(i) a developmental delay of 35 percent or more in 1 of the developmental areas described in section 632(5)(A)(i); or

[''(ii) a developmental delay of 25 percent or more in 2 or more of the developmental areas described in section 632(5)(A)(i).

[''(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

[''(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

[''(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

[''(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

[''(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

[''(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

[''(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, which comprehensive system may include—

[''(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

[''(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

[''(C) training personnel to work in rural and inner-city areas; and

[''(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

[''(9) Subject to subsection (b), policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

[''(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

[''(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

[''(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

[''(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

[''(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

[''(E) the resolution of intra- and interagency disputes; and

[''(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

[''(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

[''(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

[''(13) Procedural safeguards with respect to programs under this part, as required by section 639.

[''(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

[''(15) A State interagency coordinating council that meets the requirements of section 641.

[''(16) Policies and procedures to ensure that, consistent with section 636(d)(5) to the maximum extent appropriate, early intervention services are provided in natural environments unless a specific outcome cannot be met satisfactorily for the infant or toddler in a natural environment.

[''(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable coursework necessary to meet the standards described in subsection (a)(9), consistent with State law within 3 years.

["SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

[''(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

[''(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

[''(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

[''(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the child.

[''(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

[''(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

[''(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

[''(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

[''(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

[''(3) a statement of the measurable outcomes expected to be achieved for the infant or toddler and the family, including, as appropriate, pre-literacy and language skills, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

[''(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

[''(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

[''(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

[''(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

[''(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

[''(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

["SEC. 637. STATE APPLICATION AND ASSURANCES.

[''(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

[''(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

[''(2) a designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies;

[''(3) information demonstrating eligibility of the State under section 634, including—

[''(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

[''(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

[''(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

[''(5) a description of the uses for which funds will be expended in accordance with this part;

[''(6) a description of the State policies and procedures that require the referral for early intervention services of a child under the age of 3 who—

[''(A) is involved in a substantiated case of child abuse or neglect; or

[''(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

[''(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

[''(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

[''(9) a description of the policies and procedures to be used—

[''(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool, other appropriate services, or exiting the program, including a description of how—

[''(i) the families of such toddlers will be included in the transition plans required by subparagraph (C); and

[''(ii) the lead agency designated or established under section 635(a)(10) will—

[''(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

[''(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, not more than 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

[''(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

[''(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

[''(C) to establish a transition plan, including, as appropriate, steps to exit from the program; and

[''(10) such other information and assurances as the Secretary may reasonably require.

[''(b) ASSURANCES.—The application described in subsection (a)—

[''(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

[''(2) shall contain an assurance that the State will comply with the requirements of section 640;

[''(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

[''(4) shall provide for—

[''(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

[''(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of the reports and proper disbursement of Federal funds under this part;

[''(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

[''(A) will not be commingled with State funds; and

[''(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

[''(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

[''(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

[''(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

[''(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

[''(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part C, as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

[''(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

[''(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

[''(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

[''(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

[''(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

["SEC. 638. USES OF FUNDS.

[''In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

[''(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

[''(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

[''(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year; and

[''(4) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

[''(A) identifying and evaluating at-risk infants and toddlers;

[''(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

[''(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

"SEC. 639. PROCEDURAL SAFEGUARDS.

[''(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

[''(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[''(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

[''(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

[''(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

[''(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

[''(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

[''(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

[''(8) The right of parents to use mediation in accordance with section 615, except that—

[''(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

[''(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

[''(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

[''(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

["SEC. 640. PAYOR OF LAST RESORT.

[''(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

[''(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

["SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

[''(a) ESTABLISHMENT.—

[''(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

[''(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

[''(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

[''(b) COMPOSITION.—

[''(1) IN GENERAL.—The council shall be composed as follows:

[''(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

[''(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

[''(C) STATE LEGISLATURE.—At least 1 member shall be from the State legislature.

[''(D) PERSONNEL PREPARATION.—At least 1 member shall be involved in personnel preparation.

[''(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

[''(F) AGENCY FOR PRESCHOOL SERVICES.—At least 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

[''(G) STATE MEDICAID AGENCY.—At least 1 member shall be from the agency responsible for the State medicaid program.

[''(H) HEAD START AGENCY.—At least 1 representative from a Head Start agency or program in the State.

[''(I) CHILD CARE AGENCY.—At least 1 representative from a State agency responsible for child care.

[''(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

[''(c) MEETINGS.—The council shall meet at least quarterly and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

[''(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

[''(e) FUNCTIONS OF COUNCIL.—

[''(1) DUTIES.—The council shall—

[''(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

[''(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

[''(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

[''(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

[''(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

[''(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

["SEC. 642. FEDERAL ADMINISTRATION.

[''Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

[''(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

[''(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

[''(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

["SEC. 643. ALLOCATION OF FUNDS.

[''(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

[''(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

[''(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

[''(b) PAYMENTS TO INDIANS.—

[''(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

[''(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

[''(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

[''(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

[''(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

[''(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

[''(c) STATE ALLOTMENTS.—

[''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

[''(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

[''(A) ½ of 1 percent of the remaining amount described in paragraph (1); or

[''(B) $500,000.

[''(3) RATABLE REDUCTION.—

[''(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

[''(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

[''(4) DEFINITIONS.—For the purpose of this subsection—

[''(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

[''(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[''(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

["SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

[''For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2009.

["PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

["SEC. 650. FINDINGS.

[''Congress finds the following:

[''(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling them to lead productive and independent adult lives.

[''(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

[''(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

[''(4) An effective educational system serving students with disabilities should—

[''(A) maintain high academic achievement standards and clear performance goals for children, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

[''(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

[''(C) promote transition services as described in section 602(32) and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

[''(5) The availability of an adequate number of qualified personnel is critical to serve effectively children with disabilities, to assume leadership positions in administration

and direct services, to provide teacher training, and to conduct high quality research to improve special education.

[''(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

[''(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

[''(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

[''(9) A comprehensive research agenda should be established and pursued to promote the highest quality and rigor in special education research, and to address the full range of issues facing children with disabilities, parents of children with disabilities, school personnel, and others.

[''(10) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

[''(11) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

[''(12) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

[''(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

[''(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

[''(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

[''(D) providing such parents information on their rights, protections, and responsibilities under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

[''(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 602(32);

[''(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

[''(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

[''(13) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

[''Subpart 1—State Personnel Preparation and Professional Development Grants

[''SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.

[''(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

[''(b) DEFINITION.—In this subpart the term 'personnel' means special education teachers, general education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities.

[''(c) PROGRAM AUTHORITY.—

[''(1) COMPETITIVE GRANTS.—

[''(A) IN GENERAL.—For any fiscal year for which the amount appropriated under section 655 is less than $100,000,000, the Secretary is authorized to award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 654.

[''(B) PRIORITY.—The Secretary may give priority to awarding grants under subparagraph (A) to State educational agencies that—

[''(i) have the greatest personnel shortages; or

[''(ii) demonstrate the greatest difficulty meeting the requirements of section 615(a)(14).

[''(C) MINIMUM.—The Secretary shall make a grant to each State educational agency selected under subparagraph (A) in an amount for each fiscal year that is—

[''(i) not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

[''(ii) not less than $80,000 in the case of an outlying area.

[''(D) INCREASES.—The Secretary may increase the amount described in subparagraph (C) to account for inflation.

[''(E) FACTORS.—The Secretary shall set the amount of each grant under subparagraph (A) after considering—

[''(i) the amount of funds available for making the grants;

[''(ii) the relative population of the State or outlying area;

[''(iii) the types of activities proposed by the State or outlying area;

[''(iv) the alignment of proposed activities with section 612(a)(15);

[''(v) the alignment of proposed activities with the plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

[''(vi) the use, as appropriate, of scientifically based activities.

[''(2) FORMULA GRANTS.—

[''(A) IN GENERAL.—For any fiscal year for which the funds appropriated under section 655 are equal to or greater than $100,000,000, the Secretary shall—

[''(i) reserve from such funds an amount sufficient to continue to make payments for the fiscal year in accordance with the terms of each multi-year grant awarded under paragraph (1) for which the grant period has not ended; and

[''(ii) use the remainder of such funds to award grants to State educational agencies, from allotments under subparagraph (B), to enable the State educational agencies to award contracts and subgrants, on a competitive basis, to carry out the authorized activities described in section 654.

[''(B) ALLOTMENT.—Except as provided in subparagraph (C), from the remainder of funds described in subparagraph (A)(ii) for a fiscal year, the Secretary shall make an allotment to each State educational agency in an amount that bears the same relation to such remainder as the amount of funds the State received under section 611(d)(3) for the preceding fiscal year bears to the amount of funds received by all States under such section for the preceding fiscal year.

[''(C) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this paragraph for any fiscal year shall not be less than ¼ of 1 percent of the amount made available under this part for such year.

[''SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

[''(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

[''(b) PARTNERS.—

[''(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including institutions of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation.

[''(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

[''(A) the Governor;

[''(B) parents of children with disabilities ages birth through 26;

[''(C) parents of nondisabled children ages birth through 26;

[''(D) individuals with disabilities;

[''(E) parent training and information centers or community parent resource centers;

[''(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

[''(G) general and special education teachers, paraprofessionals, related services personnel, and early intervention personnel;

[''(H) the State advisory panel established under part B;

[''(I) the State interagency coordinating council established under part C;

[''(J) institutions of higher education within the State;

[''(K) individuals knowledgeable about vocational education;

[''(L) the State agency for higher education;

[''(M) the State vocational rehabilitation agency;

[''(N) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

[''(O) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

[''(P) other individuals.

[''SEC. 653. APPLICATIONS.

[''(a) IN GENERAL.—

[''(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

[''(2) STATE PLAN.—The application shall include a plan that identifies and addresses

the State and local needs for the professional development of administrators, principals, and teachers, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

[''(A) is designed to enable the State to meet the requirements of section 612(a)(14);

[''(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

[''(i) current and anticipated personnel vacancies and shortages; and

[''(ii) the number of preservice programs; and

[''(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965, as appropriate.

[''(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency shall carry out each of the strategies described in subsection (b)(4).

[''(b) ELEMENTS OF STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT PLAN.—Each professional development plan shall—

[''(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

[''(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership; and

[''(B) how the State will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

[''(2) describe how the strategies and activities described in paragraph (4) will be coordinated with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

[''(3) describe how the State will align its professional development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

[''(4) describe what strategies the State will use to address the professional development and personnel needs identified under subsection (a)(2) and how those strategies will be implemented, including—

[''(A) a description of the preservice and inservice programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

[''(B) how such strategies shall be integrated, to the maximum extent possible, with other activities supported by grants funded under this part, including those under section 664;

[''(5) provide an assurance that the State will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

[''(6) provide an assurance that the State will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

[''(7) describe how the State will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

[''(8) describe the steps the State will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

[''(9) describe how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

[''(c) PEER REVIEW.—

[''(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

[''(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

[''(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

[''(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall describe the progress of the State in implementing its plan and analyzing the effectiveness of the State's activities under this subpart.

["SEC. 654. USE OF FUNDS.

[''(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

[''(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities, such as programs that—

[''(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development; and

[''(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development as defined in section 9101(34) of the Elementary and Secondary Education Act of 1965.

[''(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively utilize and integrate technology—

[''(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

[''(B) to enhance learning by children with disabilities; and

[''(C) to effectively communicate with parents.

[''(3) Providing professional development activities that—

[''(A) improve the knowledge of special education and regular education teachers concerning—

[''(i) the academic and developmental or functional needs of students with disabilities; or

[''(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement; and

[''(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—

[''(i) provide training in how to teach and address the needs of students with different learning styles;

[''(ii) involve collaborative groups of teachers and administrators;

[''(iii) provide training in methods of—

[''(I) positive behavior interventions and supports to improve student behavior in the classroom;

[''(II) scientifically based reading instruction, including early literacy instruction;

[''(III) early and appropriate interventions to identify and help children with disabilities;

[''(IV) effective instruction for children with low incidence disabilities;

[''(V) successful transitioning to postsecondary opportunities; and

[''(VI) using classroom-based techniques to assist children prior to referral for special education;

[''(iv) provide training to enable special education and regular education teachers and principals to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

[''(v) provide training for special education, regular education, principals, and related services personnel in planning, developing, and implementing effective and appropriate IEPs; and

[''(vi) providing training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students;

[''(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

[''(D) develop and enhance instructional leadership skills of principals.

[''(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruitment and retaining highly qualified teachers, including programs that provide—

[''(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

[''(B) induction and support for special education teachers during their first 3 years of employment as teachers, respectively; or

[''(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

[''(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

[''(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development described in section 9101(34) of the Elementary and Secondary Education Act of 1965; and

[''(B) development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

[''(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

[''(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

[''(A) special education and regular education teachers have—

[''(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

[''(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that they teach;

[''(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

[''(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students meet challenging State student academic achievement and functional standards.

[''(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

[''(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

[''(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

[''(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

[''(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

[''(7) Developing or assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

[''(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

[''(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic and functional achievement standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

[''(10) Coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

[''(c) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

[''(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

[''(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

[''(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

[''(1) not less than 75 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

[''(2) not more than 25 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

[''(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

[''SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

[''There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

[''SEC. 660. PURPOSE.

[''The purpose of this subpart is—

[''(1) to provide Federal funding for scientifically based research, technical assistance, model demonstration projects, and information dissemination to improve early intervention, educational, and transitional results for children with disabilities; and

[''(2) to assist State educational agencies and local educational agencies in improving their education systems.

[''SEC. 661. ADMINISTRATIVE PROVISIONS.

[''(a) COMPREHENSIVE PLAN.—

[''(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart (other than activities assisted under sections 662 and 665) in order to enhance the provision of early intervention, educational, related and transitional services to children with disabilities under parts B and C. The plan shall be coordinated with the agenda developed pursuant to section 662(d) and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State program improvement grants under subpart 1.

[''(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of at least 60 days on the plan.

[''(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

[''(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under this subpart, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

[''(b) ELIGIBLE APPLICANTS.—

[''(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

[''(A) A State educational agency.

[''(B) A local educational agency.

[''(C) A public charter school that is a local educational agency under State law.

[''(D) An institution of higher education.

[''(E) Any other public agency.

[''(F) A private nonprofit organization.

[''(G) An outlying area.

[''(H) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

[''(I) A for-profit organization.

[''(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to 1 or more categories of eligible entities described in paragraph (1).

[''(c) SPECIAL POPULATIONS.—

[''(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, the Secretary shall, as appropriate, require an applicant to meet the criteria set forth by the Secretary under this subpart and demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

[''(2) REQUIRED OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this Act other than paragraph (1), the Secretary shall reserve at least 1 percent of the total amount of funds made available to carry out this subpart for 1 or both of the following activities:

[''(A) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

[''(B) To enable Historically Black Colleges and Universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

[''(C) RESERVATION OF FUNDS.—The Secretary may reserve funds made available under this subpart to satisfy the requirements of subparagraphs (A) and (B).

[''(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, may, without regard to the rulemaking procedures under section 553(a) of title 5, United States Code, limit competitions to, or otherwise give priority to—

[''(1) projects that address 1 or more—

[''(A) age ranges;

[''(B) disabilities;

[''(C) school grades;

[''(D) types of educational placements or early intervention environments;

[''(E) types of services;

[''(F) content areas, such as reading; or

[''(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

[''(2) projects that address the needs of children based on the severity or incidence of their disability;

[''(3) projects that address the needs of—

[''(A) low achieving students;

[''(B) underserved populations;

[''(C) children from low income families;

[''(D) limited English proficient children;
[''(E) unserved and underserved areas;
[''(F) rural or urban areas;
[''(G) children whose behavior interferes with their learning and socialization;
[''(H) children with reading difficulties; or
[''(I) children in charter schools;
[''(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;
[''(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;
[''(6) projects that promote the development and use of universally designed technologies, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general curriculum; and
[''(7) any activity that is authorized in this subpart or subpart 3.

[''(e) APPLICANT AND RECIPIENT RESPONSIBILITIES.—
[''(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart—
[''(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and
[''(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.
[''(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under this subpart to—
[''(A) share in the cost of the project;
[''(B) prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;
[''(C) disseminate such findings and products; and
[''(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

[''(f) APPLICATION MANAGEMENT.—
[''(1) STANDING PANEL.—
[''(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart (other than applications for assistance under sections 662 and 665) that, individually, request more than $75,000 per year in Federal financial assistance.
[''(B) MEMBERSHIP.—The standing panel shall include, at a minimum—
[''(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;
[''(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;
[''(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;
[''(iv) individuals who administer programs at the State or local level in which children with disabilities participate;
[''(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;
[''(vi) individuals who establish policies that affect the delivery of services to children with disabilities;
[''(vii) parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and
[''(viii) individuals with disabilities.
[''(C) TERM.—Unless approved by the Secretary due to extenuating circumstances related to shortages of experts in a particular area of expertise or for a specific competition, no individual shall serve on the standing panel for more than 3 consecutive years.
[''(2) PEER REVIEW PANELS FOR PARTICULAR COMPETITIONS.—
[''(A) COMPOSITION.—The Secretary shall ensure that each sub panel selected from the standing panel that reviews applications under this subpart (other than sections 662 and 665) includes—
[''(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by this subpart; and
[''(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.
[''(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub panel that reviews an application under this subpart (other than an application under sections 662 and 665) shall be individuals who are not employees of the Federal Government.
[''(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—
[''(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds made available under this subpart to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.
[''(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds made available to carry out this subpart to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.
[''(4) AVAILABILITY OF CERTAIN PRODUCTS.—The Secretary shall ensure that recipients of grants, cooperative agreements, or contracts under this subpart and subpart 3 make available in formats that are accessible to individuals with disabilities any products developed under such grants, cooperative agreements, or contracts that the recipient is making available to the public.

[''(g) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out this subpart to evaluate activities carried out under this subpart.

[''(h) MINIMUM FUNDING REQUIRED.—
[''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart to address the following needs:
[''(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.
[''(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.
[''(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.
[''(2) RATABLE REDUCTION.—If the total amount appropriated to carry out sections 662, 664, and 674 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.
[''(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under this subpart that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

[''SEC. 662. RESEARCH TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES.

[''(a) NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.—
[''(1) ESTABLISHMENT.—
[''(A) IN GENERAL.—There is established, in the Institute of Education Sciences established under section 111 of the Education Sciences Reform Act of 2002 (hereinafter in this section referred to as 'the Institute'), the National Center for Special Education Research.
[''(B) MISSION.—The mission of the National Center for Special Education Research (hereafter in this section referred to as the 'Center') shall be to—
[''(i) sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;
[''(ii) sponsor research to improve services provided under, and support the implementation of, this Act; and
[''(iii) evaluate the implementation and effectiveness of this Act in coordination with the National Center for Education Evaluation.
[''(2) COMMISSIONER.—The Center shall be headed by a Commissioner for Special Education Research (hereinafter in this section referred to as 'the Commissioner'). The Commissioner shall be appointed by the Director of the Institute (hereinafter in this section referred to as 'the Director') in accordance with section 117 of the Education Sciences Reform Act of 2002. The Commissioner shall have substantial knowledge of the Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.
[''(3) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and E of the Education Sciences Reform Act of 2002, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134 of such Act, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this section.
[''(4) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—In carrying out the duties under this part, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible entities.
[''(b) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include research activities to—
[''(1) improve services provided under this Act in order to improve academic achievement, functional outcomes, and educational results for children with disabilities;
[''(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;
[''(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;
[''(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

[''(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments as described in section 1111(b) of the Elementary and Secondary Education Act of 1965;

[''(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

[''(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

[''(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

[''(9) improve reading and literacy skills of children with disabilities;

[''(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

[''(11) examine methods of early intervention for children with disabilities who need significant levels of support;

[''(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods as a method to improve educational and transitional results for children with disabilities;

[''(13) improve the preparation of personnel who provide educational and related services to children with disabilities to increase the academic achievement of students with disabilities;

[''(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services; and

[''(15) help parents improve educational results for their children, particularly related to transition issues.

[''(c) STANDARDS.—The Commissioner shall ensure that activities assisted under this section—

[''(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

[''(2) are carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

[''(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

[''(d) PLAN.—The Commissioner shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

[''(1) is consistent with the priorities and mission of the Institute of Education Sciences and the mission of the Special Education Research Center;

[''(2) shall be carried out, updated, and modified, as appropriate;

[''(3) is consistent with the purpose of this Act;

[''(4) contains an appropriate balance across all age ranges and types of children with disabilities;

[''(5) provides for research that is objective and uses measurable indicators to assess its progress and results;

[''(6) is coordinated with the comprehensive plan developed under section 661; and

[''(7) provides that the research conducted under this part is relevant to special education practice and policy.

[''(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

[''(f) DISSEMINATION.—The Center shall—

[''(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Center; and

[''(2) assist the Director in the preparation of a biennial report, as described in section 119 of the Education Sciences Reform Act of 2003.

[''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.

[''SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

[''(a) IN GENERAL.—From amounts made available under section 675, the Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, carry out model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

[''(b) REQUIRED ACTIVITIES.—The Secretary shall support activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional performance to improve educational results and functional outcomes for children with disabilities through—

[''(1) implementing effective strategies that are conducive to learning and for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

[''(2) improving the alignment, compatibility, and development of valid and reliable assessment methods, including alternate assessment methods and evaluation methods, for assessing adequately yearly progress as described in section 1111(b)(2)(B) of the Elementary and Secondary Education Act of 1965;

[''(3) providing information to both regular education teachers and special education teachers to address the different learning styles and disabilities of students;

[''(4) disseminating innovative, effective, and efficient curricula, materials (including those that are universally designed), instructional approaches, and strategies that—

[''(A) support effective transitions between educational settings or from school to post-school settings;

[''(B) support effective inclusion of students with disabilities in general education settings, especially students with low-incidence disabilities; and

[''(C) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

[''(5) demonstrating and applying scientifically-based findings to facilitate systematic changes related to the provision of services to children with disabilities.

[''(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional outcomes to improve results for children with disabilities through—

[''(1) applying and testing research findings in typical service settings to determine the usability, effectiveness, and general applicability of those findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;

[''(2) demonstrating and applying scientifically-based findings to facilitate systemic changes related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel;

[''(3) supporting and promoting the coordination of early intervention, education, and transitional services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

[''(4) promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instructional reform, and evaluating of such reforms;

[''(5) enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of scientifically based research and effective practices developed in model demonstration projects, relating to the provision of services to children with disabilities;

[''(6) disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities;

[''(7) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

[''(8) promoting change through a multi-State or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;

[''(9) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

[''(A) to schools and agencies serving deaf-blind children and their families;

[''(B) to programs and agencies serving other groups of children with low-incidence disabilities and their families; and

[''(C) to address the postsecondary education needs of individuals who are deaf or hard-of-hearing;

[''(10) demonstrating models of personnel preparation to ensure appropriate placements and services for all students with disabilities and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and

[''(11) disseminating information on how to reduce racial and ethnic disproportionalities.

[''(d) BALANCE AMONG DISABILITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges and disabilities.

[''(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

[''(f) APPLICATIONS.—

[''(1) IN GENERAL.—An eligible entity that desires to receive a grant, or to enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(2) CONTENTS.—The Secretary may, as appropriate, require eligible entities to demonstrate that the projects described in their applications are supported by scientifically based research that has been carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research.

[''(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment or that strengthen State and local agency capacity to improve instructional practices of personnel to improve educational results for children with disabilities in the school environment.

[''SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

[''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities—

[''(1) to help address State identified needs for highly qualified personnel in special education, related services, early intervention, transition, and regular education, to work with children with disabilities, consistent with the needs identified in the State plan described in section 653(a)(2) and the standards described in section 612(a)(14);

[''(2) to ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children;

[''(3) to encourage increased focus on academics and core content areas in special education personnel preparation programs;

[''(4) to ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom;

[''(5) to ensure that all special education teachers teaching in core academic subjects are highly qualified;

[''(6) to ensure that preservice and in-service personnel preparation programs include training in—

[''(A) the use of new technologies;

[''(B) the area of early intervention, educational, and transition services;

[''(C) effectively involving parents; and

[''(D) positive behavior supports; and

[''(7) to provide high-quality professional development for principals, superintendents, and other administrators, including training in—

[''(A) instructional leadership;

[''(B) behavioral supports in the school and classroom;

[''(C) paperwork reduction;

[''(D) promoting improved collaboration between special education and general education teachers;

[''(E) assessment and accountability;

[''(F) ensuring effective learning environments; and

[''(G) fostering positive relationships with parents.

[''(b) PERSONNEL DEVELOPMENT; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to prepare personnel, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

[''(A) Supporting collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities—

[''(i) to improve and reform their existing programs, to support effective existing programs, to support the development of new programs, and to prepare teachers and related services personnel—

[''(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

[''(II) to work collaboratively in regular classroom settings; and

[''(ii) to incorporate best practices and scientifically based research about preparing personnel—

[''(I) so the personnel will have the knowledge and skills to improve educational results for children with disabilities; and

[''(II) to implement effective teaching strategies and interventions to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.

[''(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of highly qualified teachers to reduce shortages in personnel.

[''(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of teachers and personnel who teach and provide related services to children with disabilities.

[''(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

[''(E) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel to acquire the collaboration skills necessary to work within teams and to improve results for children with disabilities, particularly within the general education curriculum.

[''(F) Promoting effective parental involvement practices to enable the personnel to work with parents and involve parents in the education of such parents' children.

[''(G) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers and administrators working with such children.

[''(H) Developing and disseminating models that prepare teachers with strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

[''(I) Developing and improving programs to enhance the ability of general education teachers, principals, school administrators, and school board members to improve results for children with disabilities.

[''(J) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

[''(K) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

[''(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

[''(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[''(A) Preparing persons who—

[''(i) have prior training in educational and other related service fields; and

[''(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

[''(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

[''(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

[''(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

[''(ii) to improve communication with parents.

[''(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

[''(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

[''(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

[''(3) DEFINITION.—As used in this section, the term 'low incidence disability' means—

[''(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

[''(B) a significant cognitive impairment; or

[''(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

[''(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

[''(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deaf and blindness.

[''(B) A demonstration of an effective collaboration with an eligible entity and a local educational agency that ensures recruitment and subsequent retention of highly qualified personnel to serve children with disabilities.

[''(C) A proposal to address the personnel and professional development needs in the State, as identified in section 653(a)(2).

[''(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

[''(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[''(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

[''(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, related services personnel, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

[''(e) ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

[''(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or

[''(B) Creating or supporting professional development schools that provide—

[''(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

[''(ii) inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies.

[''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

[''(A) that shall consist of—

[''(i) 1 or more institutions of higher education with special education personnel preparation programs;

[''(ii) 1 or more local educational agencies; and

[''(iii) in the case of activities assisted under paragraph (2)(B), an elementary school or secondary school; and

[''(B) that may consist of other entities eligible for assistance under this part, such as a State educational agency.

[''(4) PRIORITY.—In awarding grants or entering into contracts or cooperative agreements under this subsection, the Secretary shall give priority to partnerships that include local educational agencies that serve—

[''(A) high numbers or percentages of low-income students; or

[''(B) schools that have failed to make adequate yearly progress toward enabling children with disabilities to meet academic achievement standards.

[''(f) TRAINING TO SUPPORT GENERAL EDUCATORS; AUTHORIZED ACTIVITIES.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

[''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

[''(A) high quality professional development for general educators that develops the knowledge and skills, and enhances the ability, of general educators to—

[''(i) utilize classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the individualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;

[''(ii) utilize classroom-based techniques, such as scientifically based reading instruction;

[''(iii) work collaboratively with special education teachers and related services personnel;

[''(iv) implement strategies, such as positive behavioral interventions—

[''(I) to address the behavior of children with disabilities that impedes the learning of such children and others; or

[''(II) to prevent children from being misidentified as children with disabilities;

[''(v) prepare children with disabilities to participate in statewide assessments (with and without accommodations) and alternative assessment, as appropriate;

[''(vi) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;

[''(vii) work with and involve parents of children with disabilities in their child's education;

[''(viii) understand how to effectively construct IEPs, participate in IEP meetings, and implement IEPs; and

[''(ix) in the case of principals and superintendents, be instructional leaders and promote improved collaboration between general educators, special education teachers, and related services personnel; and

[''(B) release and planning time for the activities described in this subsection.

[''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

[''(A) that shall consist of—

[''(i) 1 or more institutions of higher education with special education personnel preparation programs;

[''(ii) 1 or more local educational agencies; and

[''(B) that may consist of other entities eligible for assistance under this part, such as a State educational agency.

[''(g) APPLICATIONS.—

[''(1) IN GENERAL.—Any eligible entity that desires to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(2) IDENTIFIED STATE NEEDS.—

[''(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), (d), (e), or (f) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, consistent with the needs identified in the State plan described in section 653(a)(2).

[''(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include in the application information demonstrating to the satisfaction of the Secretary that the applicant and 1 or more State educational agencies have engaged in a cooperative effort to carry out and monitor the project to be assisted.

[''(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide assurances from 1 or more States that such States—

[''(A) intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities; and

[''(B) need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under parts B and C.

[''(h) SELECTION OF RECIPIENTS.—

[''(1) IMPACT OF PROJECT.—In selecting award recipients under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

[''(2) REQUIREMENT FOR APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible applicants that meet State and professionally recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

[''(3) PREFERENCES.—In selecting recipients under this section, the Secretary may give preference to institutions of higher education that are—

[''(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

[''(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

[''(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

[''(i) SERVICE OBLIGATION.—Each application for funds under subsections (b), (c), (d), and (e) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 1 year for every year for which assistance was received, or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

[''(j) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

[''(k) DEFINITIONS.—In this section the term 'personnel' means special education

teachers, general education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities.

[''(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2010.

["SEC. 665. STUDIES AND EVALUATIONS.

[''(a) STUDIES AND EVALUATIONS.—

[''(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute for Education Sciences responsibility to carry out this section.

[''(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded on a competitive basis, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

[''(A) a free appropriate public education to children with disabilities; and

[''(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

[''(b) NATIONAL ASSESSMENT.—

[''(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

[''(A) to determine the effectiveness of this Act in achieving its purposes;

[''(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this Act more effectively; and

[''(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

[''(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, and other appropriate individuals.

[''(3) SCOPE OF ASSESSMENT.—The national assessment shall assess the—

[''(A) implementation of programs assisted under this Act and the impact of those programs on addressing the developmental, educational, and transitional needs of, and improving the academic achievement and functional outcomes of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments, including alternative assessments;

[''(B) types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

[''(C) implementation of the personal preparation professional development activities assisted under this Act and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

[''(D) effectiveness of schools, local educational agencies, States, and other recipients of assistance under this Act, in achieving the purposes of this Act in—

[''(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments, and the performance of children with disabilities on alternate assessments;

[''(ii) improving the participation rate of children with disabilities in the general education curriculum;

[''(iii) improving the transitions of children with disabilities at natural transition points;

[''(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

[''(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

[''(vi) addressing the reading and literacy needs of children with disabilities;

[''(vii) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

[''(viii) improving the participation of parents of children with disabilities in the education of their children;

[''(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities including mediation and voluntary binding arbitration; and

[''(x) reducing the misidentification of children, especially minority and limited English proficient children.

[''(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

[''(A) an interim report that summarizes the preliminary findings of the national assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003; and

[''(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of the Individual with Disabilities Education Improvement Act of 2003.

[''(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WITH SIGNIFICANT DISABILITIES.—The Secretary shall carry out a national study or studies to examine—

[''(1) the criteria that States use to determine eligibility for alternate assessments and the number and type of children who take those assessments;

[''(2) the validity and reliability of alternate assessment instruments and procedures;

[''(3) the alignment of alternate assessments with State academic content and achievement standards or with alternate academic achievement standards; and

[''(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

[''(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

[''(1) summarizes the research conducted under section 662;

[''(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

[''(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

[''(4) describes the extent and progress of the national assessment; and

[''(5) describes the findings and determinations resulting from reviews of State implementation of this Act.

[''(e) AUTHORIZED ACTIVITIES.—In carrying out this subsection, the Secretary may support objective studies, evaluations, and assessments, including studies that—

[''(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

[''(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

[''(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

[''(A) data on—

[''(i) the number of minority children who are referred for special education evaluation;

[''(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

[''(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

[''(iv) the number of minority children who drop out of the educational system; and

[''(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

[''(4) measure educational and transitional services and results of children with disabilities served under this Act, including longitudinal studies that—

[''(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

[''(B) examine educational results, transition services, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

[''(5) identify and report on the placement of children with disabilities by disability category.

[''(f) RESERVATION FOR STUDIES AND TECHNICAL ASSISTANCE.—

[''(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve not more than ½ of 1 percent of the amount appropriated under parts B and C for each fiscal year to carry out this section, of which $3,000,000 shall be available to carry out subsection (c).

[''(2) MAXIMUM AMOUNT.—For the first fiscal year for which the amount described in paragraph (1) is at least $40,000,000, the maximum amount the Secretary may reserve under paragraph (1), is $40,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph (1) is $40,000,000, increased by the cumulative rate of inflation since the fiscal year described in the previous sentence.

[''(3) USE OF MAXIMUM AMOUNT.—In any fiscal year described in paragraph (2) for which the Secretary reserves the maximum amount described in that paragraph, the Secretary shall use at least ½ of the reserved amount for activities under subsection (d).

["Subpart 3—Supports To Improve Results for Children With Disabilities

["SEC. 670. PURPOSES.

[''The purposes of this subpart are to ensure that—

[''(1) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this Act, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

[''(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

[''(3) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

["SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

[''(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

[''(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

[''(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

[''(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

[''(B) be prepared to lead productive independent adult lives, to the maximum extent possible;

[''(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

[''(3) assist parents to—

[''(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

[''(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention, transition services, and related services;

[''(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

[''(D) obtain appropriate information about the range, type, and quality of options, programs, services, technologies, and research based practices and interventions, and resources available to assist children with disabilities and their families in school and at home;

[''(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

[''(F) participate in school reform activities;

[''(4) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

[''(5) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

[''(6) assist parents and students with disabilities to understand their rights and responsibilities under this Act, including those under section 615(m) on the student's reaching the age of majority;

[''(7) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act;

[''(8) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

[''(9) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

[''(10) annually report to the Secretary on—

[''(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

[''(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

[''(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

[''(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

[''(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

[''(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

[''(2) to work with community based organizations.

[''(e) DISTRIBUTION OF FUNDS.—

[''(1) IN GENERAL.—The Secretary shall—

[''(A) make at least 1 award to a parent organization in each State for a parent training and information center which is designated as the statewide parent training and information center; or

[''(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

[''(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

[''(f) QUARTERLY REVIEW.—

[''(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

[''(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

[''(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that has a board of directors—

[''(1) the majority of whom are parents of children with disabilities ages birth through 26;

[''(2) that includes—

[''(A) individuals working in the fields of special education, related services, and early intervention; and

[''(B) individuals with disabilities;

[''(3) the parent and professional members of which are broadly representative of the population to be served; and

[''(4) has as its mission serving families of children and youth with disabilities who—

[''(A) are ages birth through 26; and

[''(B) have the full range of disabilities described in section 602(3).

["SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

[''(a) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

[''(1) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

[''(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

[''(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

[''(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

[''(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

[''(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

[''(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

[''(c) DEFINITION.—As used in this section, the term 'local parent organization' means a parent organization, as defined in section 671(g), that—

[''(1) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

[''(2) has as its mission serving parents of children with disabilities who—

[''(A) are ages birth through 26; and

[''(B) have the full range of disabilities described in section 602(3).

["SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

[''(a) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 671 and 672.

[''(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

[''(1) effective national coordination of parent training efforts, which includes encouraging collaborative efforts among award recipients under sections 671 and 672;

[''(2) dissemination of information, scientifically based research, and research based practices and interventions;

[''(3) promotion of the use of technology, including universal designed technologies,

assistive technology devices, and assistive technology services;

[''(4) reaching underserved populations;

[''(5) including children with disabilities in general education programs;

[''(6) facilitation of transitions from—

[''(A) early intervention services to preschool;

[''(B) preschool to elementary school;

[''(C) elementary school to secondary school; and

[''(D) secondary school to postsecondary environments; and

[''(7) promotion of alternative methods of dispute resolution, including mediation.

[''SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.

[''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

[''(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

[''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

[''(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

[''(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

[''(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

[''(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

[''(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

[''(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL ACTIVITIES.—In carrying out this section, the Secretary may support—

[''(1) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

[''(2) providing (A) video description, (B) open captioning, (C) closed captioning of television programs, videos, or other materials appropriate for use in the classroom setting, or (D) news (but news only until September 30, 2006), when such services are not provided by the producer or distributor of such information, materials, or news, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia;

[''(3) distributing materials described in paragraphs (1) and (2) through such mechanisms as a loan service; and

[''(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

[''(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''SEC. 675. AUTHORIZATION OF APPROPRIATIONS.

[''There are authorized to be appropriated to carry out sections 671, 672, 673, and 663 such sums as may be necessary for each of the fiscal years 2004 through 2009.

[''Subpart 4—Interim Alternative Educational Settings, Behavioral Supports, and Whole School Interventions

''SEC. 681. PURPOSE.

[''The purpose of this subpart is to authorize resources to foster a safe learning environment that supports academic achievement for all students by improving the quality of interim alternative educational settings, providing more behavioral supports in schools, and supporting whole school interventions.

[''SEC. 682. DEFINITION OF ELIGIBLE ENTITY.

[''In this subpart, the term 'eligible entity' means—

[''(1) a local educational agency; or

[''(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

[''(A) another local educational agency;

[''(B) a community-based organization with a demonstrated record of effectiveness in helping special needs students with behavioral challenges succeed;

[''(C) an institution of higher education;

[''(D) a mental health provider; or

[''(E) an educational service agency.

[''SEC. 683. PROGRAM AUTHORIZED.

[''The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities—

[''(1) to establish or expand behavioral supports and whole school behavioral interventions by providing for effective, research-based practices, including—

[''(A) comprehensive, early screening efforts for students at risk for emotional and behavioral difficulties;

[''(B) training for school staff on early identification, prereferral, and referral procedures;

[''(C) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in whole school positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

[''(D) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

[''(E) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

[''(F) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

[''(G) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

[''(2) to improve interim alternative educational settings by—

[''(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers);

[''(B) attracting and retaining a high quality, diverse staff;

[''(C) providing for on-site counseling services;

[''(D) utilizing research-based interventions, curriculum, and practices;

[''(E) allowing students to use instructional technology that provides individualized instruction;

[''(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

[''(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

[''(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

[''(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

[''SEC. 684. PROGRAM EVALUATIONS.

[''(a) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this subpart shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

[''(b) BEST PRACTICES ON WEB SITE.—The Secretary shall make available on the Department's web site information for parents, teachers, and school administrators on best practices for interim alternative educational settings, behavior supports, and whole school intervention.

[''SEC. 685. AUTHORIZATION OF APPROPRIATIONS.

[''There are authorized to be appropriated to carry out this subpart $50,000,000 for fiscal year 2004 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

[TITLE II—REHABILITATION ACT OF 1973

[SEC. 201. FINDINGS.

[Section 2(a) of the Rehabilitation Act of 1973 (29 U.S.C. 701(a)) is amended—

[(1) in paragraph (5), by striking ''and'' at the end;

[(2) in paragraph (6), by striking the period and inserting ''; and''; and

[(3) by adding at the end the following:

[''(7) there is a substantial need to improve and expand services for students with disabilities under this Act.''.

[SEC. 202. DEFINITIONS.

[Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

[(1) by redesignating paragraphs (35) through (39) as paragraphs (36) through (40), respectively;

[(2) in subparagraph (A)(ii) of paragraph (36) (as redesignated in paragraph (1)), by striking ''paragraph (36)(C)'' and inserting ''paragraph (37)(C)''; and

[(3) by inserting after paragraph (34) the following:

[''(35)(A) The term 'student with a disability' means an individual with a disability who—

[''(i) is not younger than 14 and not older than 21;

[''(ii) has been determined to be eligible under section 102(a) for assistance under this title; and

[''(iii)(I) is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act (29 U.S.C. 1411 et seq.); or

[''(II) is an individual with a disability, for purposes of section 504.

[''(B) The term 'students with disabilities' means more than 1 student with a disability.''.

[SEC. 203. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

[Section 100 of the Rehabilitation Act of 1973 (29 U.S.C. 720) is amended—

[(1) by redesignating subsection (d) as subsection (e); and

[(2) by inserting after subsection (c) the following:

[''(d) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR SERVICES TO STUDENTS WITH DISABILITIES.—In addition to any funds appropriated under subsection (b)(1), there are authorized to be appropriated such sums as may be necessary for fiscal years 2004 through 2009 to carry out programs and activities under sections 101(a)(25)(B) and 103(b)(6).''.

[SEC. 204. STATE PLAN.

[(a) ASSESSMENT AND STRATEGIES.—Section 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(15)) is amended—

[(1) in subparagraph (A)(i)—

[(A) in subclause (II), by striking ''and'' at the end;

[(B) in subclause (III), by adding ''and'' at the end; and

[(C) by adding at the end the following:

[''(IV) students with disabilities, including their need for transition services;''; and

[(2) in subparagraph (D)—

[(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and

[(B) by inserting after clause (ii) the following:

[''(iii) the methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title.''.

[(b) SERVICES FOR STUDENTS WITH DISABILITIES.—Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended by adding at the end the following:

[''(25) SERVICES FOR STUDENTS WITH DISABILITIES.—The State plan shall provide an assurance satisfactory to the Secretary that the State—

[''(A) has developed and implemented strategies to address the needs identified in the assessment described in paragraph (15), and achieve the goals and priorities identified by the State, to improve and expand vocational rehabilitation services for students with disabilities on a statewide basis in accordance with paragraph (15); and

[''(B) will use funds appropriated under section 100(d) to carry out programs or activities designed to improve and expand vocational rehabilitation services for students with disabilities that—

[''(i) facilitate the transition of the students with disabilities from the receipt of educational services in school, to the receipt of vocational rehabilitation services under this title, including, at a minimum, those services specified in the interagency agreement required in paragraph (11)(D);

[''(ii) improve the achievement of post-school goals of students with disabilities, including improving the achievement through attendance at meetings regarding individualized education programs developed under section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414);

[''(iii) provide vocational guidance, career exploration services, and job search skills and strategies and technical assistance to students with disabilities;

[''(iv) support the provision of training and technical assistance to State and local educational agency and designated State agency personnel responsible for the planning and provision of services to students with disabilities; and

[''(v) support outreach activities to students with disabilities who are eligible for, and need, services under this title.''.

[SEC. 205. SCOPE OF SERVICES.

[Section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723) is amended—

[(1) in subsection (a)(15), by inserting '', including services described in clauses (i) through (iii) of section 101(a)(25)(B)'' before the semicolon; and

[(2) in subsection (b), by striking paragraph (6) and inserting the following:

[''(6)(A)(i) Consultation and technical assistance services to assist State and local educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

[''(ii) Training and technical assistance described in section 101(a)(25)(B)(iv).

[''(B) Services for groups of individuals with disabilities who meet the requirements of clauses (i) and (iii) of section 7(35)(A), including services described in clauses (i), (ii), (iii), and (v) of section 101(a)(25)(B), to assist in the transition from school to post-school activities.''.

[SEC. 206. STANDARDS AND INDICATORS.

[Section 106(a) of the Rehabilitation Act of 1973 (29 U.S.C. 726(a)) is amended by striking paragraph (1)(C) and all that follows through paragraph (2) and inserting the following:

[''(2) MEASURES.—The standards and indicators shall include outcome and related measures of program performance that—

[''(A) facilitate the accomplishment of the purpose and policy of this title;

[''(B) to the maximum extent practicable, are consistent with the core indicators of performance, and corresponding State adjusted levels of performance, established under section 136(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(b)); and

[''(C) include measures of the program's performance with respect to the transition to post-school activities, and achievement of the post-school goals, of students with disabilities served under the program.''.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Individuals with Disabilities Education Improvement Act of 2003''.

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

''PART A—GENERAL PROVISIONS

''SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

''(a) SHORT TITLE.—This Act may be cited as the 'Individuals with Disabilities Education Act'.

''(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

''(c) FINDINGS.—Congress finds the following:

''(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

''(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

''(A) the children did not receive appropriate educational services;

''(B) the children were excluded entirely from the public school system and from being educated with their peers;

''(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

''(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

''(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

''(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

''(5) Over 25 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

''(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible in order to—

''(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

''(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

''(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

''(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

''(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

''(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

''(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and prereferral interventions to reduce the need to label children as disabled in order to address their learning and behavioral needs;

''(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

''(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

''(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

''(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

''(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

''(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

''(10)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.

''(B) America's ethnic profile is rapidly changing. In the year 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

''(C) Minority children comprise an increasing percentage of public school students.

''(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession.

''(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

''(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

''(C) This poses a special challenge for special education in the referral of, assessment of, and services for, our Nation's students from non-English language backgrounds.

''(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

''(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

''(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their white counterparts.

''(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

''(E) Studies have found that schools with predominately Caucasian students and teachers have placed disproportionately high numbers of their minority students into special education.

''(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

''(B) The opportunity for minority individuals, organizations, and Historically Black Colleges and Universities to participate fully in awards for grants and contracts, boards of organizations receiving funds under this Act, and peer review panels, and in the training of professionals in the area of special education is essential if we are to obtain greater success in the education of minority children with disabilities.

''(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

''(d) PURPOSES.—The purposes of this title are—

''(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment, further education, and independent living;

''(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

''(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

''(2) to assist States in the implementation of a Statewide, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

''(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

''(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

''SEC. 602. DEFINITIONS.

''Except as otherwise provided, as used in this Act:

''(1) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such external device at the same time the child is receiving other services under this Act).

''(2) ASSISTIVE TECHNOLOGY SERVICE.—The term 'assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

''(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

''(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

''(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

''(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

''(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

''(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

''(3) CHILD WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'child with a disability' means a child—

''(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

''(ii) who, by reason thereof, needs special education and related services.

''(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

''(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

''(ii) who, by reason thereof, needs special education and related services.

''(4) CORE ACADEMIC SUBJECT.—The term 'core academic subject' has the meaning given the term in section 9101(11) of the Elementary and Secondary Education Act of 1965.

''(5) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency'—

''(A) means a regional public multiservice agency—

''(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

''(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

''(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

''(6) ELEMENTARY SCHOOL.—The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

''(7) EQUIPMENT.—The term 'equipment' includes—

''(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

''(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

''(8) EXCESS COSTS.—The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

''(A) amounts received—

''(i) under part B of this title;

''(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

''(iii) under parts A and B of title III of that Act; and

''(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

''(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term 'free appropriate public education' means special education and related services that—

''(A) have been provided at public expense, under public supervision and direction, and without charge;

''(B) meet the standards of the State educational agency;

''(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

''(D) are provided in conformity with the individualized education program required under section 614(d).

''(10) HIGHLY QUALIFIED.—The term 'highly qualified' means the following:

''(A) ALL SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, means that the teacher holds at least a bachelor's degree and that—

''(i) the teacher has obtained full State certification as a special education teacher through a State-approved special education teacher preparation program (including certification obtained through alternative routes to certification) or other comparably rigorous methods, or passed the State teacher special education licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

''(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

''(iii) the teacher demonstrates knowledge of special education and the teaching skills necessary to teach children with disabilities.

''(B) NEW ELEMENTARY SCHOOL SPECIAL EDUCATION TEACHERS.—When used with respect to a special education elementary school teacher who is new to the profession, means that the teacher demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum).

''(C) NEW MIDDLE SCHOOL AND SECONDARY SCHOOL SPECIAL EDUCATION TEACHERS.—When used with respect to a special education middle school or secondary school teacher who is new to the profession, means that the teacher has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

''(i) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

''(ii) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

''(D) VETERAN SPECIAL EDUCATION TEACHERS.—When used with respect to an elementary school, middle school, or secondary school special education teacher who is not new to the profession, means that the teacher has—

''(i) met the applicable standard in subparagraph (B) or (C), which includes an option for a test; or

''(ii) has demonstrated competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation for special education teachers that—

''(I) is set by the State for both grade-appropriate academic subject matter knowledge and special education teaching skills;

''(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with special education teachers, core content specialists, teachers, principals, and school administrators;

''(III) provides objective, coherent information about the teachers' attainment of knowledge of core content knowledge in the academic subjects in which a teacher teaches;

''(IV) is applied uniformly to all special education teachers who teach in the same academic subject and the same grade level throughout the State;

''(V) takes into consideration, but is not based primarily on, the time the teacher has been teaching in the academic subject;

''(VI) is made available to the public on request; and

''(VII) may involve multiple objective measures of teacher competency.

''(E) TEACHERS PROVIDING CONSULTATIVE SERVICES.—

''(i) IN GENERAL.—Notwithstanding subparagraphs (B) through (D), when used with respect to a special education teacher who provides only consultative services to a highly qualified regular education teacher (as the term highly qualified is defined in section 9101(23) of the Elementary and Secondary Education Act of 1965), means that the teacher meets the requirements of subparagraph (A).

''(ii) CONSULTATIVE SERVICES.—As used in clause (i), the term 'consultative services' means services that adjust the learning environment, modify instructional methods, adapt curricula, use positive behavior supports and interventions, and select and implement appropriate accommodations to meet the needs of individual children.

''(F) EXCEPTION.—Notwithstanding subparagraphs (B) through (D), when used with respect to a special education teacher who teaches more than 1 subject, primarily to middle school and secondary school-aged children with significant cognitive disabilities, means that the teacher has demonstrated subject knowledge and teaching skills in reading, mathematics, and other areas of the basic elementary school curriculum by—

''(i) passing a rigorous State test (which may consist of passing a State-required certification or licensing test or tests in those areas); or

''(ii) demonstrating competency in all the academic subjects in which the teacher teaches, based on a high objective uniform State standard as described in subparagraph (D)(ii).

''(11) INDIAN.—The term 'Indian' means an individual who is a member of an Indian tribe.

''(12) INDIAN TRIBE.—The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

''(13) INDIVIDUALIZED EDUCATION PROGRAM.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

''(14) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term 'individualized family service plan' has the meaning given such term in section 636.

''(15) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability' has the meaning given such term in section 632.

''(16) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education'—

''(A) has the meaning given such term in section 101 (a) and (b) of the Higher Education Act of 1965; and

''(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

''(17) LIMITED ENGLISH PROFICIENT.—The term 'limited English proficient' has the meaning given the term in section 9101(25) of the Elementary and Secondary Education Act of 1965.

''(18) LOCAL EDUCATIONAL AGENCY.—

''(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

''(B) The term includes—

''(i) an educational service agency, as defined in paragraph (5); and

''(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

''(C) The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

''(19) NATIVE LANGUAGE.—The term 'native language', when used with respect to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

''(20) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

''(21) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(22) PARENT.—The term 'parent'—

''(A) includes a legal guardian; and

''(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

''(23) PARENT ORGANIZATION.—The term 'parent organization' has the meaning given such term in section 671(g).

''(24) PARENT TRAINING AND INFORMATION CENTER.—The term 'parent training and information center' means a center assisted under section 671 or 672.

''(25) RELATED SERVICES.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school health services, counseling services, including rehabilitation counseling, orientation and mobility services, travel training instruction, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such external device at the same time the child is receiving other services under this Act).

''(26) SECONDARY SCHOOL.—The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

''(27) SECRETARY.—The term 'Secretary' means the Secretary of Education.

''(28) SPECIAL EDUCATION.—The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

''(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

''(B) instruction in physical education.

''(29) SPECIFIC LEARNING DISABILITY.—

''(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

''(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

''(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

''(30) STATE.—The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

''(31) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

''(32) SUPPLEMENTARY AIDS AND SERVICES.—The term 'supplementary aids and services' means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

''(33) TRANSITION SERVICES.—The term 'transition services' means a coordinated set of activities for a child with a disability (as defined in paragraph (3)(A)) that—

''(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

''(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

''(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

''SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

''(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

''(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

''(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this Act.

''SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

''(a) IN GENERAL.—A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

''(b) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

''(c) EFFECTIVE DATE.—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

''SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

''(a) IN GENERAL.—If the Secretary determines that a program authorized under this Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

''(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

''(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the 'Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or

''(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

''SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

''The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

''SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

''(a) IN GENERAL.—In carrying out the provisions of this Act, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

''(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that—

''(1) violates or contradicts any provision of this Act; and

''(2) procedurally or substantively lessens the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program

meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

''(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not more than 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

''(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

''(1) violate or contradict any provision of this Act; or

''(2) establish a rule that is required for compliance with, and eligibility under, this Act without following the requirements of section 553 of title 5, United States Code.

''(e) EXPLANATION AND ASSURANCES.—Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B of this Act shall include an explanation in the written response that—

''(1) such response is provided as informal guidance and is not legally binding;

''(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

''(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

''(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS ACT.—

''(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

''(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall—

''(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

''(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.

''SEC. 608. STATE ADMINISTRATION.

''(a) RULEMAKING.—Each State that receives funds under this Act shall—

''(1) ensure that any State rules, regulations, and policies relating to this Act conform to the purposes of this Act; and

''(2) identify in writing to its local educational agencies and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this Act and Federal regulations.

''(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this Act shall support and facilitate local educational agency and school-level systemic reform designed to enable children with disabilities to meet the challenging State student academic achievement standards.

''SEC. 609. REPORT TO CONGRESS.

''The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

''PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

''SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

''(a) GRANTS TO STATES.—

''(1) PURPOSE OF GRANTS.—The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

''(2) MAXIMUM AMOUNT.—The maximum amount available for awarding grants under this section for any fiscal year is—

''(A) the total number of children with disabilities in the 2002–2003 school year in the States who received special education and related services and who were—

''(i) aged 3 through 5, if the State was eligible for a grant under section 619; and

''(ii) aged 6 through 21; multiplied by

''(B) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by;

''(C) the rate of change in the sum of—

''(i) 85 percent of the change in the nationwide total of the population described in subsection (d)(3)(A)(i)(II); and

''(ii) 15 percent of the change in the nationwide total of the population described in subsection (d)(3)(A)(i)(III).

''(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

''(1) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used—

''(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

''(B) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

''(2) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

''(3) DEFINITION.—As used in this subsection, the term 'freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

''(c) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (i).

''(d) ALLOCATIONS TO STATES.—

''(1) IN GENERAL.—After reserving funds for studies and evaluations under section 665, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

''(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

''(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) ALLOCATION OF INCREASE.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

''(I) to each State the amount the State received under this section for fiscal year 1999;

''(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

''(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

''(i) PRECEDING YEAR ALLOCATION.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

''(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

''(I) the sum of—

''(aa) the amount the State received under this section for fiscal year 1999; and

''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

''(II) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

''(III) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

''(I) the amount the State received under this section for the preceding fiscal year; and

''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

''(C) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

''(4) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

''(i) the amount the State received under this section for fiscal year 1999; and

''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

''(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—

''(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

''(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

''(e) STATE-LEVEL ACTIVITIES.—

''(1) STATE ADMINISTRATION.—

''(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

''(i) each State may reserve not more than the maximum amount the State was eligible to reserve for State administration for fiscal year 2003 or $800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

''(ii) each outlying area may reserve not more than 5 percent of the amount the outlying area receives under subsection (b) for any fiscal year or $35,000, whichever is greater.

''(B) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

''(C) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current as of the date of submission of the certification.

''(2) OTHER STATE-LEVEL ACTIVITIES.—

''(A) STATE-LEVEL ACTIVITIES.—

''(i) IN GENERAL.—For the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2004 and 2005, not more than 10 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For fiscal years 2006, 2007, 2008, and 2009, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

''(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i), in the case of a State for which the maximum amount reserved for State administration under paragraph (1) is not greater than $800,000 (as adjusted pursuant to paragraph (1)(A)(i)), the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2004 and 2005, not more than 12 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For each of the fiscal years 2006, 2007, 2008, and 2009, each such State may reserve for such purpose the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

''(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

''(i) For monitoring, enforcement and complaint investigation.

''(ii) To establish and implement the mediation, processes required by section 615(e)(1), including providing for the costs of mediators and support personnel;

''(iii) To support the State protection and advocacy system to advise and assist parents in the areas of—

''(I) dispute resolution and due process;

''(II) voluntary mediation; and

''(III) the opportunity to resolve complaints.

''(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

''(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

''(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

''(iii) To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.

''(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

''(v) To support the development and use of technology, including universally designed technologies and assistive technology devices, to maximize accessibility to the general curriculum for children with disabilities.

''(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.

''(vii) To assist local educational agencies in meeting personnel shortages.

''(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

''(ix) Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

''(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

''(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

''(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies) in addressing the needs of high-need children and the unanticipated enrollment of other children eligible for services under this part, each State shall reserve for each of the fiscal years 2004 through 2009, 2 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for each of the fiscal years 2004 through 2009, respectively, to—

''(i) establish a high-cost fund; and

''(ii) make disbursements from the high-cost fund to local educational agencies in accordance with this paragraph.

''(B) REQUIRED DISBURSEMENTS FROM THE FUND.—

''(i) IN GENERAL.—Each State educational agency shall make disbursements from the fund established under subparagraph (A) to local educational agencies to pay the percentage, described in subparagraph (D), of the costs of providing a free appropriate public education to high-need children.

''(ii) SPECIAL RULE.—If funds reserved for a fiscal year under subparagraph (A) are insufficient to pay the percentage described in subparagraph (D) to assist all the local educational agencies having applications approved under subparagraph (C), then the State educational agency shall ratably reduce the amount paid to each local educational agency that receives a disbursement for that fiscal year.

''(C) APPLICATION.—A local educational agency that desires a disbursement under this subsection shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Such application shall include assurances that funds provided under this paragraph shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

''(D) DISBURSEMENTS.—

''(i) IN GENERAL.—A State educational agency shall make a disbursement to a local educational agency that submits an application under subparagraph (C) in an amount that is equal to 75 percent of the costs that are in excess of 4 times the average per-pupil expenditure in the United States or in the State where the child resides (whichever average per-pupil expenditure is lower) associated with educating each high need child served by such local educational agency in a fiscal year for whom such agency desires a disbursement.

''(ii) APPROPRIATE COSTS.—The costs associated with educating a high need child under clause (i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's appropriately developed IEP.

''(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of such child to ensure a free appropriate public education for such child.

''(F) PERMISSIBLE DISBURSEMENTS FROM REMAINING FUNDS.—A State educational agency may make disbursements to local educational agencies from any funds that are remaining in the high cost fund after making the required disbursements under subparagraph (D) for a fiscal year for the following purposes:

''(i) To pay the costs associated with serving children with disabilities who moved into the areas served by such local agencies after the budget for the following school year had been finalized to assist the local educational agencies in providing a free appropriate public education for such children in such year.

''(ii) To compensate local educational agencies for extraordinary costs, as determined by the State, of any children eligible for services under this part due to—

''(I) unexpected enrollment or placement of children eligible for services under this part; or

''(II) a significant underestimate of the average cost of providing services to children eligible for services under this part.

''(G) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall—

''(i) be allocated to local educational agencies pursuant to subparagraphs (D) or (F) for the next fiscal year; or

''(ii) be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).

''(H) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

''(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education

pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

''(ii) to authorize a State educational agency or local educational agency to indicate a limit on what is expected to be spent on the education of a child with a disability.

''(I) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

''(J) DEFINITIONS.—In this paragraph:

''(i) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

''(ii) HIGH-NEED CHILD.—The term 'high-need', when used with respect to a child with a disability, means a child with a disability for whom a free appropriate public education in a fiscal year costs more than 4 times the average per-pupil expenditure for such fiscal year.

''(K) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2003.—Notwithstanding the provisions of subparagraphs (A) through (J), a State may use funds reserved pursuant to this paragraph for administering and implementing a placement-neutral cost-sharing and reimbursement program of high-need, low-incidence, emergency, catastrophic, or extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were operative on January 1, 2003.

''(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1), (2), and (3) without regard to—

''(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

''(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

''(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe how amounts under this section—

''(A) will be used to meet the requirements of this Act; and

''(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

''(6) FLEXIBILITY IN USING FUNDS FOR PART C.—Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under section 619 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten.

''(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

''(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—

''(A) PROCEDURE.—For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

''(i) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

''(ii) ALLOCATION OF REMAINING FUNDS.—After making allocations under clause (i), the State shall—

''(I) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

''(II) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

''(3) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

''(g) DEFINITIONS.—For the purpose of this section—

''(1) the term 'average per-pupil expenditure in public elementary schools and secondary schools in the United States' means—

''(A) without regard to the source of funds—

''(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

''(ii) any direct expenditures by the State for the operation of those local educational agencies; divided by

''(B) the aggregate number of children in average daily attendance to whom those local educational agencies provided free public education during that preceding year; and

''(2) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

''(h) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

''(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

''(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 through 21 who are enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

''(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as 'BIA') schools, and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools had such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

''(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 through 21 on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

''(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

''(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

''(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

''(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A);

''(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

''(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

''(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

''(3) APPLICABILITY.—Section 616(a) shall apply to the information described in this paragraph.

''(4) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—

''(A) IN GENERAL.—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

''(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an

amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

''(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

''(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

''(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

''(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

''(5) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

''(6) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(20), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

''(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

''(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

''(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

''(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

''(E) provide assistance in the preparation of information required under paragraph (2)(D).

''(7) ANNUAL REPORTS.—

''(A) IN GENERAL.—The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

''(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

''(i) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated such sums as may be necessary.

''SEC. 612. STATE ELIGIBILITY.

''(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

''(1) FREE APPROPRIATE PUBLIC EDUCATION.—

''(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

''(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

''(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

''(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

''(I) were not actually identified as being a child with a disability under section 602(3); or

''(II) did not have an individualized education program under this part.

''(C) STATE FLEXIBILITY.—A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.

''(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

''(3) CHILD FIND.—

''(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

''(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

''(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

''(5) LEAST RESTRICTIVE ENVIRONMENT.—

''(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

''(B) ADDITIONAL REQUIREMENT.—

''(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

''(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

''(6) PROCEDURAL SAFEGUARDS.—

''(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

''(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

''(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) and (b) of section 614.

''(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

''(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in

transition planning conferences arranged by the designated lead agency under section 635(a)(10).

''(10) CHILDREN IN PRIVATE SCHOOLS.—

''(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

''(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

''(I) Amounts to be expended for the provision of those services (including direct services to parentally placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

''(II) Such services may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.

''(III) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be children with disabilities, and the number of children served under this subsection.

''(ii) CHILD-FIND REQUIREMENT.—

''(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.

''(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children and an accurate count of such children.

''(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

''(IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local education agency has met its obligations under clause (i).

''(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities who are parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—

''(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

''(II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;

''(III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

''(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

''(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services through a contract.

''(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

''(v) COMPLIANCE.—

''(I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

''(II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

''(vi) PROVISION OF EQUITABLE SERVICES.—

''(I) DIRECT SERVICES.—To the extent practicable, the local educational agency shall provide direct services to children with disabilities parentally placed in private schools.

''(II) DIRECTLY OR THROUGH CONTRACTS.—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.

''(III) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

''(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

''(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

''(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

''(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

''(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

''(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

''(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

''(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

''(I) if—

''(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

''(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

''(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

''(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

''(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

''(I) shall not be reduced or denied for failure to provide such notice if—

''(aa) the school prevented the parent from providing such notice; or

''(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); and

''(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

''(aa) the parent is illiterate and cannot write in English; or

''(bb) compliance with clause (iii)(I) would likely have resulted in physical or serious emotional harm to the child.

''(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

''(A) IN GENERAL.—The State educational agency is responsible for ensuring that—

''(i) the requirements of this part are met; and

''(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

''(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

''(II) meet the educational standards of the State educational agency.

''(B) LIMITATION.—Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

''(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

''(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

''(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

''(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

''(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

''(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

''(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

''(B) OBLIGATION OF PUBLIC AGENCY.—

''(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(25) relating to related services, 602(32) relating to supplementary aids and services, and 602(33) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

''(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

''(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

''(i) State statute or regulation;

''(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

''(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

''(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

''(14) PERSONNEL STANDARDS.—

''(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

''(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The standards under subparagraph (A) include standards for related services personnel and paraprofessionals that—

''(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

''(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

''(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

''(C) STANDARDS FOR SPECIAL EDUCATION TEACHERS.—

''(i) IN GENERAL.—The standards described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the end of the 2006–2007 school year.

''(ii) COMPLIANCE.—Notwithstanding paragraphs (2) and (3) of section 1119(a) of the Elementary and Secondary Education Act of 1965, for purposes of determining compliance with such paragraphs—

''(I) the Secretary, the State educational agency, and local educational agencies shall apply the definition of highly qualified in section 602(10) to special education teachers; and

''(II) the State shall ensure that all special education teachers teaching in core academic subjects within the State are highly qualified (as defined in section 602(10)) not later than the end of the 2006–2007 school year.

''(iii) PARENTS' RIGHT TO KNOW.—In carrying out section 1111(h)(6) of the Elementary and Secondary Education Act of 1965 with respect to special education teachers, a local educational agency shall—

''(I) include in a response to a request under such section any additional information needed to demonstrate that the teacher meets the applicable requirements of section 602(10) relating to certification or licensure as a special education teacher; and

''(II) apply the definition of highly qualified in section 602(10) in carrying out section 1111(h)(6)(B)(ii).

''(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

''(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this subsection shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.

''(15) PERFORMANCE GOALS AND INDICATORS.—The State—

''(A) has established goals for the performance of children with disabilities in the State that—

''(i) promote the purposes of this Act, as stated in section 601(d);

''(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

''(iii) address graduation rates and drop out rates, as well as such other factors as the State may determine; and

''(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

''(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

''(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A).

''(16) PARTICIPATION IN ASSESSMENTS.—

''(A) IN GENERAL.— All children with disabilities are included in all general State and districtwide assessment programs and accountability systems, including assessments and accountability systems described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations, alternate assessments where necessary, and as indicated in their respective individualized education programs.

''(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

''(C) ALTERNATE ASSESSMENTS.—

''(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (B) as indicated in their respective individualized education programs.

''(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—

''(I) are aligned with the State's challenging academic content and academic achievement standards; and

''(II) if the State has adopted alternate academic achievement standards permitted under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

''(iii) CONDUCT OF ALTERNATIVE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

''(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

''(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

''(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

''(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

''(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

''(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

''(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

''(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

''(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

''(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

''(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

''(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

''(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

''(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

''(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

''(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

''(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

''(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

''(20) STATE ADVISORY PANEL.—

''(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

''(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

''(i) parents of children with disabilities ages birth through 26;

''(ii) individuals with disabilities;

''(iii) teachers;

''(iv) representatives of institutions of higher education that prepare special education and related services personnel;

''(v) State and local education officials;

''(vi) administrators of programs for children with disabilities;

''(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

''(viii) representatives of private schools and public charter schools;

''(ix) at least 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

''(x) representatives from the State juvenile and adult corrections agencies.

''(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities ages birth through 26 or parents of such individuals.

''(D) DUTIES.—The advisory panel shall—

''(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

''(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

''(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

''(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

''(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

''(21) SUSPENSION AND EXPULSION RATES.—

''(A) IN GENERAL.—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

''(i) among local educational agencies in the State; or

''(ii) compared to such rates for nondisabled children within such agencies.

''(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

''(22) ACCESS TO INSTRUCTIONAL MATERIALS.—

''(A) IN GENERAL.—The State adopts the national Instructional Materials Accessibility Standard described in section 675(a) for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of the standard in the Federal Register.

''(B) PREPARATION AND DELIVERY OF FILES.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a State educational agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enters into a written contract with the publisher of the print instructional materials to—

''(i) prepare, and on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, established pursuant to section 675(b), electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or

''(ii) purchase instructional materials from a publisher that are produced in or may be rendered in the specialized formats described in section 675(a)(4)(C).

''(C) ASSISTIVE TECHNOLOGY.—In carrying out subparagraph (B), the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

''(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

''(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

''(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

''(c) EXCEPTION FOR PRIOR STATE PLANS.—

''(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

''(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a

modification to an application to the same extent and in the same manner as this section applies to the original plan.

''(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

''(d) APPROVAL BY THE SECRETARY.—

''(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

''(2) NOTICE AND HEARING.—The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State—

''(A) with reasonable notice; and

''(B) with an opportunity for a hearing.

''(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

''(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

''(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

''(2) PAYMENTS.—

''(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

''(i) the total amount received by the State under this part for such fiscal year; by

''(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

''(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

''(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

''(3) NOTICE AND HEARING.—

''(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

''(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

''(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

''(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

''SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

''(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

''(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

''(2) USE OF AMOUNTS.—

''(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

''(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

''(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

''(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

''(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

''(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

''(ii) a decrease in the enrollment of children with disabilities;

''(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

''(I) has left the jurisdiction of the agency;

''(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

''(III) no longer needs such program of special education; or

''(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

''(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—

''(i) 8 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 8 percent of the amount of funds the local educational agency receives under this part.

''(ii) 40 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 40 percent of the amount of funds the local educational agency receives under this part, subject to clause (iv).

''(iii) EARLY INTERVENING SERVICES.—

''(I) 8 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (i), the 8 percent funds shall be counted toward the percentage and amount of funds that may be used to provide early intervening educational services pursuant to subsection (f).

''(II) 40 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (ii), the local educational agency shall use an amount of the 40 percent funds from clause (ii) that represents 15 percent of the total amount of funds the local educational agency receives under this part, to provide early intervening educational services pursuant to subsection (f).

''(iv) SPECIAL RULE.—Funds treated as local funds pursuant to clause (i) or (ii) may be considered non-Federal or local funds for the purposes of—

''(I) clauses (ii) and (iii) of subparagraph (A); and

''(II) the provision of the local share of costs for title XIX of the Social Security Act.

''(v) REPORT.—For each fiscal year in which a local educational agency exercises its authority pursuant to this subparagraph and treats Federal funds as local funds, the local educational agency shall report to the State educational agency the amount of funds so treated and the activities that were funded with such funds.

''(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

''(i) the number of children with disabilities participating in the schoolwide program; multiplied by

''(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

''(II) the number of children with disabilities in the jurisdiction of that agency.

''(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 612(a)(14) of this Act and section 2122 of the Elementary and Secondary Education Act of 1965.

''(4) PERMISSIVE USE OF FUNDS.—

''(A) USES.—Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

''(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular

class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

''(ii) EARLY INTERVENING SERVICES.—To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

''(B) ADMINISTRATIVE CASE MANAGEMENT.—A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

''(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

''(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

''(B) provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State's charter school law.

''(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a local educational agency, when purchasing print instructional materials, acquires these instructional materials in the same manner as a State educational agency described in section 612(a)(22).

''(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

''(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

''(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.—The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6398) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

''(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

''(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

''(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

''(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

''(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

''(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

''(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

''(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

''(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

''(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

''(1) JOINT ESTABLISHMENT.—

''(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

''(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

''(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

''(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

''(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

''(B) be jointly responsible for implementing programs that receive assistance under this part.

''(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

''(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

''(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

''(ii) be carried out only by that educational service agency.

''(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

''(f) EARLY INTERVENING SERVICES.—

''(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount treated as local funds pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening educational services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who do not meet the definition of a child with a disability under section 602(3) but who need additional academic and behavioral support to succeed in a general education environment.

''(2) ACTIVITIES.—In implementing coordinated, early intervening educational services under this subsection, a local educational agency may carry out activities that include—

''(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;

''(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction; and

''(C) developing and implementing interagency financing structures for the provision of such services and supports.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to either limit or create a right to a free appropriate public education under this part.

''(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening educational services with funds made available for this subsection, shall annually report to the State educational agency on—

''(A) the number of children served under this subsection; and

''(B) the number of children served under this subsection who are subsequently referred to special education.

''(5) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out coordinated, early intervening educational services aligned with activities funded by, and carried

out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

''(6) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Comptroller General shall conduct a study on the types of services provided to children served under this subsection, and shall submit a report to Congress regarding the study.

''(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

''(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

''(A) has not provided the information needed to establish the eligibility of such agency under this section;

''(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

''(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

''(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

''(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

''(h) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that—

''(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

''(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

''(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

''(j) STATE AGENCY FLEXIBILITY.—

''(1) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—If a State educational agency pays or reimburses local educational agencies within the State for not less than 80 percent of the non-Federal share of the costs of special education and related services, or the State is the sole provider of free appropriate public education or direct services pursuant to section 612(b), then the State educational agency, notwithstanding sections 612(a) (17) and (18) and 612(b), may treat funds allocated pursuant to section 611 as general funds available to support the educational purposes described in paragraph (2) (A) and (B).

''(2) CONDITIONS.—A State educational agency may use funds in accordance with paragraph (1) subject to the following conditions:

''(A) 8 PERCENT RULE.—A State educational agency may treat not more than 8 percent of the funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act.

''(B) 40 PERCENT RULE.—For any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a State educational agency may treat not more than 40 percent of the amount of funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act, subject to subparagraph (C).

''(C) REQUIREMENT.—A State educational agency may exercise its authority pursuant to subparagraph (B) only if the State educational agency uses an amount of the 40 percent funds from subparagraph (B) that represents 15 percent of the total amount of funds the State educational agency receives under this part, to provide, or to pay or reimburse local educational agencies for providing, early intervening prereferral services pursuant to subsection (f).

''(2) PROHIBITION.—Notwithstanding subsection (a), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, then the Secretary shall prohibit the State educational agency from treating funds allocated under this part as general funds pursuant to paragraph (1).

''(3) REPORT.—For each fiscal year for which a State educational agency exercises its authority pursuant to paragraph (1) and treats Federal funds as general funds, the State educational agency shall report to the Secretary the amount of funds so treated and the activities that were funded with such funds.

''SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

''(a) EVALUATIONS AND REEVALUATIONS.—

''(1) INITIAL EVALUATIONS.—

''(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

''(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

''(C) PROCEDURES.—Such initial evaluation shall consist of procedures—

''(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within which the evaluation must be conducted, within such timeframe; and

''(ii) to determine the educational needs of such child.

''(D) PARENTAL CONSENT.—

''(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

''(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

''(iii) REFUSAL OR FAILURE TO CONSENT.—If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such informed consent.

''(2) REEVALUATIONS.—

''(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

''(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

''(ii) if the child's parents or teacher requests a reevaluation.

''(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

''(i) not more than once a year, unless the parent and the local educational agency agree otherwise; and

''(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

''(b) EVALUATION PROCEDURES.—

''(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

''(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

''(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

''(i) whether the child is a child with a disability; and

''(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;

''(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

''(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

''(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

''(A) tests and other evaluation materials used to assess a child under this section—

''(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

''(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;

''(iii) are used for purposes for which the assessments or measures are valid and reliable;

''(iv) are administered by trained and knowledgeable personnel; and

''(v) are administered in accordance with any instructions provided by the producer of such tests;

''(B) the child is assessed in all areas of suspected disability; and

''(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

''(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

''(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

''(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

''(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

''(A) lack of scientifically based instruction in reading;

''(B) lack of instruction in mathematics; or

''(C) limited English proficiency.

''(6) SPECIFIC LEARNING DISABILITIES.—

''(A) IN GENERAL.—Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602(29), a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

''(B) ADDITIONAL AUTHORITY.—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

''(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

''(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

''(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and

''(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

''(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

''(ii) the present levels of performance and educational needs of the child;

''(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

''(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

''(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials and procedures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

''(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

''(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability, the local educational agency—

''(A) shall notify the child's parents of—

''(i) that determination and the reasons for the determination; and

''(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

''(B) shall not be required to conduct such an assessment unless requested by the child's parents.

''(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

''(B) EXCEPTION.—

''(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.

''(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

''(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

''(1) DEFINITIONS.—As used in this title:

''(A) INDIVIDUALIZED EDUCATION PROGRAM.—

''(i) IN GENERAL.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

''(I) a statement of the child's present levels of academic achievement and functional performance, including—

''(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or

''(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

''(II) a statement of measurable annual goals, including academic and functional goals, designed to—

''(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum; and

''(bb) meet each of the child's other educational needs that result from the child's disability;

''(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

''(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

''(aa) to advance appropriately toward attaining the annual goals;

''(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

''(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

''(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

''(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

''(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

''(AA) the child cannot participate in the regular assessment; and

''(BB) the particular alternate assessment selected is appropriate for the child;

''(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

''(VIII) beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter—

''(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

''(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and

''(cc) beginning at least 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

''(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—

''(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

''(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

''(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

''(i) the parents of a child with a disability;

''(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

''(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;

''(iv) a representative of the local educational agency who—

''(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

''(II) is knowledgeable about the general curriculum; and

''(III) is knowledgeable about the availability of resources of the local educational agency;

''(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

''(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

''(vii) whenever appropriate, the child with a disability.

''(C) IEP TEAM ATTENDANCE.—

''(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if that member, the parent of a child with a disability, and the local educational agency agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

''(ii) EXCUSAL.—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

''(I) that member, the parent, and the local educational agency consent to the excusal; and

''(II) the member submits input into the development of the IEP prior to the meeting.

''(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.—A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

''(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

''(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

''(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

''(i) consistent with State policy; and

''(ii) agreed to by the agency and the child's parents.

''(3) DEVELOPMENT OF IEP.—

''(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

''(i) the strengths of the child;

''(ii) the concerns of the parents for enhancing the education of their child;

''(iii) the results of the initial evaluation or most recent evaluation of the child; and

''(iv) the academic, developmental, and functional needs of the child.

''(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

''(i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;

''(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

''(iii) in the case of a child who is blind or visually impaired—

''(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and

''(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;

''(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

''(v) consider whether the child requires assistive technology devices and services.

''(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

''(D) AGREEMENT.—In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

''(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.

''(4) REVIEW AND REVISION OF IEP.—

''(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

''(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

''(ii) revise the IEP as appropriate to address—

''(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

''(II) the results of any reevaluation conducted under this section;

''(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

''(IV) the child's anticipated needs; or

''(V) other matters.

''(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

''(5) THREE-YEAR IEP.—

''(A) DEVELOPMENT OF 3-YEAR IEP.—The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of—

''(i) measurable goals that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and

''(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).

''(B) REVIEW AND REVISION OF 3-YEAR IEP.—

''(i) REQUIREMENT.—Each year the local educational agency shall ensure that the IEP Team—

''(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and

''(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.

''(ii) COMPREHENSIVE REVIEW.—If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

''(iii) PREFERENCE.—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

''(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

''(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

''(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

''(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).

''(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

''(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

''(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

''(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP Team meetings and placement meetings pursuant to this section, the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

''SEC. 615. PROCEDURAL SAFEGUARDS.

''(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

''(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

''(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to

such child, and to obtain an independent educational evaluation of the child;

''(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

''(3) written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

''(A) proposes to initiate or change; or

''(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child;

''(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

''(5) an opportunity for mediation in accordance with subsection (e);

''(6) an opportunity for either party to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

''(7)(A) procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

''(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

''(ii) that shall include—

''(I) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

''(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

''(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

''(IV) a proposed resolution of the problem to the extent known and available to the party at the time; and

''(B) a requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii);

''(8) a requirement that the local educational agency shall send a prior written notice pursuant to subsection (c)(1) in response to a parent's due process complaint notice under paragraph (7) if the local educational agency has not sent such a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice; and

''(9) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

''(c) NOTIFICATION REQUIREMENTS.—

''(1) CONTENT OF PRIOR WRITTEN NOTICE.—The prior written notice of the local educational agency required by subsection (b)(3) shall include—

''(A) a description of the action proposed or refused by the agency;

''(B) an explanation of why the agency proposes or refuses to take the action;

''(C) a description of any other options that the agency considered and the reasons why those options were rejected;

''(D) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

''(E) a description of any other factors that are relevant to the agency's proposal or refusal;

''(F) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

''(G) sources for parents to contact to obtain assistance in understanding the provisions of this part.

''(2) DUE PROCESS COMPLAINT NOTICE.—

''(A) IN GENERAL.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of that subsection.

''(B) TIMING.—The party sending a hearing officer notification under subparagraph (A) shall send the notification within 20 days of receiving the complaint.

''(C) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (B), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify both parties in writing of such determination.

''(D) PARENT'S AMENDED NOTICE OF COMPLAINT.—

''(i) IN GENERAL.—A parent may amend the parent's due process complaint notice only if—

''(I) the public agency consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

''(II) the hearing officer grants permission, but may do so only before a due process hearing occurs.

''(ii) APPLICABLE TIMELINE.—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice.

''(d) PROCEDURAL SAFEGUARDS NOTICE.—

''(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

''(A) upon initial referral or parental request for evaluation;

''(B) upon registration of a complaint under subsection (b)(6); and

''(C) upon request by a parent.

''(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

''(A) independent educational evaluation;

''(B) prior written notice;

''(C) parental consent;

''(D) access to educational records;

''(E) the opportunity to present and resolve complaints, including—

''(i) the time period in which to make a complaint;

''(ii) the opportunity for the agency to resolve the complaint; and

''(iii) the availability of mediation;

''(F) the child's placement during pendency of due process proceedings;

''(G) procedures for students who are subject to placement in an interim alternative educational setting;

''(H) requirements for unilateral placement by parents of children in private schools at public expense;

''(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

''(J) State-level appeals (if applicable in that State);

''(K) civil actions, including the time period in which to file such actions; and

''(L) attorney's fees.

''(e) MEDIATION.—

''(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

''(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

''(A) The procedures shall ensure that the mediation process—

''(i) is voluntary on the part of the parties;

''(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

''(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

''(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents and schools who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

''(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

''(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

''(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

''(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

''(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

''(F) WRITTEN MEDIATION AGREEMENT.—An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

''(f) IMPARTIAL DUE PROCESS HEARING.—

''(1) IN GENERAL.—

''(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

''(B) OPPORTUNITY TO RESOLVE COMPLAINT.—

''(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the IEP Team—

''(I) within 15 days of receiving notice of the parents' complaint;

''(II) which shall include a representative of the public agency who has decisionmaking authority on behalf of such agency;

''(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

''(IV) where the parents of the child discuss their complaint, and the specific issues that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

''(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 15 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

''(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is reached to resolve the complaint at such meeting, the agreement shall be set forth in a written settlement agreement that is—

''(I) signed by both the parent and a representative of the public agency who has decisionmaking authority on behalf of such agency; and

''(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

''(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

''(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

''(3) LIMITATIONS ON HEARING.—

''(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

''(i) not be—

''(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

''(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

''(ii) possess a fundamental understanding of this Act, Federal and State regulations pertaining to this Act, and interpretations of this Act by State and Federal courts;

''(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

''(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

''(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

''(C) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

''(D) TIMELINE FOR REQUESTING HEARING.—A parent or public agency shall request an impartial due process hearing within 2 years of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

''(E) EXCEPTION TO THE STATUTE OF LIMITATIONS.—The statute of limitations described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

''(i) failure of the local educational agency to provide prior written or procedural safeguards notices;

''(ii) false representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

''(iii) the local educational agency's withholding of information from parents.

''(F) DECISION OF HEARING OFFICER.—

''(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

''(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

''(I) compromised the child's right to an appropriate public education;

''(II) seriously hampered the parents' opportunity to participate in the process; or

''(III) caused a deprivation of educational benefits.

''(iii) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

''(G) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the right of a parent to file a complaint with the State educational agency.

''(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such State educational agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

''(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

''(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

''(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

''(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

''(4) the right to a written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

''(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

''(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(20).

''(i) ADMINISTRATIVE PROCEDURES.—

''(1) IN GENERAL.—

''(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

''(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

''(2) RIGHT TO BRING CIVIL ACTION.—

''(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

''(B) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

''(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

''(i) shall receive the records of the administrative proceedings;

''(ii) shall hear additional evidence at the request of a party; and

''(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

''(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

''(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

''(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

''(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

''(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

''(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

''(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

''(II) the offer is not accepted within 10 days; and

''(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

''(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

''(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

''(I) a meeting convened as a result of an administrative hearing or judicial action; or

''(II) an administrative hearing or judicial action for purposes of this paragraph.

''(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

''(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

''(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

''(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

''(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

''(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

''(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

''(4) PARENTS REPRESENTING THEIR CHILDREN IN COURT.—Subject to subsection (m), and notwithstanding any other provision of Federal law regarding attorney representation (including the Federal Rules of Civil Procedure), a parent of a child with a disability may represent the child in any action under this part in Federal or State court, without the assistance of an attorney.

''(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

''(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

''(1) AUTHORITY OF SCHOOL PERSONNEL.—

''(A) IN GENERAL.—School personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

''(B) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (C), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1).

''(C) MANIFESTATION DETERMINATION.—

''(i) IN GENERAL.—Except as provided in subparagraphs (A) and (D), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the IEP Team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations, to determine—

''(I) if the conduct in question was the result of the child's disability; or

''(II) if the conduct in question resulted from the failure to implement the IEP or to implement behavioral interventions as required by section 614(d)(3)(B)(i).

''(ii) MANIFESTATION.—If the IEP Team determines that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

''(D) SPECIAL CIRCUMSTANCES.—In cases where a child—

''(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency; or

''(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school or a school function under the jurisdiction of a State or local educational agency; or

''(iii) has committed serious bodily injury upon another person while at school or at a school function under the jurisdiction of a State or local educational agency,

school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability.

''(E) NOTIFICATION.—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

''(F) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (B) or (D) shall—

''(i) continue to receive educational services pursuant to section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

''(ii) receive behavioral intervention services as described in section 614(d)(3)(B)(i), and a functional behavioral assessment (but only if the local educational agency did not conduct such an assessment before the violation occurred), designed to address the behavior violation so that the violation does not recur.

''(2) DETERMINATION OF SETTING.—The alternative educational setting shall be determined by the IEP Team.

''(3) APPEAL.—

''(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

''(B) AUTHORITY OF HEARING OFFICER.—

''(i) IN GENERAL.—If a parent of a child with a disability disagrees with a decision as described in subparagraph (A), the hearing officer may determine whether the decision regarding such action was appropriate.

''(ii) CHANGE OF PLACEMENT ORDER.—A hearing officer under this section may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

''(4) PLACEMENT DURING APPEALS.—When a parent requests a hearing regarding a disciplinary procedure described in paragraph (1)(B) or challenges the interim alternative educational setting or manifestation determination—

''(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(B), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

''(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested.

''(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

''(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

''(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

''(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

''(ii) the parent of the child has requested an evaluation of the child pursuant to section 614;

''(iii) the teacher of the child, or other personnel of the local educational agency, has expressed concern about a pattern of behavior demonstrated by the child, to the director of special education of such agency or to other administrative personnel of the agency; or

''(iv) the child has engaged in a pattern of behavior that should have alerted personnel of the local educational agency that the child may be in need of special education and related services.

''(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child has a disability if the parent of the child has not agreed to allow an evaluation of the child pursuant to section 614.

''(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

''(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

''(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

''(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

''(A) CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

''(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

''(7) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

''(A) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or

V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

''(B) ILLEGAL DRUG.—The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

''(C) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.

''(D) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

''(l) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

''(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

''(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

''(A) the public agency shall provide any notice required by this section to both the individual and the parents;

''(B) all other rights accorded to parents under this part transfer to the child;

''(C) the agency shall notify the individual and the parents of the transfer of rights; and

''(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

''(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

''(n) E-MAIL.—A parent of a child with a disability may elect to receive notices required under this section by e-mail communication, if the public agency makes such option available.

''SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

''(a) FEDERAL AND STATE MONITORING.—

''(1) IN GENERAL.—The Secretary shall—

''(A) monitor implementation of this Act through—

''(i) oversight of the States' exercise of general supervision, as required in section 612(a)(11); and

''(ii) the system of indicators, described in subsection (b)(2); and

''(B) enforce this Act in accordance with subsection (c); and

''(C) require States to monitor implementation of this Act by local educational agencies and enforce this Act in accordance with paragraph (3) of this subsection and subsection (c).

''(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

''(3) MONITORING PRIORITIES.—The Secretary shall monitor, and shall require States to monitor, the following priority areas:

''(A) Provision of a free appropriate public education in the least restrictive environment.

''(B) Provision of transition services, as defined in section 602(33).

''(C) State exercise of general supervisory authority, including the effective use of complaint resolution and mediation.

''(D) Overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

''(4) PERMISSIVE AREAS OF REVIEW.—The Secretary may examine other relevant information and data, including data provided by States under section 618, and data from the State's compliance plan under subsection (b)(2)(C).

''(b) INDICATORS.—

''(1) SYSTEM.—The Secretary shall implement and administer a system of required indicators as described in paragraph (2) that measures the progress of States in improving their performance under this Act.

''(2) INDICATORS.—

''(A) IN GENERAL.—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

''(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number and percentage of students with disabilities who graduate with a regular diploma within the number of years specified in a student's IEP; and

''(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared to the performance and rates for all children.

''(B) SECRETARY'S ASSESSMENT.—Based on that review and a review of the State's compliance plan under subparagraph (C), the Secretary shall assess the State's progress in improving educational results for children with disabilities.

''(C) STATE COMPLIANCE PLAN.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, each State shall have in place a compliance plan developed in collaboration with the Secretary. Each State's compliance plan shall—

''(i) include benchmarks to measure continuous progress on the priority areas described in subsection (a)(3);

''(ii) describe strategies the State will use to achieve the benchmarks; and

''(iii) be approved by the Secretary.

''(D) PUBLIC REPORTING AND PRIVACY.—

''(i) IN GENERAL.—After the Secretary approves a State's compliance plan under subparagraph (C), the State shall use the benchmarks in the plan and the indicators described in this subsection to analyze the progress of each local educational agency in the State on those benchmarks and indicators.

''(ii) REPORT.—The State shall report annually to the public on each local educational agency's progress under clause (i), except where doing so would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

''(3) DATA COLLECTION AND ANALYSIS.—The Secretary shall—

''(A) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this subsection is collected, analyzed, and accurately reported to the Secretary; and

''(B) provide technical assistance to improve the capacity of States to meet these data collection requirements.

''(c) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary shall examine relevant State information and data annually, to determine whether the State is making satisfactory progress toward improving educational results for children with disabilities using the indicators described in subsection (b)(2)(A) and the benchmarks established in the State compliance plan under subsection (b)(2)(C), and is in compliance with the provisions of this Act.

''(2) LACK OF SATISFACTORY PROGRESS BY A STATE.—

''(A) IN GENERAL.—If after examining data, as provided in subsection (b)(2) (A) and (C), the Secretary determines that a State failed to make satisfactory progress in meeting the indicators described in subsection (b)(2)(A) or has failed to meet the benchmarks described in subsection (b)(2)(C) for 2 consecutive years after the State has developed its compliance plan, the Secretary shall notify the State that the State has failed to make satisfactory progress, and shall take 1 or more of the following actions:

''(i) Direct the use of State level funds for technical assistance, services, or other expenditures to ensure that the State resolves the area or areas of unsatisfactory progress.

''(ii) Withhold not less than 20, but not more than 50, percent of the State's funds for State administration and activities for the fiscal year under section 611(e), after providing the State the opportunity to show cause why the withholding should not occur, until the Secretary determines that sufficient progress has been made in improving educational results for children with disabilities.

''(B) ADDITIONAL SECRETARIAL ACTION.—If, at the end of the 5th year after the Secretary has approved the compliance plan that the State has developed under subsection (b)(2)(C), the Secretary determines that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving educational results for children with disabilities pursuant to the indicators described in subsection (b)(2)(A), the Secretary shall take 1 or more of the following actions:

''(i) Seek to recover funds under section 452 of the General Education Provisions Act.

''(ii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part pursuant to subsection (c)(5).

''(iii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(iv) Pending the outcome of any hearing to withhold payments under clause (ii), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

''(C) SUBSTANTIAL NONCOMPLIANCE.—Notwithstanding subparagraph (B), at any time that the Secretary determines that a State is not in substantial compliance with any provision of this part or that there is a substantial failure to comply with any condition of a local agency's or State agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

''(i) Request that the State prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

''(ii) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

''(iii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

''(iv) Recovery of funds under section 452 of the General Education Provisions Act.

''(v) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part.

''(vi) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(vii) Pending the outcome of any hearing to withhold payments under clause (v), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

''(3) EGREGIOUS NONCOMPLIANCE.—At any time that the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary shall take such additional enforcement actions as the Secretary determines to be appropriate from among those actions specified in paragraph (2)(C), and, additionally, may impose 1 or more of the following sanctions upon that State:

''(A) Institute a cease and desist action under section 456 of the General Education Provisions Act.

''(B) Refer the case to the Office of the Inspector General.

''(4) REPORT TO CONGRESS.—The Secretary shall report to Congress within 30 days of taking enforcement action pursuant to paragraph (2)(B) or (C), or (3), on the specific action taken and the reasons why enforcement action was taken.

''(5) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraphs (2)(B)(ii) and (2)(C)(v), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to make satisfactory progress as specified in paragraph (2)(B), or to comply with the provisions of this part, as specified in paragraph (2)(C), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (2)(B) or (2)(C) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

''(6) JUDICIAL REVIEW.—

''(A) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

''(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

''(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

''(d) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that—

''(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

''(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

''(e) STATE AND LOCAL MONITORING.—

''(1) IN GENERAL.—The State educational agency shall monitor and enforce implementation of this Act, implement a system of monitoring the benchmarks in the State's compliance plan under subsection (b)(2)(C), and require local educational agencies to monitor and enforce implementation of this Act.

''(2) ADDITIONAL ENFORCEMENT OPTIONS.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the benchmarks in the State's compliance plan, the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under section 613(a)(2)(C) for any fiscal year.

''SEC. 617. ADMINISTRATION.

''(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

''(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

''(A) the education of children with disabilities; and

''(B) carrying out this part; and

''(2) provide short-term training programs and institutes.

''(b) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to this part.

''(c) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661, and 664, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that not more than 20 such personnel shall be employed at any 1 time.

''(d) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this Act, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

''(1) a model IEP form;

''(2) a model individualized family service plan (IFSP) form;

''(3) a model form of the notice of procedural safeguards described in section 615(d); and

''(4) a model form of the prior written notice described in section 615 (b)(3) and (c)(1) that is consistent with the requirements of this part and is sufficient to meet such requirements.

''SEC. 618. PROGRAM INFORMATION.

''(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on—

''(1)(A) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are receiving a free appropriate public education;

''(B) the number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services;

''(C) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are participating in regular education;

''(D) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

''(E) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who, for each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services;

''(F) the number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;

''(G)(i) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are removed to an interim alternative educational setting under section 615(k)(1);

''(ii) the acts or items precipitating those removals; and

''(iii) the number of children with disabilities who are subject to long-term suspensions or expulsions;

''(H) the incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more;

''(I) the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled;

''(J) the number of due process complaints filed under section 615 and the number of hearings conducted;

''(K) the number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings;

''(L) the number of hearings requested under section 615(k)(3)(B)(ii) and the number of changes in placements ordered as a result of those hearings; and

''(M) the number of mediations held and the number of settlement agreements reached through such mediations;

''(2) the number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C; and

''(3) any other information that may be required by the Secretary.

''(b) DATA REPORTING.—The data described in subsection (a) shall be reported by each State at the school district and State level in a manner that does not result in the disclosure of data identifiable to individual children.

''(c) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this Act.

''(d) DISPROPORTIONALITY.—

''(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

''(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

''(B) the placement in particular educational settings of such children; and

''(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

''(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

''SEC. 619. PRESCHOOL GRANTS.

''(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

''(1) to children with disabilities aged 3 through 5, inclusive; and

''(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

''(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

''(1) is eligible under section 612 to receive a grant under this part; and

''(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

''(c) ALLOCATIONS TO STATES.—

''(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

''(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) ALLOCATION.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

''(I) allocate to each State the amount the State received under this section for fiscal year 1997;

''(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

''(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

''(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

''(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

''(I) the sum of—

''(aa) the amount the State received under this section for fiscal year 1997; and

''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

''(II) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

''(III) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated under this section from the preceding fiscal year.

''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

''(I) the amount the State received under this section for the preceding fiscal year; and

''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

''(C) RATABLE REDUCTIONS.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

''(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

''(i) the amount the State received under this section for fiscal year 1997; and

''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

''(B) If the amount available for allocations under this paragraph is equal to or less than the amount allocated under this section to the States for fiscal year 1997, each State shall be allocated the amount the State received for that year, ratably reduced, if necessary.

''(d) RESERVATION FOR STATE ACTIVITIES.—

''(1) IN GENERAL.—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

''(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

''(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

''(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

''(e) STATE ADMINISTRATION.—

''(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

''(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

''(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

''(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

''(2) for direct services for children eligible for services under this section;

''(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

''(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year; or

''(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten.

''(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

''(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

''(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

''(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools

and secondary schools within the local educational agency's jurisdiction; and

''(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

''(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

''(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

''(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

''(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

"SEC. 631. FINDINGS AND POLICY.

''(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

''(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development which occurs during a child's first 3 years of life;

''(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

''(3) to maximize the potential for individuals with disabilities to live independently in society;

''(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

''(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children.

''(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

''(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

''(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

''(3) to enhance State capacity to provide high quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

''(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

"SEC. 632. DEFINITIONS.

''As used in this part:

''(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

''(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

''(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

''(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

''(A) are provided under public supervision;

''(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

''(C) are designed to meet the developmental needs of an infant or toddler with a disability in any 1 or more of the following areas:

''(i) physical development;

''(ii) cognitive development;

''(iii) communication development;

''(iv) social or emotional development; or

''(v) adaptive development;

''(D) meet the standards of the State in which the services are provided, including the requirements of this part;

''(E) include—

''(i) family training, counseling, and home visits;

''(ii) special instruction;

''(iii) speech-language pathology and audiology services, and sign language and cued language services;

''(iv) occupational therapy;

''(v) physical therapy;

''(vi) psychological services;

''(vii) service coordination services;

''(viii) medical services only for diagnostic or evaluation purposes;

''(ix) early identification, screening, and assessment services;

''(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

''(xi) social work services;

''(xii) vision services;

''(xiii) assistive technology devices and assistive technology services; and

''(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

''(F) are provided by qualified personnel, including—

''(i) special educators;

''(ii) speech-language pathologists and audiologists;

''(iii) teachers of the deaf;

''(iv) occupational therapists;

''(v) physical therapists;

''(vi) psychologists;

''(vii) social workers;

''(viii) nurses;

''(ix) nutritionists;

''(x) family therapists;

''(xi) orientation and mobility specialists;

''(xii) vision specialists, including opthamologists and optometrists; and

''(xiii) pediatricians and other physicians;

''(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

''(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

''(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

''(A) means an individual under 3 years of age who needs early intervention services because the individual—

''(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

''(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

''(B) may also include, at a State's discretion—

''(i) at-risk infants and toddlers; and

''(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten.

"SEC. 633. GENERAL AUTHORITY.

''The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

"SEC. 634. ELIGIBILITY.

''In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

''(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

''(2) has in effect a statewide system that meets the requirements of section 635.

"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

''(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

''(1) A definition of the term 'developmental delay' that—

''(A) will be used by the State in carrying out programs under this part; and

''(B) covers, at a minimum, all infants and toddlers with—

''(i) a developmental delay of 35 percent or more in 1 of the developmental areas described in section 632(5)(A)(i); or

''(ii) a developmental delay of 25 percent or more in 2 or more of the developmental areas described in section 632(5)(A)(i).

''(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

''(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

''(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

''(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

''(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

''(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

''(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, which comprehensive system may include—

''(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

''(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

''(C) training personnel to work in rural and inner-city areas; and

''(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

''(9) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

''(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

''(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

''(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

''(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

''(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

''(E) the resolution of intra- and interagency disputes; and

''(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

''(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

''(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

''(13) Procedural safeguards with respect to programs under this part, as required by section 639.

''(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

''(15) A State interagency coordinating council that meets the requirements of section 641.

''(16) Policies and procedures to ensure that, consistent with section 636(d)(5) to the maximum extent appropriate, early intervention services are provided in natural environments unless a specific outcome cannot be met satisfactorily for the infant or toddler in a natural environment.

''(b) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE TO UNDER 6 YEARS OF AGE.—

''(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

''(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure—

''(A) that parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants and toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

''(B) that the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

''(C) that parents of children served pursuant to this subsection are provided with annual notice—

''(i) of such parents' right to elect services pursuant to this subsection or under part B; and

''(ii) fully explaining the differences between receiving services pursuant to this subsection and receiving services under part B, including—

''(I) the types of services available under both provisions;

''(II) applicable procedural safeguards under both provisions, including due-process protections and mediation or other dispute resolution options; and

''(III) the possible costs, if any (including any fees to be charged to families as described in section 632(4)(B)) to parents under both provisions;

''(D) that the conference under section 637(a)(9)(A)(ii)(II), the review under section 637(a)(9)(B), and the establishment of a transition plan under section 637(a)(9)(C) occur not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before each of the following:

''(i) the time the child will first be eligible for services under part B, including under section 619; and

''(ii) if the child is receiving services in accordance with this subsection, the time the child will no longer receive those services;

''(E) the continuance of all early intervention services outlined in the child's individualized family service plan under section 636 while any eligibility determination is being made for services under this subsection;

''(F) that services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills and are provided in accordance with an individualized family service plan under section 636; and

''(G) the referral for evaluation for early intervention services of a child below the age of 3 who experiences a substantiated case of exposure to violence or trauma.

''(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on—

''(A) the percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part; and

''(B) the number of children who are eligible for services under section 619 who instead continue to receive early intervention services under this part.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

''(5) AVAILABLE FUNDS.—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(A), including fees to be charged to families as described in section 632(4)(B).

''SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

''(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

''(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

''(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

''(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the child.

''(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

''(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

''(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

''(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

''(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

''(3) a statement of the measurable outcomes expected to be achieved for the infant or toddler and the family, including, as appropriate, preliteracy and language skills, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

''(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including

the frequency, intensity, and method of delivering services;

''(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

''(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

''(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

''(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

''(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

''SEC. 637. STATE APPLICATION AND ASSURANCES.

''(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

''(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

''(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

''(3) information demonstrating eligibility of the State under section 634, including—

''(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

''(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

''(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

''(5) a description of the uses for which funds will be expended in accordance with this part;

''(6) a description of the State policies and procedures that require the referral for evaluation for early intervention services of a child under the age of 3 who—

''(A) is involved in a substantiated case of child abuse or neglect; or

''(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

''(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

''(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

''(9) a description of the policies and procedures to be used—

''(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(b)) to preschool, other appropriate services, or exiting the program, including a description of how—

''(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

''(ii) the lead agency designated or established under section 635(a)(10) will—

''(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

''(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

''(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

''(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

''(C) to establish a transition plan, including, as appropriate, steps to exit from the program; and

''(10) such other information and assurances as the Secretary may reasonably require.

''(b) ASSURANCES.—The application described in subsection (a)—

''(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

''(2) shall contain an assurance that the State will comply with the requirements of section 640;

''(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

''(4) shall provide for—

''(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

''(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of the reports and proper disbursement of Federal funds under this part;

''(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

''(A) will not be commingled with State funds; and

''(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

''(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

''(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

''(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

''(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

''(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part C, as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

''(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

''(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

''(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

''(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

''(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

''SEC. 638. USES OF FUNDS.

''In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

''(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

''(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

''(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

''(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday to the beginning of the following school year, in lieu of a free appropriate public education provided in accordance with part B; and

''(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

''(A) identifying and evaluating at-risk infants and toddlers;

''(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

''(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

''SEC. 639. PROCEDURAL SAFEGUARDS.

''(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

''(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a

civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

''(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

''(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

''(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

''(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

''(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

''(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

''(8) The right of parents to use mediation in accordance with section 615, except that—

''(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

''(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

''(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

''(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

''SEC. 640. PAYOR OF LAST RESORT.

''(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

''(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

''(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

''(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the State educational agency, in order to ensure—

''(i) the provision of, and financial responsibility for, services provided under this part; and

''(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any dispute.

''(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PARTS B AND D.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12).

''(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

''(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1) the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

''(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

''(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

''(A) State statute or regulation;

''(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

''(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.

''(c) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

''SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

''(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

''(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

''(b) COMPOSITION.—

''(1) IN GENERAL.—The council shall be composed as follows:

''(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

''(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

''(C) STATE LEGISLATURE.—At least 1 member shall be from the State legislature.

''(D) PERSONNEL PREPARATION.—At least 1 member shall be involved in personnel preparation.

''(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

''(F) AGENCY FOR PRESCHOOL SERVICES.—At least 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

''(G) STATE MEDICAID AGENCY.—At least 1 member shall be from the agency responsible for the State medicaid program.

''(H) HEAD START AGENCY.—At least 1 representative from a Head Start agency or program in the State.

''(I) CHILD CARE AGENCY.—At least 1 representative from a State agency responsible for child care.

''(J) AGENCY FOR HEALTH INSURANCE.—At least 1 member shall be from the agency responsible for the State regulation of health insurance.

''(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

''(c) MEETINGS.—The council shall meet at least quarterly and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

''(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

''(e) FUNCTIONS OF COUNCIL.—

''(1) DUTIES.—The council shall—

''(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

''(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

''(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

''(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

''(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

''(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

''SEC. 642. FEDERAL ADMINISTRATION.

''Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

''(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

''(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

''(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

''SEC. 643. ALLOCATION OF FUNDS.

''(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

''(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

''(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

''(b) PAYMENTS TO INDIANS.—

''(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

''(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

''(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

''(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

''(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

''(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

''(c) STATE ALLOTMENTS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

''(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

''(A) ½ of 1 percent of the remaining amount described in paragraph (1); or

''(B) $500,000.

''(3) RATABLE REDUCTION.—

''(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

''(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

''(4) DEFINITIONS.—For the purpose of this subsection—

''(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

''(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

''(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

''(e) RESERVATION FOR STATE BONUS GRANTS.—The Secretary shall reserve 10 percent of the amount by which the amount appropriated under section 644 for any fiscal year exceeds $434,159,000 to make allotments to States that are carrying out the policy described in section 635(b), in accordance with the formula described in subsection (c)(1) without regard to subsections (c) (2) and (3).

''SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

''For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2009.

''PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

''SEC. 650. FINDINGS.

''Congress finds the following:

''(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling them to lead productive and independent adult lives.

''(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

''(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

''(4) An effective educational system serving students with disabilities should—

''(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

''(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

''(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

''(5) The availability of an adequate number of qualified personnel is critical to serve effectively children with disabilities, to assume leadership positions in administration and direct services, to provide teacher training, and to conduct high quality research to improve special education.

''(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

''(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

''(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

''(9) A comprehensive research agenda should be established and pursued to promote the highest quality and rigor in special education research, and to address the full range of issues

facing children with disabilities, parents of children with disabilities, school personnel, and others.

''(10) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

''(11) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

''(12) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

''(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

''(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

''(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

''(D) providing such parents information on their rights, protections, and responsibilities under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

''(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 673(b)(6);

''(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

''(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

''(13) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

''Subpart 1—State Personnel Preparation and Professional Development Grants

''SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.

''(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

''(b) DEFINITION.—In this subpart, the term 'personnel' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

''(c) COMPETITIVE GRANTS.—

''(1) IN GENERAL.—Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than $100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 653.

''(2) PRIORITY.—In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

''(A) are in States with the greatest personnel shortages; or

''(B) demonstrate the greatest difficulty meeting the requirements of section 612(a)(14).

''(3) MINIMUM.—The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

''(A) not less than $500,000, nor more than $4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

''(B) not less than $80,000 in the case of an outlying area.

''(4) INCREASES.—The Secretary may increase the amounts under in paragraph (3) to account for inflation.

''(5) FACTORS.—The Secretary shall set the amount of each grant under paragraph (1) after considering—

''(A) the amount of funds available for making the grants;

''(B) the relative population of the State or outlying area;

''(C) the types of activities proposed by the State or outlying area;

''(D) the alignment of proposed activities with section 612(a)(14);

''(E) the alignment of proposed activities with the State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

''(F) the use, as appropriate, of scientifically based activities.

''(d) FORMULA GRANTS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than $100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this subpart, an amount that bears the same relation to the amount appropriated as the amount the State received under section 611(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under section 611(d) for that fiscal year.

''(2) MINIMUM ALLOTMENTS FOR STATES THAT RECEIVED COMPETITIVE GRANTS.—

''(A) IN GENERAL.—The amount allotted under this subsection to any State that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be at least the amount specified for that fiscal year in the State's grant award document under that subsection.

''(B) SPECIAL RULE.—Each such State shall use the minimum amount described in subparagraph (A) for the activities described in its competitive grant award document for that year, unless the Secretary approves a request from the State to spend the funds on other activities.

''(3) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this subsection for any fiscal year shall not be less than—

''(A) the greater of $500,000 or ½ of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

''(B) $80,000, in the case of an outlying area.

''(e) CONTINUATION AWARDS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this subpart, from funds appropriated under section 655 for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State (at the request of the State) that received a multi-year award under this part (as this part was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003), to enable the State to carry out activities in accordance with the terms of the multi-year award.

''(2) PROHIBITION.—A State that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this subpart for that fiscal year.

''SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

''(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

''(b) PARTNERS.—

''(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including institutions of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation programs.

''(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

''(A) the Governor;

''(B) parents of children with disabilities ages birth through 26;

''(C) parents of nondisabled children ages birth through 26;

''(D) individuals with disabilities;

''(E) parent training and information centers or community parent resource centers funded under sections 671 and 672, respectively;

''(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

''(G) personnel as defined in section 651(b);

''(H) the State advisory panel established under part B;

''(I) the State interagency coordinating council established under part C;

''(J) individuals knowledgeable about vocational education;

''(K) the State agency for higher education;

''(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

''(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

''(N) other individuals.

''(3) REQUIRED PARTNER.—If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall—

''(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

''(B) ensure that any activities the State will carry out under this subpart that are within that partner's jurisdiction (which may include activities described in section 654(b)) are carried out by that partner.

''SEC. 653. APPLICATIONS.

''(a) IN GENERAL.—

''(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

''(2) STATE PLAN.—The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of administrators, principals, and teachers, as well as individuals who provide direct supplementary aids

and services to children with disabilities, and that—

''(A) is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a) (8) and (9);

''(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

''(i) current and anticipated personnel vacancies and shortages; and

''(ii) the number of preservice programs; and

''(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.

''(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

''(b) ELEMENTS OF STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT PLAN.—Each professional development plan under subsection (a)(2) shall—

''(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

''(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership, including the partner described in section 652(b)(3) if applicable; and

''(B) how the State will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

''(2) describe how the strategies and activities described in paragraph (4) will be coordinated with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

''(3) describe how the State will align its professional development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

''(4) describe what strategies the State will use to address the professional development and personnel needs identified under subsection (a)(2) and how those strategies will be implemented, including—

''(A) a description of the preservice and inservice programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

''(B) how such strategies shall be integrated, to the maximum extent possible, with other activities supported by grants funded under this part, including those under section 664;

''(5) provide an assurance that the State will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

''(6) provide an assurance that the State will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

''(7) describe how the State will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

''(8) describe the steps the State will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

''(9) describe how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

''(c) PEER REVIEW.—

''(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

''(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

''(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

''(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall describe the progress of the State in implementing its plan and analyze the effectiveness of the State's activities under this subpart.

"SEC. 654. USE OF FUNDS.

''(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

''(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

''(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development; and

''(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development as defined in section 9101(34) of the Elementary and Secondary Education Act of 1965.

''(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

''(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

''(B) to enhance learning by children with disabilities; and

''(C) to effectively communicate with parents.

''(3) Providing professional development activities that—

''(A) improve the knowledge of special education and regular education teachers concerning—

''(i) the academic and developmental or functional needs of students with disabilities; or

''(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

''(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—

''(i) provide training in how to teach and address the needs of children with different learning styles and children with limited English proficiency;

''(ii) involve collaborative groups of teachers and administrators;

''(iii) provide training in methods of—

''(I) positive behavioral interventions and supports to improve student behavior in the classroom;

''(II) scientifically based reading instruction, including early literacy instruction;

''(III) early and appropriate interventions to identify and help children with disabilities;

''(IV) effective instruction for children with low incidence disabilities;

''(V) successful transitioning to postsecondary opportunities; and

''(VI) using classroom-based techniques to assist children prior to referral for special education;

''(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

''(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and

''(vi) providing training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students; and

''(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings.

''(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruitment and retaining highly qualified teachers, including programs that provide—

''(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

''(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

''(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

''(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

''(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101(34) of the Elementary and Secondary Education Act of 1965; and

''(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

''(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

''(A) professional development programs to improve the delivery of early intervention services;

''(B) initiatives to promote the recruitment and retention of early intervention personnel; and

''(C) interagency activities to ensure that personnel are adequately prepared and trained.

''(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

''(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

''(A) special education and regular education teachers have—

''(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

''(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that they teach;

''(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

''(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

''(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

''(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

''(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

''(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

''(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

''(7) Developing or assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

''(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

''(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic and functional achievement standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

''(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

''(c) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

''(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

''(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

''(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

''(1) not less than 75 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

''(2) not more than 25 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

''(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

''SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2004 through 2009.

''Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

''SEC. 660. PURPOSE.

''The purpose of this subpart is—

''(1) to provide Federal funding for scientifically based research, technical assistance, model demonstration projects, and information dissemination to improve early intervention, educational, and transitional results for children with disabilities; and

''(2) to assist State educational agencies and local educational agencies in improving their education systems.

''SEC. 661. ADMINISTRATIVE PROVISIONS.

''(a) COMPREHENSIVE PLAN.—

''(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart (other than activities assisted under section 665 and subpart 3) in order to enhance the provision of early intervention, educational, related and transitional services to children with disabilities under parts B and C. The plan shall be coordinated with the plan developed pursuant to section 177(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State Personnel and Professional Development grants under subpart 1 and for grants under this subpart.

''(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of at least 60 days on the plan.

''(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart, subpart 3, and subpart 4 to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

''(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under this subpart, subpart 3, and subpart 4, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

''(b) ELIGIBLE APPLICANTS.—

''(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

''(A) A State educational agency.

''(B) A local educational agency.

''(C) A public charter school that is a local educational agency under State law.

''(D) An institution of higher education.

''(E) Any other public agency.

''(F) A private nonprofit organization.

''(G) An outlying area.

''(H) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

''(I) A for-profit organization.

''(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to 1 or more categories of eligible entities described in paragraph (1).

''(c) SPECIAL POPULATIONS.—

''(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, and subpart 4, the Secretary shall, as appropriate, require an applicant to meet the criteria set forth by the Secretary under this subpart and demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

''(2) OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this Act, the Secretary shall reserve at least 1 percent of the total amount of funds made available to carry out this subpart, subpart 3, or subpart 4 for 1 or both of the following activities:

''(A) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

''(B) To enable Historically Black Colleges and Universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

''(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4, may, without regard to the rulemaking procedures under section 553(a) of title 5, United States Code, limit competitions to, or otherwise give priority to—

''(1) projects that address 1 or more—

''(A) age ranges;

''(B) disabilities;

''(C) school grades;

''(D) types of educational placements or early intervention environments;

''(E) types of services;

''(F) content areas, such as reading; or

''(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

''(2) projects that address the needs of children based on the severity or incidence of their disability;

''(3) projects that address the needs of—

''(A) low achieving students;

''(B) underserved populations;

''(C) children from low income families;

''(D) limited English proficient children;

''(E) unserved and underserved areas;

''(F) rural or urban areas;

''(G) children whose behavior interferes with their learning and socialization;

''(H) children with reading difficulties;

''(I) children in charter schools; or

''(J) children who are gifted and talented;

''(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

''(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

''(6) projects that promote the development and use of universally designed technologies, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general education curriculum; and

''(7) any activity that is authorized in this subpart or subpart 3.

''(e) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

''(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart, subpart 3, or subpart 4—

''(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

''(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

''(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4 to—

''(A) share in the cost of the project;

''(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

''(C) disseminate such findings and products; and

''(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

''(f) APPLICATION MANAGEMENT.—

''(1) STANDING PANEL.—

''(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart (other than applications for assistance under section 665), subpart 3, and subpart 4 that, individually, request more than $75,000 per year in Federal financial assistance.

''(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

''(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;

''(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

''(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

''(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

''(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

''(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

''(vii) parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

''(viii) individuals with disabilities.

''(C) TERM.—Unless approved by the Secretary due to extenuating circumstances related to shortages of experts in a particular area of expertise or for a specific competition, no individual shall serve on the standing panel for more than 3 consecutive years.

''(2) PEER REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

''(A) COMPOSITION.—The Secretary shall ensure that each sub panel selected from the standing panel that reviews applications under this subpart (other than section 665), subpart 3, and subpart 4 includes—

''(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the relevant subpart; and

''(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

''(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub panel that reviews an application under this subpart (other than an application under section 665), subpart 3, and subpart 4 shall be individuals who are not employees of the Federal Government.

''(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

''(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds made available under this subpart, subpart 3, and subpart 4 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

''(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds made available to carry out this subpart, subpart 3, or subpart 4 to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

''(4) AVAILABILITY OF CERTAIN PRODUCTS.—The Secretary shall ensure that recipients of grants, cooperative agreements, or contracts under this subpart, subpart 3, and subpart 4 make available in formats that are accessible to individuals with disabilities any products developed under such grants, cooperative agreements, or contracts that the recipient is making available to the public.

''(g) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out this subpart, subpart 3, and subpart 4 to evaluate activities carried out under this subpart.

''(h) MINIMUM FUNDING REQUIRED.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart and subpart 3 to address the following needs:

''(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

''(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

''(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

''(2) RATABLE REDUCTION.—If the total amount appropriated to carry out this subpart, subpart 3, and part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.

''(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under this subpart that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

''SEC. 662. RESEARCH COORDINATION TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES.

''The Secretary shall coordinate research carried out under this subpart with research carried out under part E of the Education Sciences Reform Act of 2002.

''SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

''(a) IN GENERAL.—From amounts made available under section 675, the Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, carry out model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

''(b) REQUIRED ACTIVITIES.—The Secretary shall support activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional performance to improve educational results and functional outcomes for children with disabilities through—

''(1) implementing effective strategies that are conducive to learning and for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

''(2) improving the alignment, compatibility, and development of valid and reliable assessment methods, including alternate assessment methods and evaluation methods, for assessing adequately yearly progress as described in section 1111(b)(2) of the Elementary and Secondary Education Act of 1965;

''(3) providing information to both regular education teachers and special education teachers to address the different learning styles and disabilities of students;

''(4) disseminating information on innovative, effective, and efficient curricula, materials (including those that are universally designed), instructional approaches, and strategies that—

''(A) support effective transitions between educational settings or from school to post-school settings;

''(B) support effective inclusion of students with disabilities in general education settings, especially students with low-incidence disabilities; and

''(C) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

''(5) demonstrating and applying scientifically-based findings to facilitate systematic changes related to the provision of services to children with disabilities.

''(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote increased academic achievement and enhanced functional outcomes for children with disabilities through—

''(1) supporting and promoting the coordination of early intervention, education, and transitional services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

''(2) promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instructional reform, and evaluating of such reforms;

''(3) enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of scientifically based research and effective practices relating to the provision of services to children with disabilities;

''(4) disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities;

''(5) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

''(6) promoting change through a multi-State or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic change;

''(7) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

''(A) to schools and agencies serving deaf-blind children and their families;

''(B) to programs and agencies serving other groups of children with low-incidence disabilities and their families;

''(C) to address the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

''(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

''(8) demonstrating models of personnel preparation to ensure appropriate placements and services for all students with disabilities and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children: and

''(9) disseminating information on how to reduce racial and ethnic disproportionalities.

''(d) BALANCE AMONG DISABILITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges and disabilities.

''(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

''(f) APPLICATIONS.—

''(1) IN GENERAL.—An eligible entity that desires to receive a grant, or to enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) CONTENTS.—The Secretary may, as appropriate, require eligible entities to demonstrate that the projects described in their applications are supported by scientifically based research that has been carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research under sections 133 and 134 of the Education Sciences Reform Act of 2002.

''(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment or that strengthen State and local agency capacity to improve instructional practices of personnel to improve educational results for children with disabilities in the school environment.

''SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities for 1 or more of the following:

''(1) To help address the needs identified in the State plan described in section 653(a)(2) for highly qualified personnel, as defined in section 651(b), to work with infants, toddlers, or children with disabilities, consistent with the standards described in section 612(a)(14).

''(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

''(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

''(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

''(5) To ensure that all special education teachers are highly qualified.

''(6) To ensure that preservice and in-service personnel preparation programs include training in—

''(A) the use of new technologies;

''(B) the area of early intervention, educational, and transition services;

''(C) effectively involving parents; and

''(D) positive behavioral supports.

''(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in—

''(A) instructional leadership;

''(B) behavioral supports in the school and classroom;

''(C) paperwork reduction;

''(D) promoting improved collaboration between special education and general education teachers;

''(E) assessment and accountability;

''(F) ensuring effective learning environments; and

''(G) fostering positive relationships with parents.

''(b) PERSONNEL DEVELOPMENT; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to prepare personnel, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

''(A) Supporting collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities—

''(i) to improve and reform their existing programs, to support effective existing programs, to support the development of new programs, and to prepare teachers, principals, administrators, and related services personnel—

''(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

''(II) to work collaboratively in regular classroom settings; and

''(ii) to incorporate best practices and scientifically based research about preparing personnel—

''(I) so the personnel will have the knowledge and skills to improve educational results for children with disabilities; and

''(II) to implement effective teaching strategies and interventions to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.

''(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of highly qualified teachers to reduce teachers shortages.

''(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of teachers and personnel who teach and provide related services to children with disabilities.

''(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

''(E) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel to acquire the collaboration skills necessary to work within teams and to improve results for children with disabilities, particularly within the general education curriculum.

''(F) Promoting effective parental involvement practices to enable the personnel to work with parents and involve parents in the education of such parents' children.

''(G) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers, principals, and administrators working with such children.

''(H) Developing and disseminating models that prepare teachers with strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

''(I) Developing and improving programs to enhance the ability of general education teachers, principals, school administrators, and school board members to improve results for children with disabilities.

''(J) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

''(K) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

''(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

''(M) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

''(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

''(A) Preparing persons who—

''(i) have prior training in educational and other related service fields; and

''(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

''(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

''(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

''(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

''(ii) to improve communication with parents.

''(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

''(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

''(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

''(3) DEFINITION.—As used in this section, the term 'low incidence disability' means—

''(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

''(B) a significant cognitive impairment; or

''(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

''(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

''(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

''(B) A demonstration of an effective collaboration with an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with disabilities.

''(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

''(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

''(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

''(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, related services personnel, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

''(e) ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

''(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or

''(B) Creating or supporting professional development schools that provide—

''(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

''(ii) inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies.

''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

''(A) that shall consist of—

''(i) 1 or more institutions of higher education with special education personnel preparation programs; and

''(ii) 1 or more local educational agencies; and

''(iii) in the case of activities assisted under paragraph (2)(B), an elementary school or secondary school; and

''(B) that may include other entities eligible for assistance under this part, such as a State educational agency.

''(4) PRIORITY.—In awarding grants or entering into contracts or cooperative agreements under this subsection, the Secretary shall give priority to partnerships that include local educational agencies that serve—

''(A) high numbers or percentages of low-income students; or

''(B) schools that have failed to make adequate yearly progress toward enabling children with disabilities to meet academic achievement standards.

''(f) TRAINING TO SUPPORT GENERAL EDUCATORS; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

''(A) high quality professional development for general educators that develops the knowledge and skills, and enhances the ability, of general educators to—

''(i) use classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the individualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;

''(ii) use classroom-based techniques, such as scientifically based reading instruction;

''(iii) work collaboratively with special education teachers and related services personnel;

''(iv) implement strategies, such as positive behavioral interventions—

''(I) to address the behavior of children with disabilities that impedes the learning of such children and others; or

''(II) to prevent children from being misidentified as children with disabilities;

''(v) prepare children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate;

''(vi) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;

''(vii) work with and involve parents of children with disabilities in their child's education;

''(viii) understand how to effectively construct IEPs, participate in IEP meetings, and implement IEPs; and

''(ix) in the case of principals and superintendents, be instructional leaders and promote improved collaboration between general educators, special education teachers, and related services personnel; and

''(B) release and planning time for the activities described in this subsection.

''(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

''(A) that consist of—

''(i) 1 or more institutions of higher education with special education personnel preparation programs; and

''(ii) 1 or more local educational agencies; and

''(B) that may include other entities eligible for assistance under this part, such as a State educational agency.

''(g) APPLICATIONS.—

''(1) IN GENERAL.—Any eligible entity that desires to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) IDENTIFIED STATE NEEDS.—

''(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), (d), (e), or (f) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, consistent with the needs identified in the State plan described in section 653(a)(2).

''(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include in the application information demonstrating to the satisfaction of the Secretary that the applicant and 1 or more State educational agencies or local educational agencies have engaged in a cooperative effort to carry out and monitor the project to be assisted.

''(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities.

''(h) SELECTION OF RECIPIENTS.—

''(1) IMPACT OF PROJECT.—In selecting award recipients under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

''(2) REQUIREMENT FOR APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible applicants that meet State and professionally recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

''(3) PREFERENCES.—In selecting recipients under this section, the Secretary may give preference to institutions of higher education that are—

''(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

''(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

''(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

''(i) SERVICE OBLIGATION.—Each application for funds under subsections (b), (c), (d), and (e) shall include an assurance that the applicant will ensure that individuals who receive assistance under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 1 year for every year for which assistance was received, or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

''(j) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

''SEC. 665. STUDIES AND EVALUATIONS.

''(a) STUDIES AND EVALUATIONS.—

''(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute for Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

''(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded on a competitive basis, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

''(A) a free appropriate public education to children with disabilities; and

''(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

''(b) NATIONAL ASSESSMENT.—

''(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

''(A) to determine the effectiveness of this Act in achieving its purposes;

''(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this Act more effectively; and

''(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

''(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, and other appropriate individuals.

''(3) SCOPE OF ASSESSMENT.—The national assessment shall assess the—

''(A) implementation of programs assisted under this Act and the impact of those programs on addressing the developmental, educational, and transitional needs of, and improving the academic achievement and functional outcomes of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments, including alternate assessments;

''(B) types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

''(C) implementation of the personnel preparation and professional development activities assisted under this Act and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

''(D) effectiveness of schools, local educational agencies, States, and other recipients of assistance under this Act, in achieving the purposes of this Act in—

''(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments, and the performance of children with disabilities on alternate assessments;

''(ii) improving the participation rate of children with disabilities in the general education curriculum;

''(iii) improving the transitions of children with disabilities at natural transition points;

''(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

''(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

''(vi) addressing the reading and literacy needs of children with disabilities;

''(vii) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

''(viii) improving the participation of parents of children with disabilities in the education of their children;

''(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities including mediation; and

''(x) reducing the misidentification of children, especially minority and limited English proficient children.

''(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

''(A) an interim report that summarizes the preliminary findings of the national assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003; and

''(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

''(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WITH SIGNIFICANT DISABILITIES.—The Secretary shall carry out a national study or studies to examine—

''(1) the criteria that States use to determine eligibility for alternate assessments and the number and type of children who take those assessments;

''(2) the validity and reliability of alternate assessment instruments and procedures;

''(3) the alignment of alternate assessments with State academic content and achievement standards or with alternate academic achievement standards; and

''(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

''(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

''(1) summarizes the research conducted under section 662;

''(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

''(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

''(4) describes the extent and progress of the national assessment; and

''(5) describes the findings and determinations resulting from reviews of State implementation of this Act.

''(e) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—

''(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

''(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

''(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

''(A) data on—

''(i) the number of minority children who are referred for special education evaluation;

''(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

''(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

''(iv) the number of minority children who drop out of the educational system; and

''(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

''(4) measure educational and transitional services and results of children with disabilities served under this Act, including longitudinal studies that—

''(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

''(B) examine educational results, transition services, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

''(5) identify and report on the placement of children with disabilities by disability category.

''(f) STUDY.—The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 635(b)(1) and on the effects of those policies.

''(g) RESERVATION FOR STUDIES AND EVALUATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve not more than ½ of 1 percent of the amount appropriated under parts B and C for each fiscal year to carry out this section, of which not more than $3,000,000 shall be available to carry out subsection (c).

''(2) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $40,000,000, increased by the cumulative rate of inflation since fiscal year 2003.

''Subpart 3—Supports To Improve Results for Children With Disabilities

''SEC. 670. PURPOSES.

''The purposes of this subpart are to ensure that—

''(1) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this Act, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

''(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

''(3) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

''SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

''(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

''(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

''(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

''(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

''(B) be prepared to lead productive independent adult lives, to the maximum extent possible;

''(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

''(3) assist parents to—

''(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

''(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

''(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

''(D) obtain appropriate information about the range, type, and quality of options, programs, services, technologies, and research based practices and interventions, and resources available to assist children with disabilities and their families in school and at home;

''(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

''(F) participate in school reform activities;

''(4) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

''(5) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

''(6) assist parents and students with disabilities to understand their rights and responsibilities under this Act, including those under section 615(m) on the student's reaching the age of majority;

''(7) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act;

''(8) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

''(9) establish cooperative partnerships with community parent resource centers funded under section 672;

''(10) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

''(11) annually report to the Secretary on—

''(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

''(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

''(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

''(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

''(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

''(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

''(2) to work with community based organizations.

''(e) DISTRIBUTION OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) make at least 1 award to a parent organization in each State for a parent training and information center which is designated as the statewide parent training and information center; or

''(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

''(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

''(f) QUARTERLY REVIEW.—

''(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

''(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

''(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that—

''(1) has a board of directors—

''(A) the majority of whom are parents of children with disabilities ages birth through 26;

''(B) that includes—

''(i) individuals working in the fields of special education, related services, and early intervention; and

''(ii) individuals with disabilities;

''(C) the parent and professional members of which are broadly representative of the population to be served; and

''(2) has as its mission serving families of children and youth with disabilities who—

''(A) are ages birth through 26; and

''(B) have the full range of disabilities described in section 602(3).

''SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

''(a) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

''(1) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

''(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

''(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

''(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

''(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

''(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

''(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

''(c) DEFINITION.—As used in this section, the term 'local parent organization' means a parent organization, as defined in section 671(g), that—

''(1) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

''(2) has as its mission serving parents of children with disabilities who—

''(A) are ages birth through 26; and

''(B) have the full range of disabilities described in section 602(3).

''SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

''(a) IN GENERAL.—The Secretary may make an award to 1 parent organization (as defined in section 671(g)) that receives assistance under section 671 to enable the parent organization to provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 671 and 672.

''(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

''(1) effective national coordination of parent training efforts, which includes encouraging collaborative efforts among award recipients under sections 671 and 672;

''(2) dissemination of information, scientifically based research, and research based practices and interventions;

''(3) promotion of the use of technology, including universally designed technologies, assistive technology devices, and assistive technology services;

''(4) reaching underserved populations;

''(5) including children with disabilities in general education programs;

''(6) facilitation of transitions from—

''(A) early intervention services to preschool;

''(B) preschool to elementary school;

''(C) elementary school to secondary school; and

''(D) secondary school to postsecondary environments; and

''(7) promotion of alternative methods of dispute resolution, including mediation.

''(c) REGIONAL PARENT CENTERS.—The recipient of the award described in section 673(a) shall establish no fewer than 4 regional centers from the parent training and information centers and community parent resource centers receiving assistance under sections 671 and 672 for the purpose of carrying out the authorized activities described in subsection (b). These regional centers shall be selected on the basis of the center's—

''(1) willingness to be a regional parent center;

''(2) demonstrated expertise in the delivery of required parent training and information center activities described in section 671(b);

''(3) demonstrated capacity to deliver the authorized activities described in subsection (b);

''(4) history of collaboration with other parent training and information centers, community parent resource centers, regional resource centers, clearinghouses, and other projects; and

''(5) geographic location.

''(d) COLLABORATION WITH THE RESOURCE CENTERS.—The recipient of the award described in subsection (a), in conjunction with the regional parent centers described in subsection (c), shall develop collaborative agreements with the geographically appropriate Regional Resource Center to further parent and professional collaboration.

''SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.

''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

''(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

''(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

''(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

''(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with

disabilities without further modification or adaptation.

''(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

''(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

''(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support—

''(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

''(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—

''(i) television programs;

''(ii) videos;

''(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

''(iv) news (but only until September 30, 2006);

''(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

''(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

''(2) LIMITATION.—The video description, open captioning, or closed captioning described in paragraph (1)(B) shall only be provided when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

''(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

''SEC. 675. ACCESSIBILITY OF INSTRUCTIONAL MATERIALS.

''(a) INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—

''(1) ACCESSIBILITY STANDARD.—Not later than 180 days after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall, by rulemaking, promulgate an Instructional Materials Accessibility Standard which shall constitute the technical standards to be used by publishers for the preparation of electronic files for States under section 612(a)(22).

''(2) RELATIONSHIP TO OTHER LAWS.—For purposes of this section:

''(A) AUTHORIZED ENTITY.—Notwithstanding the provisions of section 106 of title 17, United States Code, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

''(B) PUBLISHER.—Notwithstanding the provisions of section of 106 of title 17, United States Code, it is not an infringement of copyright for a publisher to create and distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Material Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

''(C) COPIES.—Copies of the electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard shall be made in compliance with the provisions of section 121(b) of title 17, United States Code, regarding the reproduction and distribution of copyrighted print instructional materials in specialized formats.

''(3) DEFINITIONS.—In this section:

''(A) INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'Instructional Materials Accessibility Standard' means the technical standards described in paragraph (2), to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

''(B) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled ''An Act to provide books for the adult blind'', approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

''(C) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 121(c)(3) of title 17, United States Code, and for the purposes of this section, includes synthesized speech, digital audio, and large print.

''(D) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by pupils in the classroom.

''(E) AUTHORIZED ENTITY.—The term 'authorized entity' has the meaning given the term in section 121(c)(1) of title 17, United States Code.

''(4) APPLICABILITY.—This section shall apply to print instructional materials published and copyrighted after the date on which the final rule establishing the Instructional Materials Accessibility Standard is published in the Federal Register.

''(b) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

''(1) ESTABLISHMENT.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall establish a center, to be known as the National Instructional Materials Access Center, which shall coordinate the acquisition and distribution of print instructional materials prepared in the Instructional Materials Accessibility Standard described in subsection (a)(2).

''(2) RESPONSIBILITIES.—The duties of the National Instructional Materials Access Center are the following:

''(A) To receive and maintain a catalog of print instructional materials made available under section 612(a)(22) and section 613(a)(6).

''(B) To provide authorized entities with access to such print instructional materials, free of charge, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

''(C) To develop, adopt, and publish procedures to protect against copyright infringement and otherwise to administratively assure compliance with title 17, United States Code, with respect to the print instructional materials provided under section 612(a)(22) and section 613(a)(6).

''(3) CONTRACT AUTHORIZED.—To assist in carrying out paragraph (1), the Secretary shall award, on a competitive basis, a contract renewable on a biennial basis with a nonprofit organization, or with a consortium of such organizations, determined by the Secretary to be best qualified to carry out the responsibilities described in paragraph (2). The contractor shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary.

''SEC. 676. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out sections 671, 672, 673, and 663 such sums as may be necessary for each of the fiscal years 2004 through 2009.

''Subpart 4—Interim Alternative Educational Settings, Behavioral Supports, and Whole School Interventions

''SEC. 681. PURPOSE.

''The purpose of this subpart is to authorize resources to foster a safe learning environment that supports academic achievement for all students by improving the quality of interim alternative educational settings, providing more behavioral supports in schools, and supporting whole school interventions.

''SEC. 682. DEFINITION OF ELIGIBLE ENTITY.

''In this subpart, the term 'eligible entity' means—

''(1) a local educational agency; or

''(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

''(A) another local educational agency;

''(B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed;

''(C) an institution of higher education;

''(D) a mental health provider; or

''(E) an educational service agency.

''SEC. 683. PROGRAM AUTHORIZED.

''The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities—

''(1) to establish or expand behavioral supports and whole school behavioral interventions by providing for effective, research-based practices, including—

''(A) comprehensive, early screening efforts for students at risk for emotional and behavioral difficulties;

''(B) training for school staff on early identification, prereferral, and referral procedures;

''(C) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in whole school positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

''(D) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

''(E) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

''(F) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

''(G) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

''(2) to improve interim alternative educational settings by—

''(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers);

''(B) attracting and retaining a high quality, diverse staff;

''(C) providing for on-site counseling services;

''(D) using research-based interventions, curriculum, and practices;

''(E) allowing students to use instructional technology that provides individualized instruction;

''(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

''(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

''(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

''(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

''SEC. 684. PROGRAM EVALUATIONS.

''(a) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this subpart shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

''(b) BEST PRACTICES ON WEBSITE.—The Secretary shall make available on the Department's website information for parents, teachers, and school administrators on best practices for interim alternative educational settings, behavior supports, and whole school intervention.

''SEC. 685. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart $50,000,000 for fiscal year 2004 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

SEC. 201. FINDINGS.

Section 2(a) of the Rehabilitation Act of 1973 (29 U.S.C. 701(a)) is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(7) there is a substantial need to improve and expand services for students with disabilities under this Act.''.

SEC. 202. DEFINITIONS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) by redesignating paragraphs (35) through (39) as paragraphs (36), (37), (38), (40), and (41), respectively;

(2) in subparagraph (A)(ii) of paragraph (36) (as redesignated in paragraph (1)), by striking ''paragraph (36)(C)'' and inserting ''paragraph (37)(C)'';

(3) by inserting after paragraph (34) the following:

''(35)(A) The term 'student with a disability' means an individual with a disability who—

''(i) is not younger than 14 and not older than 21;

''(ii) has been determined to be eligible under section 102(a) for assistance under this title; and

''(iii)(I) is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

''(II) is an individual with a disability, for purposes of section 504.

''(B) The term 'students with disabilities' means more than 1 student with a disability.''; and

(4) by inserting after paragraph (38) the following:

''(39) The term 'transition services expansion year' means—

''(A) the first fiscal year for which the amount appropriated under section 100(b) exceeds the amount appropriated under section 100(b) for fiscal year 2004 by not less than $100,000,000; and

''(B) each fiscal year subsequent to that first fiscal year.''.

SEC. 203. STATE PLAN.

(a) ASSESSMENT AND STRATEGIES.—Section 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(15)) is amended—

(1) in subparagraph (A)(i)—

(A) in subclause (II), by striking ''and'' at the end;

(B) in subclause (III), by adding ''and'' at the end; and

(C) by adding at the end the following:

''(IV) in a transition services expansion year, students with disabilities, including their need for transition services;''; and

(2) in subparagraph (D)—

(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and

(B) by inserting after clause (ii) the following:

''(iii) in a transition services expansion year, the methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title or to post-secondary education or employment;''.

(b) SERVICES FOR STUDENTS WITH DISABILITIES.—Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended by adding at the end the following:

''(25) SERVICES FOR STUDENTS WITH DISABILITIES.—The State plan for a transition services expansion year shall provide an assurance satisfactory to the Secretary that the State—

''(A) has developed and implemented strategies to address the needs identified in the assessment described in paragraph (15), and achieve the goals and priorities identified by the State, to improve and expand vocational rehabilitation services for students with disabilities on a statewide basis in accordance with paragraph (15); and

''(B) from funds reserved under section 110A, shall carry out programs or activities designed to improve and expand vocational rehabilitation services for students with disabilities that—

''(i) facilitate the transition of the students with disabilities from the receipt of educational services in school, to the receipt of vocational rehabilitation services under this title, including, at a minimum, those services specified in the interagency agreement required in paragraph (11)(D);

''(ii) improve the achievement of post-school goals of students with disabilities, including improving the achievement through participation in meetings regarding individualized education programs developed under section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414);

''(iii) provide vocational guidance, career exploration services, and job search skills and strategies and technical assistance to students with disabilities;

''(iv) support the provision of training and technical assistance to State and local educational agency and designated State agency personnel responsible for the planning and provision of services to students with disabilities; and

''(v) support outreach activities to students with disabilities who are eligible for, and need, services under this title.''.

SEC. 204. SCOPE OF SERVICES.

Section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723) is amended—

(1) in subsection (a), by striking paragraph (15) and inserting the following:

''(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment, including, in a transition services expansion year, services described in clauses (i) through (iii) of section 101(a)(25)(B);''; and

(2) in subsection (b), by striking paragraph (6) and inserting the following:

''(6)(A)(i) Consultation and technical assistance services to assist State and local educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

''(ii) In a transition services expansion year, training and technical assistance described in section 101(a)(25)(B)(iv).

''(B) In a transition services expansion year, services for groups of individuals with disabilities who meet the requirements of clauses (i) and (iii) of section 7(35)(A), including services described in clauses (i), (ii), (iii), and (v) of section 101(a)(25)(B), to assist in the transition from school to post-school activities.''.

SEC. 205. STANDARDS AND INDICATORS.

Section 106(a) of the Rehabilitation Act of 1973 (29 U.S.C. 726(a)) is amended by striking paragraph (1)(C) and all that follows through paragraph (2) and inserting the following:

''(2) MEASURES.—The standards and indicators shall include outcome and related measures of program performance that—

''(A) facilitate the accomplishment of the purpose and policy of this title;

''(B) to the maximum extent practicable, are consistent with the core indicators of performance, and corresponding State adjusted levels of performance, established under section 136(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(b)); and

''(C) include measures of the program's performance with respect to the transition to post-school activities, and achievement of the post-school goals, of students with disabilities served under the program.''.

SEC. 206. RESERVATION FOR EXPANDED TRANSITION SERVICES.

The Rehabilitation Act of 1973 is amended by inserting after section 110 (29 U.S.C. 730) the following:

''SEC. 110A. RESERVATION FOR EXPANDED TRANSITION SERVICES.

''(a) RESERVATION.—From the State allotment under section 110 in a transition services expansion year, each State shall reserve an amount calculated by the Commissioner under subsection (b) to carry out programs and activities under sections 101(a)(25)(B) and 103(b)(6).

''(b) CALCULATION.—The Commissioner shall calculate the amount to be reserved for such programs and activities for a fiscal year by each State by multiplying $50,000,000 by the percentage determined by dividing—

''(1) the amount allotted to that State under section 110 for the prior fiscal year; by

''(2) the total amount allotted to all States under section 110 for that prior fiscal year.''.

SEC. 207. CONFORMING AMENDMENT.

Section 1(b) of the Rehabilitation Act of 1973 is amended by inserting after the item relating to section 110 the following:

''Sec. 110A. Reservation for expanded transition services.''.

TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

SEC. 301. NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.

(a) AMENDMENT.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(1) by redesignating part E as part F; and

(2) by inserting after part D the following:

''PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

''SEC. 175. ESTABLISHMENT.

''(a) ESTABLISHMENT.—There is established in the Institute a National Center for Special Education Research.

''(b) MISSION.—The mission of the National Center for Special Education Research (in this part referred to as the 'Special Education Research Center') is—

''(1) to sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to

improve the developmental, educational, and transitional results of such individuals;

''(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act; and

''(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

''(c) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.

''SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RESEARCH.

''The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as 'the Special Education Research Commissioner') who shall have substantial knowledge of the Special Education Research Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.

''SEC. 177. DUTIES.

''(a) GENERAL DUTIES.—The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 175(b), such as activities that—

''(1) improve services provided under the Individuals with Disabilities Education Act in order to improve—

''(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

''(B) developmental outcomes for infants and toddlers;

''(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

''(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

''(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

''(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 1111(b) of the Elementary and Secondary Education Act of 1965;

''(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

''(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

''(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

''(9) improve reading and literacy skills of children with disabilities;

''(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

''(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

''(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods as a method to improve educational and transitional results for children with disabilities;

''(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

''(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

''(15) help parents improve educational results for their children, particularly related to transition issues; and

''(16) address the unique needs of children with significant cognitive disabilities.

''(b) STANDARDS.—The Commissioner of Special Education Research shall ensure that activities assisted under this section—

''(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

''(2) are carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

''(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

''(c) PLAN.—The Commissioner of Special Education Research shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

''(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

''(2) is carried out, updated, and modified, as appropriate;

''(3) is consistent with the purpose of the Individuals with Disabilities Education Act;

''(4) contains an appropriate balance across all age ranges and types of children with disabilities;

''(5) provides for research that is objective and uses measurable indicators to assess its progress and results;

''(6) is coordinated with the comprehensive plan developed under section 661 of the Individuals with Disabilities Education Act; and

''(7) provides that the research conducted under part D of the Individuals with Disabilities Education Act is relevant to special education practice and policy.

''(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible entities.

''(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this part shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

''(f) DISSEMINATION.—The Special Education Research Center shall—

''(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

''(2) assist the Director in the preparation of a biennial report, as described in section 119.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2004 through 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) EDUCATION SCIENCES REFORM ACT OF 2002.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(C) in section 111(b)(1)(A) (20 U.S.C. 9511(b)(1)(A)), by inserting ''and special education'' after ''early childhood education''.

(B) in section 111(c)(3) (20 U.S.C. 9511(c)(3))—

(i) in subparagraph (B), by striking ''and'' after the semicolon;

(ii) in subparagraph (C), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) the National Center for Special Education Research (as described in part E).'';

(C) in section 115(a) (20 U.S.C. 9515(a)), by striking ''including those'' and all that follows through ''such as'' and inserting ''including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), such as''; and

(D) in section 116(c)(4)(A)(ii) (20 U.S.C. 9516(c)(4)(A)(ii) is amended by inserting ''special education experts,'' after ''early childhood experts,''.

(2) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 1117(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6317(a)(3)) is amended by striking ''part E'' and inserting ''part D''.

(c) TRANSITION PROVISIONS.—

(1) ORDERLY TRANSITION.—Notwithstanding any other provision of law, the Secretary of Education shall take such steps as are necessary to provide for the orderly transition to, and implementation of, part E of the Education Science Reform Act of 2002, as enacted by subsection (a), from research activities carried out under section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act).

(2) CONTINUATION OF AWARDS.—The Secretary of Education shall continue research awards made under section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act) that are in effect on the day before the date of enactment of this Act in accordance with the terms of those awards.

(d) EFFECTIVE DATES.—Notwithstanding any other provision of law—

(1) the amendments made by subsections (a) and (b) of this section shall take effect on October 1, 2004; and

(2) section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act) shall remain in effect through September 30, 2004.

TITLE IV—COMMISSION ON UNIVERSAL DESIGN AND THE ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS

SEC. 401. COMMISSION ON UNIVERSAL DESIGN AND THE ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS.

(a) ESTABLISHMENT AND PURPOSE.—

(1) ESTABLISHMENT.—There is established a Commission (hereafter in this section referred to as the ''Commission'') to study, evaluate, and make appropriate recommendations to the Congress and to the Secretary on universal design and accessibility of curriculum and instructional materials for use by all children, with a particular focus on children with disabilities, in elementary schools and secondary schools.

(2) PURPOSE.—The purpose of the Commission is—

(A) to survey the issues related to improving access to curriculum and instructional materials for children with disabilities, with and without assistive technologies;

(B) to study the benefits, current or potential costs, and challenges of developing and implementing a standard definition of the term universal design as a means to achieve accessibility of curriculum and instructional materials, and as the Commission determines necessary, to recommend a definition for the term universal design, or other terms, taking into consideration educational objectives, investment of resources, state of technology, and effect on development of curriculum and instructional materials;

(C) to examine issues related to the need for and current availability and accessibility of curriculum and instructional materials for use in elementary schools and secondary schools by children with disabilities, gaps in or conflicts among relevant technical standards, educational quality, availability of instructional materials, technical standards, intellectual property rights, and the economic and technical feasibility of implementing any recommended definitions; and

(D) to provide the Congress and the Secretary, not later than 24 months after the date of enactment of this Act, the report described in subsection (d).

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, of which—

(A) 3 members shall be appointed by the Majority Leader of the Senate;

(B) 2 members shall be appointed by the Minority Leader of the Senate;

(C) 3 members shall be appointed by the Speaker of the House of Representatives;

(D) 2 members shall be appointed by the Minority Leader of the House;

(E) 8 members shall be appointed by the Secretary including representatives of States, local educational agencies, publishers of instructional material, individuals with disabilities, technical standard setting bodies, and authorized entities as defined in section 121(c)(1) of title 17, United States Code; and

(F) 3 members shall be appointed by the Registrar of Copyrights.

(2) EXPERTISE OF COMMISSIONERS.—All members of the Commission shall be individuals who have been appointed on the basis of technical qualifications, professional expertise, and demonstrated knowledge and shall include at least 4 representatives of each of the following:

(A) publishers of instructional materials, including of textbooks, software, and other print, electronic, or digital curricular materials;

(B) elementary and secondary education, including teachers, special educators, and State and local education officials or administrators;

(C) researchers in the fields of disabilities, technology, and accessible media;

(D) experts in intellectual property rights; and

(E) advocates of children with disabilities, including parents of blind, visually impaired, deaf, hearing impaired, physically challenged, cognitively impaired, or learning disabled, or representatives of organizations that advocate for such children.

(3) DATE.—The appointment of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(4) PERIOD OF APPOINTMENT AND VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(5) INITIAL MEETING.—Not later than 45 days after the date on which all members of the Commission have been appointed, the Commission shall hold the Commission's first meeting.

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(8) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a chairperson and vice chairperson from among the members of the Commission.

(c) DUTIES OF THE COMMISSION.—The Commission shall study and make recommendations to Congress and the Secretary regarding—

(1) the purposes of the Commission described in subsection (a)(2);

(2) priority topics for additional research;

(3) the availability and accessibility of curricula and instructional materials, including print, software, CD–ROM, video, and Internet, for use in elementary schools and secondary schools by children with disabilities, including—

(A) the numbers of affected children with disabilities, by grade, age, and type of disability;

(B) the technical and other means by which such materials are made accessible, such as assistive technologies, electronic versions, large print, closed captioning, video description, and Braille, and any conflicts between relevant technical standards by which instructional materials are made accessible;

(C) the steps taken by State and local educational agencies to support accessibility, including through State adoption and procurement policies, the acquisition and integration of assistive technology, and any State and local requirements or standards;

(D) timeliness of receipt of such materials by children with disabilities; and

(E) continued barriers to access to such materials; and

(4) the potential and likely effects of providing accessible or universally designed materials for all students in elementary schools and secondary schools, with a particular focus on children with disabilities, including—

(A) an analysis of the current and potential costs to develop and provide accessible instructional materials, with and without specialized formats, to publishers, States, local educational agencies, schools, and others, broken down by—

(i) type of disability, including physical, sensory, and cognitive disability;

(ii) type of instructional materials, including by grade and by basal and supplemental materials; and

(iii) type of media, including print, electronic, software, web-based, audio, and video; and

(B) an analysis of the effects of any recommended definitions regarding—

(i) the availability and quality of instructional materials for nondisabled students, and innovation in the development and delivery of these materials;

(ii) State learning content standards that are media-, skill-, or pedagogically-based and may therefore be compromised;

(iii) prices of instructional materials and the impact of the definitions on State and local budgets; and

(iv) intellectual property rights in connection with the development, distribution, and use of curriculum and instructional materials.

(d) PUBLIC HEARINGS.—As part of the study conducted under this subsection, the Commission shall hold public hearings, including through the use of the Internet or other technologies, for the purposes referred to in subsection (a).

(e) REPORT.—

(1) INTERIM REPORT.—Not later than 12 months after the establishment of the Commission, the Commission shall provide to the Secretary and Congress an interim report on the Commission's activities during the Commission's first year and any preliminary findings.

(2) FINAL REPORT.—Not later than 24 months after the establishment of the Commission, the Commission shall submit a report to the Secretary and Congress that shall contain—

(A) recommendations determined necessary regarding definitions of the terms described in subsection (a)(2)(B);

(B) recommendations for additional research; and

(C) a detailed statement of the findings and conclusions of the Commission resulting from the study of the issues identified in subsection (a)(2)(C).

(f) POWERS OF THE COMMISSION.—

(1) AUTHORITY OF COMMISSION.—The Commission may hold such hearings, convene and act at such times and places, take such testimony, and receive such evidence, as the Commission considers necessary to carry out the responsibilities of the Commission.

(2) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) COMPENSATION.—Except as provided in paragraph (5), each member of the Commission who is not an officer or employee of the Federal Government shall serve without compensation. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(5) PER DIEM.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(6) EMPLOYMENT AND COMPENSATION OF EMPLOYEES.—Except as otherwise provided in this section and consistent with section 3161 of title 5, United States Code, the Chairperson may appoint, fix the compensation of, and terminate an executive director and such additional employees as may be necessary to enable the Commission to perform the Commission's duties.

(7) DETAILING OF FEDERAL EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(8) TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(g) TERMINATION OF THE COMMISSION.—The Commission shall terminate on the date that is 90 days after the date on which the Commission submits its final report under subsection (e)(2).

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) AUTHORIZATION.—There are authorized to be appropriated $750,000 for fiscal year 2004, and such sums as necessary for fiscal year 2005 to carry out the provisions of this section.

(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this subsection shall remain available, without fiscal year limitation, until expended.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GREGG. Mr. President, I ask unanimous consent that following the opening statements by the two managers, Senator HARKIN be recognized to offer his amendment regarding funding. I further ask that immediately upon the reporting of that amendment, it be temporarily set aside and the I be recognized to offer a first-degree amendment regarding funding; provided further, that there be 2 hours of debate equally divided between the two managers, or their designees, to debate both first-degree amendments concurrently. I ask also that following that debate, the Senate proceed to a vote in relationship to my amendment, to be followed by a vote in relationship to

the Harkin amendment, with no second-degree amendments in order to either amendment.

Finally, I ask unanimous consent that no further amendments relating to funding be in order to the bill, and that there be 2 minutes of debate equally divided between the votes, and that the votes begin at 1:45 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I ask the Senator to modify the consent agreement to say that the time from now until 1:45 be equally divided between the two sides. It is more than 2 hours.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I see my friend and colleague from Iowa, who will be offering an extremely important amendment dealing with the funding issue for the special needs education program. As he is gathering his papers, I want to say to our colleagues in the Senate that this legislation represents the best effort of our committee, which is truly bipartisan.

I pay tribute to Senator GREGG, our chairman, for his leadership in helping bring all of the members together on this legislation. We virtually have a unanimous committee recommendation. We have a few public policy issues, which appropriately the Senate will address, and then we will move ahead.

Many times around this institution we wonder how it functions and works. I think recognizing the extraordinary challenges that so many of these children are facing has sort of brought out the best of our Members.

I thank our chairman, and I thank all of my colleagues on my side who took great interest and great involvement in this issue. I will go into greater detail as we go through the process.

I always pay tribute to my friend and colleague from Iowa, Senator HARKIN, who has had a special leadership role in issues involving the disabled and handicapped since the time he has been in the Senate. I always thank him, as well as the rest of our colleagues.

As we move through the course of the morning, we will have a more detailed description of what is in the legislation and the importance of the support of this institution.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join the senior Senator from Massachusetts. I specifically thank the senior Senator from Massachusetts for his cooperation and the cooperation of the entire committee.

This is a bill that is 90 percent agreed to. There are some public policy issues we are going to debate on the floor, specifically on the process of funding this bill. It is a very strong step forward in the area of addressing the needs of children who have special needs, basically focused on making sure there is less bureaucracy and more care, that teachers have more flexibility and parents have more involvement, and that there is less litigation and more results.

Kids who have special needs, rather than just being put through a process of checking off boxes, are actually given the opportunity to learn, and we have accountability standards for that learning.

It is a very good bill. We will get into more depth on its substance as we move forward. I appreciate the courtesy of the Senator from Iowa for moving expeditiously his amendment, along with one of the amendments I will be offering, one of the primary issues that needs to be addressed on the floor. I look forward to him offering his amendment. I will offer mine, and we will get into the substance of that debate.

Mr. HARKIN. Mr. President, the Individuals with Disabilities Education Act is a landmark civil rights law that has had a powerfully positive impact on millions of Americans.

Before moving to the substance of my remarks, I would like to thank the chairman of our committee, the Senator from New Hampshire, Mr. GREGG, and the ranking member, my friend from Massachusetts, Senator KENNEDY, for their dedicated work on this bill. The reauthorization of a bill of this size is a considerable undertaking, and I want to recognize the excellent work of Annie White of Senator GREGG's staff, and Connie Garner of Senator KENNEDY's staff, along with many other committee staff who have worked so hard on this reauthorization.

Let me take a moment to put the Individuals with Disabilities Act in historical context. IDEA was passed almost three decades ago, in 1975, the year after I was first elected to the House of Representatives. So I have watched the progress of this law since its inception. I am proud of what IDEA has achieved. No question, we have further to go to achieve equal educational opportunity for children with disabilities. But we have made tremendous progress since 1975.

We must not forget that, prior to the early 1970s, children with disabilities were routinely kept out of school. More than 1 million children were excluded entirely from their local public schools, and more than half of all children with disabilities in the United States did not receive appropriate educational services. If they did get an education, it was often in segregated schools or institutional settings.

But in the early 1970s, that began to change. Two landmark cases, PARC v. Commonwealth of Pennsylvania in 1971, and Mills v. Board of Education in 1972 established that children with disabilities had the right to an equal opportunity for education under the fourteenth amendment to the Constitution.

In 1975, Congress wrote IDEA for two reasons. First, we fleshed out the substance and details of what was required to achieve equality for children with disabilities. Congress specified critical protections for parents and children to transform the constitutional requirement into a practical reality throughout the country. While we still have further to go, I believe that we have made major progress since the days when 1 million children were entirely excluded from school. The latest figures available indicate that some 6.6 million children are receiving services under IDEA.

A second important purpose of IDEA was to help States meet their constitutional obligations. And here we have fallen far short of our goals. When IDEA was passed, the Federal Government pledged to help with 40 percent of the excess costs of special education. At the present time, we are funding less than 20 percent of these costs. I will have more to say about this later when I offer an amendment along with my friend and colleague, the senior Senator from Nebraska.

I think it is important to keep fixed in our minds these two historic purposes of IDEA, because these purposes must inform our discussion over the next few days here in the Senate. The protections that we wrote into the law to ensure opportunity for all continue to be critical today. And the need for Federal help to meet states' obligation also continues to be critical to realizing the full promise of this law.

These matters are vitally important because the education that a child receives has a profound impact on his or her future. This is true for all children, whether or not they have disabilities.

IDEA is a critical cornerstone of the Federal Government's commitment to ensuring equality for individuals with disabilities. When we passed the landmark Americans with Disabilities Act in 1990, we said that this Nation's four great goals for individuals with disabilities are equal opportunity, full participation, independent living and economic self-sufficiency. These same goals are referenced in IDEA. Obviously, a quality education is essential to achieving all four of these goals.

These may be broad goals, but they are not abstractions. To the contrary, they have enormous practical, nitty-gritty consequences for individuals with disabilities. They have the power to transform individual lives.

On that score, I want to tell you about my good friend, Danny Piper from Ankeny, IA. Tragically, Danny died in a car accident more than a year ago, but he left behind a legacy of friends, family, and personal achievement.

From an early age, Danny's parents insisted that he be educated with his peers. He was an integral part of his school community, performing in the school play and active in a variety of school activities. Once, after he testified before my subcommittee on the ADA, I asked him how testifying before Congress compared to being in the school play. He answered, ''Not so bad.''

Danny went on to finish high school and get a job. I spent one day with him on the job at Osco drugstore, where he worked everyday. He showed me the ropes—how to correctly stock the shelves, how to load the cardboard box machine to avoid getting hurt, and so on. We had lunch together, too. It was a day I will always cherish.

Danny had what we want for all of our children—a fulfilling life of independence and dignity. He lived with a friend in an apartment. He worked every day. This is what IDEA is all about. It is why I strongly support the protections this law provides—and why it is time for the Federal Government to fully fund the act.

We have a long way to go to ensure that all children have access to a quality education, and the opportunities that come with it. This reauthorization correctly emphasizes enforcement of the act. I thank my friend from Massachusetts for his leadership on this issue. This bill contains provisions that require states to meet compliance benchmarks. It specifies that the Secretary and the States must take action if there is a consistent failure to provide an appropriate education to children with disabilities.

The bill also ensures that a child's individualized education program, known as an IEP, provides services up front to ensure that a child succeeds. So each child will have access to the behavioral health services that will ensure a good experience for the child and his or her classmates. Getting that plan in place in the first place, rather than after any problems occur, is critical to making this law work for everyone.

The bill has several important provisions to assist deaf children get the education that they need to succeed. It specifies that interpreters are a related service required under the act, and it preserves critical access to captioning for deaf and hard-of-hearing students. These provisions are very important to me because, as many of you know, my brother Frank was deaf. These are the kinds of services that would have made a huge difference for Frank. So I am especially proud to support these provisions in the reauthorization.

This bill also maintains all of the early intervention and preschool education programs that get children off on the right foot so they can achieve in school.

As we debate this reauthorization, let's be guided by the vision that IDEA is an investment in children's lives and futures. We are investing money at the front end—with early intervention, with interpreters, with behavioral health and other related services. And the return on that investment is productive, independent, taxpaying citizens. We get individuals who are prepared to go on to higher education, to gainful employment, and to independent living in our communities.

But we have to make investments in order to get the results we want. We have to ensure that schools provide the appropriate education required by the law. And we have to meet our commitment to help local public schools by, at long last, providing them with full Federal funding IDEA. As I said, IDEA was passed in 1975. It has been almost three decades, and we are not even half way toward meeting our original commitment to pay 40 percent of the excess costs of special education.

I will be offering an amendment later with my friend, the senior Senator from Nebraska, to remedy this longstanding failure of the Federal Government. Over the years, we have talked again and again about full funding. I say to my colleagues that its time for us not just to talk the talk, but to walk the walk. It is time to make good on the critical investment of federal funds that we pledged over 30 years ago.

I will have more to say on this later. For now, I conclude by noting that IDEA is about the kind of country we want America to be. We must fully fund the act, and we must renew our commitment to its cornerstone protections. Only then will every child in America have the opportunity not only to dream, but to make his or her dreams a reality.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 3144

Mr. HARKIN. Mr. President, I send an amendment to the desk on behalf of myself and Senator HAGEL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. HAGEL, Mr. KENNEDY, Ms. COLLINS, Mr. JEFFORDS, Mr. COLEMAN, Mrs. CLINTON, Mr. ROBERTS, Ms. MIKULSKI, Mr. DODD, Mr. REED, Ms. STABENOW, Mr. LEVIN, Mr. ROCKEFELLER, Mr. CORZINE, Mr. SCHUMER, Mr. WARNER, and Ms. MURKOWSKI, proposes an amendment numbered 3144.

Mr. HARKIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend part B of the Individuals with Disabilities Education Act to reach full Federal funding of such part in 6 years, and for other purposes)

In section 611 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill) strike subsection (i) and insert the following:

''(i) FUNDING.—

''(1) IN GENERAL.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated—

''(A) $12,268,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2005, and, there are hereby appropriated $2,200,000,000 for fiscal year 2005, which shall become available for obligation on July 1, 2005 and shall remain available through September 30, 2006, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $12,268,000,0000, then the amount appropriated in this subparagraph shall be reduced by the difference between $12,268,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(B) $14,468,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2006, and, there are hereby appropriated $4,400,000,000 for fiscal year 2006, which shall become available for obligation on July 1, 2006 and shall remain available through September 30, 2007, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $14,468,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $14,468,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(C) $16,668,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2007, and, there are hereby appropriated $6,600,000,000 for fiscal year 2007, which shall become available for obligation on July 1, 2007 and shall remain available through September 30, 2008, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $16,668,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $16,668,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(D) $18,868,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2008, and, there are hereby appropriated $8,800,000,000 for fiscal year 2008, which shall become available for obligation on July 1, 2008 and shall remain available through September 30, 2009, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $18,868,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $18,868,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(E) $21,068,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2009, and, there are hereby appropriated $11,000,000,000 for fiscal year 2009, which shall become available for obligation on July 1, 2009 and shall remain available through September 30, 2010, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $21,068,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $21,068,000,000 and the maximum amount available for awarding grants under subsection (a)(2); and

''(F) the maximum amount available for awarding grants under subsection (a)(2) for fiscal year 2010 and each succeeding fiscal year, and, there are hereby appropriated for each such year an amount equal to the maximum amount available for awarding grants under subsection (a)(2) for the fiscal year for which the determination is made minus $10,068,000,000, which shall become available for obligation on July 1 of the fiscal year for which the determination is made and shall remain available through September 30 of the succeeding fiscal year.

''(2) REAUTHORIZATION.—Nothing in this subsection shall be construed to prevent or limit the authority of Congress to reauthorize the provisions of this Act.

AMENDMENT NO. 3145

Mr. GREGG. Mr. President, I ask that my amendment be called up.

The PRESIDING OFFICER. The pending amendment will be set aside. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 3145.

Mr. GREGG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To authorize appropriations for part B of the Individuals with Disabilities Education Act)

On page 443, strike lines 3 and 4, and insert the following:

there are authorized to be appropriated—

''(1) $12,358,376,571 for fiscal year 2005;

''(2) $14,648,647,143 for fiscal year 2006;

''(3) $16,938,917,714 for fiscal year 2007;

''(4) $19,229,188,286 for fiscal year 2008;

''(5) $21,519,458,857 for fiscal year 2009;

''(6) $23,809,729,429 for fiscal year 2010;

''(7) $26,100,000,000 for fiscal year 2011; and

''(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I am joined by my colleague from Nebraska, Senator HAGEL, and many others to offer an amendment that will ensure at long last the Congress meets its commitment it made almost 30 years ago. At that time, we told children with disabilities, their families, schools, and States that the Federal Government would pay 40 percent of the extra cost of special education. We have never lived up to that commitment. In fact, we are not even halfway there.

This is really about the credibility of the Congress. It is about the credibility of each and every one of us. We tell our children all the time to keep your promises, do what you say you are going to do. We teach them if they do not follow through, other people will be hurt. Yet the Congress has not kept its word. We have not done what we have told children, parents, schools, and States we would do, and people have been hurt as a result.

People are harmed every time parents of children with disabilities are pitted against parents with children without disabilities for a limited pot of funds. They are harmed every time a family opts not to ask for what their child truly needs because they have been told it costs too much and other children will suffer. They are harmed every time a school district struggles to provide educational opportunities for all its students.

Congress had two purposes when it passed the predecessor to IDEA in 1975. First, we wanted to codify the constitutional obligation to provide education to all children, including those with disabilities. There had been several Federal court cases, including the PARC case in Pennsylvania and the Mills case in DC, that challenged the exclusion of kids with disabilities from public schools. These cases held that if schools do provide for public education of their kids, then they must educate all children. So Congress passed a law, and we spelled out what schools have to do to meet these constitutional obligations.

The other purpose of the law was to provide financial support for the education of children with disabilities. Congress recognized that serving additional students would cost substantially more money, and it committed to paying 40 percent of the excess costs of special education, which is known as the full funding amount.

Almost 30 years later, we are reauthorizing this bill, and I say to my friends and colleagues that we need to think about what we originally wanted to do and promised to do. We wanted to show Federal support for the principle that all children deserve a quality education, and we wanted to help State and local governments meet the costs involved. The amendment of Senator HAGEL and I will help us at long last to achieve these goals.

Recent history leaves no doubt that discretionary increases will not get us to full funding. The charade is over. Educators, parents, children, and State and local government officials all know that we need mandatory increases. Promised increases on the discretionary side will not get us to full funding. They have not worked for 29 years; they will not work now.

If Members of this body are still not convinced that we need mandatory full funding, they only have to look at the past 2 years. This chart shows that, in 2003, President Bush proposed a $1 billion increase for IDEA. The Senate increased it to $2.3 billion. And the final tally was $1.3 billion.

Last year, it was the same story. President Bush wanted a $650 million increase. The Senate went up to $2.2 billion, and we came down to $1.2 billion, actually less of an increase than we had the year before.

Again this year President Bush asked for $1 billion, and we do not know how it will come out next year. We can look at the last 2 years and say probably the same thing will happen again.

The reason is simple, there are a lot of other important education programs that also need money. The President has consistently shortchanged the No Child Left Behind Act, especially title I. There simply has not been enough discretionary money to meet our obligations on IDEA while also funding programs to help schools meet the mandate of the No Child Left Behind Act. So special education funding gets squeezed.

Again, we are on track for a similar situation this year. The President, as I said, has proposed $1 billion for IDEA. The Senate budget resolution includes the same amount. So, according to the Congressional Research Service, we will never reach full funding if we increase IDEA at the rate of $1 billion a year under current law.

Under the revised funding formula in S. 1248, we will not reach full funding until fiscal year 2028, nearly a quarter century from now, 53 years after Congress first committed to that goal and made that promise. A child born today would not see full funding of IDEA during his or her entire education. That is unacceptable.

Fully funding IDEA within 6 years, as we do in our amendment, takes $2.2 billion a year, not $1 billion as the President has proposed.

Where is the additional money from IDEA going to come from this year if we do not use mandatory funding? Do my colleagues want to cut title 1? Do we want to cut afterschool centers? Do we want to cut teacher training? The money simply is not there in the President's budget to find $2.2 billion a year for special education unless we use mandatory funding.

My colleague from Nebraska, Senator HAGEL, and I have been trying to meet this goal for a long time now. We came close once before.

When the No Child Left Behind Act passed the Senate, this body agreed unanimously to mandate increases for IDEA until we reached full funding in 6 years. But strong opposition from the President and the House leadership thwarted the will of the Senate. At that time, we were told in conference to wait until reauthorization of IDEA took place. Well, here we are. We are reauthorizing IDEA.

So again I want to make this point very clear. Two years ago, this Senate unanimously approved mandatory funding for IDEA. It was only taken out in conference. It was taken out saying we have to wait until the reauthorization of IDEA. Well, as I said, we are on the reauthorization of IDEA right now and that is why Senator HAGEL and I and others are proposing this amendment.

We have waited long enough; children with disabilities and their parents have waited long enough; schools have waited long enough and, quite frankly, our property taxpayers have waited long enough.

Back home, I have heard from parents, school administrators, teachers, State legislators, chambers of commerce, taxpayers' associations, and others about the need to fully fund IDEA. I am sure every Senator in this body has heard the same thing from his or her own constituents. These voices are unanimous in support of mandatory full funding because they know that is the only way we are ever going to reach that.

Mandatory funding is also widely supported by all of the national disability and education groups. During this reauthorization, the education and disability communities disagreed on a

lot of issues, but they are unanimous and united on mandatory funding.

This chart shows a list of all of those who are in support. There are 36 organizations that are members of the Consortium of Citizens with Disabilities Education Task Force, plus 38 organizations that are part of the IDEA Funding Coalition.

The National Governors Association also has a clear position supporting mandatory full funding. To quote the joint policy of the NGA and the Council of Chief State School Officers:

Mandatory full funding of the Federal share of IDEA is essential.

They further state:

Congress should do the following: Provide mandatory full funding at the federally committed level of 40 percent of the average per pupil expenditure.

The Governors support mandatory full funding because they know how much it will mean to each of their States. I have a chart that shows how much more each State will get under the amendment Senator HAGEL and I are proposing as compared to what they would get if it is not supported. Again, I am not going to run through every State, but it is here for Senators to look at it if they would like. I urge each of my colleagues to look up their own State.

My own State of Iowa stands to gain $2 billion over 10 years under this amendment, an increase of $460 million over what they would get with the annual $1 billion increases.

I will talk for a minute about the investments IDEA funding pays for. It pays for the teachers who help children learn. It pays for occupational and physical therapy to help children grow stronger. It pays for interpreters and captioning for deaf and hard-of-hearing students, and Braille materials that allow blind children to read their textbooks. It pays for the behavioral health services that allow children with mental health needs to succeed. It pays for assistive technology, for example, software that helps a blind child use the classroom materials, or augmentative communication devices that help kids with cerebral palsy communicate with their teachers and their peers.

IDEA is an investment in children's lives and in their future. We are investing money at the front end with early intervention, with interpreters, with behavioral health and other related services. The return on that investment is productive, independent, taxpaying citizens. We get individuals who are prepared to go on to higher education, to gainful employment, and to independent living in their communities.

The unemployment rate for people with disabilities right now is about 70 percent. That is right, 70 percent. IDEA is critical to ensuring that we bring that rate down and increase the number of individuals with disabilities who are working.

Our House colleague, former Congressman Tony Coelho, always liked to say people with disabilities are the one group that really wants to pay taxes. They want to work. They want to have the opportunity to contribute to our society and economy.

IDEA has also cut down on the number of children who have to live in institutions. Dr. Charlie Lakin of the University of Minnesota estimates $6.5 billion a year is saved on institutional costs by making it possible for children with disabilities to live in their own homes and communities. The true value of this is impossible to measure in dollars. How does one measure the value of keeping a family together?

In closing, when Congress first passed this law in 1975, we created a beacon of hope for children who previously had none. We said to children with disabilities and their parents that all children deserve educational opportunity, all children deserve to take part in the American dream, all children deserve to look forward to having a home and a job when they grow up. To that end, we made a pledge to these children and their parents. We promised the Federal Government would pay its fair share of the costs, up to 40 percent on average per-pupil expense, to ensure this dream becomes a reality.

Today, nearly three decades later, it is time for Congress to make good on that commitment. So I urge my colleagues to vote yes on the amendment offered by Senator HAGEL, this Senator from Iowa, and so many others.

I see my colleague and cosponsor of the amendment, Senator HAGEL. He is a great leader on this issue. I yield to him at this time.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I thank my colleague, the distinguished Senator from Iowa, for his years of effort and leadership and focus on this issue.

I rise this morning to join with Senator HARKIN in introducing this amendment to S. 1248, the Individuals With Disabilities Education Act, IDEA, reauthorization. Our amendment will provide mandatory increases in funding of $2.2 billion per year to fully fund part B of the IDEA Program over the next 6 years.

This amendment will allow us to reach our Federal funding commitment to IDEA by fiscal year 2010 and fulfill our nearly 30-year-old Federal commitment to the States, our schools, our children with disabilities.

In 1975, Congress guaranteed children with disabilities the right to a free and appropriate public education. This means whatever the cost, States and local school districts are mandated by Federal law to provide necessary services to educate a child with a disability. Congress understood this Federal mandate would be costly. As a result, Congress agreed over 30 years ago to provide States with 40 percent of the cost of educating these children. Unfortunately, States have been bearing the bulk of the costs associated with IDEA for this time. States have upheld their part of the deal. Congress has not. This is why Senator HARKIN and I and others believe mandatory funding is warranted for the IDEA Program.

IDEA is one of the largest unfunded mandates imposed on the States. As a matter of fact, I recall in a speech on the Senate floor earlier this year the junior Senator from Tennessee, the former Governor of Tennessee, Mr. ALEXANDER, talking about unfunded mandates that he dealt with in his 8 years as Governor of Tennessee. He pointed out specifically that IDEA was one of those unfunded mandates.

Everyone in this body has heard from their Governors, school boards, administrators, teachers and parents about the importance of this issue. Unfortunately, instead of making IDEA funding a priority, Congress continues to pass new education programs that require more money, more resources, and more responsibility from the States. So we continue to force down upon the States, more unfunded mandates. Even though the purpose is noble, the cause is right, and we say on the floor of the Congress that we will help, we will provide those resources and those funds—in the case of IDEA, for 30 years we have not done that. We have not fulfilled the statutory commitments that we made to the States and the school districts—and ultimately to our children.

For the past 7 years, I have worked on a bipartisan basis with Senators HARKIN, DODD, KENNEDY, JEFFORDS, WARNER, COLLINS, CHAFEE, SNOWE, COLEMAN, ROBERTS, and others to accomplish this task. Three years ago, as was noted by my distinguished colleague from Iowa, the Senate agreed to an amendment that Senator HARKIN and I offered to the No Child Left Behind Act. The amendment provided mandatory funding for the IDEA program. Unfortunately, this amendment was removed during a House-Senate conference in 2001.

Today we have another opportunity to show the Senate's support for mandatory IDEA funding by passing the Harkin-Hagel amendment. Although we have had great success in increasing IDEA appropriations from $2.3 billion in fiscal year 1996 to $10.1 billion in fiscal year 2004, we still have a long way to go before meeting our total Federal IDEA funding responsibilities. The cost of special education is high. We understand that. But it is the thing that is most important for the parents, the teachers, and the children. By underfunding the Federal Government's portion of IDEA, States and local school districts are forced to pick up the additional costs, adding to their already heavy tax burdens.

Our amendment has nothing to do with expanding the Federal role. It has nothing to do with expanding the Federal role in education. It is about meeting the existing commitments of the Federal Government under the current law.

While I share the same budgetary concerns as others in this body—we all

must share those concerns and act as prudent, wise stewards of the people's money—I remind my colleagues that despite our recent progress on IDEA, we are still only about halfway to meeting our Federal obligation that we made to the people of this country 30 years ago. We are not now meeting those statutory commitments. Although we made budget promises year after year, we continue to fail in meeting our annual discretionary funding goals for IDEA.

Last year the Senate adopted a budget amendment that would have increased IDEA funds by $2.2 billion in fiscal year 2004. Unfortunately, we came up $1 billion short, even though we had passed it in the Senate, by the time we finished the appropriations process. This is just another example of why mandatory funding is absolutely necessary to fulfill the commitment of Congress to IDEA. Meeting our Federal commitment to IDEA would help school districts fund additional education priorities such as facility improvements, teacher salaries, and purchasing upgraded hardware and software for the classroom.

On another point that needs some clarification, the Harkin-Hagel amendment, this amendment that we debate this morning, would not take away the authority of Congress to reauthorize this program. There seems to be some misunderstanding about that issue. In fact, our amendment includes language that states that nothing shall prevent future reauthorizations.

I urge my colleagues to vote today to fulfill America's commitment to IDEA funding. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield at least 7 minutes to the Senator from Vermont, my friend and colleague who has spent a great part of his life and career in the Senate on educational issues, and especially on this particular issue. It is important that we hear his voice. I yield 7 minutes—more time if he so desires.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, it was many years ago the Senator from Massachusetts and I sat on the committee that designed this bill and passed it with all the expectations of it being fulfilled. But we still are a long ways from that.

I support the bipartisan Harkin-Hagel amendment to S. 1248, the Individuals with Disabilities Education Improvement Act of 2003.

This amendment would fully fund the Federal share of special education within 6 years, and finally meet the commitment that Congress made in 1975 when the original IDEA law was enacted.

And although I am supporting this amendment, I must admit that my emotions are mixed.

That is because we have been trying to accomplish this task for 29 years, and for 29 years we have failed. Quite simply, this should have been done a long time ago, and it pains me that we are still debating this issue.

In 1975 I was a member of the House-Senate conference committee that authored the Education for All Handicapped Children Act.

This came after courts across this country ruled that State and Federal constitutions obliged schools to provide all children with a free and appropriate education.

At that time, we in the Congress enacted a funding schedule for the Federal Government's share IDEA dollars.

We calculated the cost of educating a disabled child to be about twice that of a non-disabled child. Based on that calculation, we committed the Federal Government to pay 40 percent of the national per-pupil expenditure for each disabled child's education.

The schedule was for the Federal Government to pay 5 percent by 1978; 10 percent by 1979; 20 percent by 1980, 30 percent by 1981; and 40 percent by 1982.

Currently, we are not even meeting the 1980 allocation of 20 percent. In fact, we are only providing states with 18.6 percent of the costs. This is a disgrace.

And according to the Congressional Research Service, if we continue increasing funding at a rate of one billion dollars each year, we will never reach our goal of 40 percent set in 1975.

Every dollar that the Federal Government fails to provide must be supplied by the State and local governments, which usually translates to higher property taxes.

For communities that often struggle to pass school budgets, our failure to meet our promise may fuel resentment against families that already have enough to deal with in raising a child with special needs.

In many small towns, such as those in Vermont, Iowa, and Nebraska, a single child with severe disabilities can have a significant impact on a school's budget.

Yet even though the Federal Government has broken its promise year after year, great progress has been made and the States and local school districts deserve a lot of the credit for providing quality education to so many children.

It is long overdue that we here in the Congress stand up to our responsibility to support all of our children, schools and communities.

If 29 years has shown us anything, it is that our children do not benefit from hollow promises.

The underlying bill is a solid piece of bipartisan legislation. There are some compromises on difficult issues such as how children are disciplined. But none of these issues addressed in the bill is as important as the subject of the amendment—fully funding IDEA and treating the annual funding increases as mandatory spending.

Although I am supporting this amendment, I am deeply troubled that some may consider the funding mechanism being proposed here is a gimmick since the current $10 billion Federal allocation will remain as discretionary spending in the language before us. If we are successful in passing this amendment—and I hope we will be—the integrity of the amendment will only be upheld if the current $10 billion continues to be used only for IDEA.

Further, that $10 billion must remain $10 billion and not be reduced and used for non-IDEA programming. As important as it is to vote for this amendment before us, it is equally important to commit to protecting the level of funding.

I urge my colleagues to support the amendment. The time is long overdue for fulfilling our promise.

I have a question for the Senator from Iowa, the sponsor of the amendment.

As we have discussed, the amendment before this body makes IDEA funding increases mandatory. The Senator from Iowa is a member of the Appropriations Committee and a ranking member of the subcommittee that overseas IDEA spending. Is it the understanding of the Senator from Iowa that the current discretionary allocation for IDEA, which is $10 billion, will continue to be dedicated only to IDEA programming and not reduced if this amendment is agreed to?

Mr. HARKIN. Mr. President, if the Senator will yield, I respond by saying to my friend from Vermont that I appreciate his question. I want to assure him that, as he knows, I am committed to fully funding IDEA. This amendment—I know I can speak for my colleague from Nebraska also—presumes that the discretionary rates will remain dedicated to special education, and I am fully confident that will be the case.

I have been on the Appropriations Committee now for 20 years and on the subcommittee that funds IDEA. My experience in 20 years is that it has never been cut. Maybe it has not been added to much, but I have never known anyone to try to cut it. Right now, Senator SPECTER is the chair of that subcommittee. I want to assure the Senator that no one has any intention of cutting IDEA. Those of us on committee would resist that. Again, Senator GREGG is also on the subcommittee, and I assume he doesn't want to cut IDEA either. There has not been a cut in IDEA funding in 25 years. There will not be any now on the discretionary account.

Mr. JEFFORDS. I thank the Senator for that commitment and understanding.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 3 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 3 minutes.

Mrs. MURRAY. Mr. President, I rise in support of the amendment to fully

fund IDEA offered by Senator HARKIN and Senator HAGEL.

Nearly 30 years ago the Federal Government made a commitment of equal opportunity to our Nation's children with disabilities. With that commitment, we promised that the Federal Government would uphold its end of the bargain and pay 40 percent of the average per-student cost for every special education student. Today, however, the Federal Government is paying less than 19 percent of that cost.

Over the past couple of years, IDEA has received significant increases but, according to the Congressional Research Service, at increases of $1 billion each year, the Federal Government will never fulfill its promise of funding at 40 percent. Further, if annual increases were $1 billion plus inflation, we would not reach the promised level of 40 percent until 2035, more than 30 years from now.

The Harkin-Hagel amendment increases IDEA funding over 8 years by $2 billion per year through mandatory funding. Mandatory funding is what it is going to take because local schools today are already struggling with the requirements of the No Child Left Behind Act, the lack of promised Federal funding, and the dismal financial picture still facing many of our States and local governments. It is going to take real funding through mandatory spending to make up for all of those gaps.

This gap in special education funding, by the way, doesn't just hurt disabled students; it hurts their classmates as well because we are forcing schools to make difficult decisions with regard to which kids get funding. In order to make up for the Federal funding shortfall, many school districts have been forced to take money from their general education budget, which affects every single student. I know we can do better for America's disabled students. Let us not make them wait another 30 years to fully fund this law.

I urge my colleagues to fulfill the promise of IDEA and support the Hagel-Harkin amendment.

Thank you, Mr. President. I yield the floor.

Mr. KENNEDY. Mr. President, we have a number of other speakers. I yield myself 6 minutes.

First of all, I congratulate the Senator from Iowa for his perseverance in ensuring that this issue would be brought to the floor of the Senate so the Senate can have an opportunity to vote on this very important question that makes an enormous difference to hundreds of thousands—millions—of our fellow citizens, primarily the parents but certainly the children who will also be affected. I commend him for his doggedness and perseverance in pursuing what is basically a fundamental civil right.

The holdings by the courts of this country have said under the equal protection laws that these children need to have the kind of necessary and reasonable accommodation they are entitled to under our Federal Constitution; therefore, we have the responsibility to make sure they are going to be protected and they are going to receive these kinds of educational opportunities.

As my good friend from Vermont pointed out, he has made special education one of his real priorities in this institution. Over the course of his very distinguished career, he has added immeasurably to the scope and understanding of the realization of the education for needy children with special needs in this country. But he remembers, as I do, when we were trying to provide—going back to 1965 when we passed the Elementary and Secondary Education Act—some funding for special needs children. Over a period of years, we enhanced that funding to try to provide some help for special needs children. But all of that changed dramatically after we had the court decisions that interpreted the Equal Protection Clause to ensure that we were going to have to make sure children with special needs were going to be able to have educational opportunities.

We passed the IDEA bill. What was the rational here in the U.S. Congress? What was the rational with the President at that particular time? It was a general recognition that to educate a special needs child, it was going to cost effectively double what it costs to normally educate a child in this country. It is going to cost double that—double of that in my State of Massachusetts. It varies slightly from different States, but, nonetheless, we recognized that it was going to be effectively doubled. That was the best estimate. That was the testimony cited. It was the judgment and the decision that the Congress was going to help and assist the States and local communities. We ensure over 80 percent of the funds provided in this program go to the local community. There is some money that can be retained at the State level in terms of training programs and coordination of various services, but this program was driven to the local level to help offset the additional burdens that taxpayers would have in local communities.

As we all know, one of the extraordinary demands we have seen in small and large communities is when a family has a special needs child who takes the extra services. They go to those town meetings and we find out who is going to end up paying for those needs. In my own State, even with the IDEA, it only offsets 8 percent of the education program. We will come back to that later. However, it is only 8 percent. The greatest percent, 50 percent, is raised at the local level in local taxes. So we have services that will be necessary for special needs children, causing particular hardships on small communities because of these additional expenditures.

When we fail in the Senate to provide that 40 percent, so often, particularly now when we have scarce resources, we see the kind of tension that is taking place between parents who have children who do not have disabilities and want to see the educational opportunities enhanced and those who have special needs and want to make sure their children are going to be covered. It brings enormous tension in local communities, neighbors struggling against neighbors.

We made the judgment and decision in 1979 when we passed the first IDEA act. At that time, we were only covering 2 million of the disabled children. Generally, it was considered to be 4.5 million children. The States were covering 2 million children. There were 37 States that had IDEA-type legislation, but by and large, we were not providing help and assistance to these children, even though too often we saw the situation where these children were effectively being warehoused, pushed off into basements, pushed off into attics, pushed off into remote areas.

The idea they were getting a benefit of any education defied the imagination.

We decided we were going to encourage the States, and the way to encourage the States was to indicate that we at the national level were going to be in partnership with the States, and most importantly, in partnership with local communities. That is where this commitment lies, with the local communities, the local towns. They pay the greatest percent of this burden. We were going to work with those local communities to help offset the expenditures.

We made a commitment that it was going to be 40 percent of that additional cost. That is the basis of the argument for the 40 percent—why it is 40 percent and not 50 percent, why it was not 100 percent. We wanted to be a partner. This is what the decision was. That was a decision and a judgment relied on by States and by local communities all across this country. That is a commitment and pledge that has not been kept.

As result of the fact we have not kept that commitment, local communities have been making up the difference and seeing their taxes rise to try to offset the challenges that local communities will face when they have special needs children. That is the issue we are trying to address today.

Today, we know we are fulfilling 19 percent of the challenge. The Congressional Research Service says, under the President's program, the way the administration is going, it would never be reached with increases of $1 billion a year. It will never be reached.

Senator HARKIN and Senator HAGEL have said we have committed ourselves to doing this. We ought to meet our responsibilities and provide these resources which are so necessary and can make such an important difference.

With the legislation before the Senate, with all of the changes—and I will wait to go over those various changes

made in the legislation, that we now will support and the contrast from 1997—we have brought this legislation up to where it can make an extraordinary difference, will make an extraordinary difference for those special needs children.

Now, people can ask, Where are you going to get the resources and where are you going to get the money given the kinds of challenges we are facing?

I just saw on the business page of the Washington Post, on Tuesday, May 4, ''The Federal Deficit Likely to Narrow by $100 Billion.'' That is this year alone. The Harkin amendment would take $2.2 billion out of that $100 billion that they expect this year over the other predictions. That is the responsible way.

I will not take the time now to go through the favorable comments that those in the Treasury and the Budget Committee have made in terms of what they are expecting regarding the windfall. It is a matter of priority. It seems to me, if we will have a $100 billion windfall that will come over the course of the summer, we ought to be able to afford $2.2 billion to meet our responsibilities to local communities all across this country that are trying to meet their responsibilities to educate children who have special needs. That is the issue.

I have great respect for my colleague and friend, the chairman of our committee. I am going to vote in favor of his amendment that will increase the authorization. If we increase the authorization, we are able to get the funding for that program, we would get to that 40 percent over a 7-year period, but, unfortunately, in terms of the authorization with the No Child Left Behind Act, we have seen what is actually appropriated and what is authorized are going in different directions.

It seems to me, if we are serious in trying to meet the needs of special needs children, we have the ability with this legislation, which will make the greatest difference in the world to special needs children in this country, that understands the importance of early intervention, understands the importance of transition, has brought into place changes in terms of the discipline, brings in other kinds of agencies so they will involve themselves. It involves the local school community to a greater extent, with greater flexibility, but still has strong accountability.

We have a very important piece of legislation. This can make an extraordinary difference. I hope our colleagues and friends will pay heed to the opportunities we have with the Harkin-Hagel amendment. It can make a very important difference. This is an obligation we have. We ought to meet the obligations we have made to families across this country. They are being hard pressed and particularly hard pressed now when many of the States are cutting back their support in terms of education funds. The burden is falling increasingly on these families.

We have an opportunity. With this positive news that is coming, we ought to make sure we support the Harkin-Hagel amendment and meet our responsibilities to special needs children.

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I yield myself such time as I may need.

Mr. President, first of all, I, once again, thank the members of the committee for assisting in pulling together a bill which is a very positive piece of legislation in the area of special education. We all understand the historical development of special education. It has been outlined quite adequately and well by the Senator from Massachusetts, the fact that for many years these children were put in special rooms or put in the basement and left there to basically be warehoused, for all intents and purposes.

Then, with the passage of the special education law back in 1976, that all changed, and these kids ended up having an opportunity, a shot at decent education, and, where mainstreaming came into play, we tried to get them into the classroom, and to the extent they could not be in the classroom, they would get high-quality care.

I have had a personal involvement in this issue for a long time. I chaired, was the president of, and a member of the board of directors, of a very excellent center for special needs children, which is an educational facility, not a hospital, called the Crotched Mountain Rehabilitation Center, in New Hampshire. I was basically very active in that center for many years, until the mid to late 1980s. So it is an issue that concerns me a lot.

I want to make sure these kids get adequate care and adequate education. This bill makes giant strides toward addressing some of the problems that have evolved over the years relative to special needs students, especially as we attempt to reduce the amount of bureaucracy and paperwork that teachers for special needs children specifically have to handle.

It is estimated that some teachers for special needs children—probably even a majority—spend almost a day and a half of every week essentially doing paperwork to maintain the lesson plans and the planning process and making sure all the different regulatory activity is addressed relative to their jobs, instead of actually being with the child and doing the classroom work that is so important. So this bill tries to address that.

It also tries to address the excessive litigiousness that has occurred over the years relative to special needs children, trying to reduce that, and getting us out of the courtroom and back into the classroom with these kids. It is a very important factor.

It also addresses the question of discipline. This has been a problem. It tries to give teachers and school officials a little more control, significantly more control, in how they manage their classrooms and dealing with children who are, unfortunately, disruptive, but does it without uniquely penalizing a child whose disruption is a function of their problem which they may have which gives them special needs. So I think we reach a balance that is very constructive.

The bill is a positive step forward in trying to make the special education laws more responsive to the outpouring of concerns we heard from school teachers, administrators, and parents across the country, but especially, in my case, from New Hampshire. So we are trying to address and improve the law to make it more efficient and effective.

We focus it now more on accountability. We want to make sure these children learn to the extent they are capable of learning. Rather than just going through a series of checking off boxes because this has been done and that has been done, what we want to know is, are there results? We try to adjust the process to focus on results versus bureaucracy and input. So that is the goal of this bill.

It is a good piece of legislation. It is bipartisan, as has been mentioned. The issues which remain are significant, but they are not the core of the bill. The core of the bill is how it addresses the needs of that child.

One of the major issues, obviously, that remains is how we fund this legislation. This has been a primary concern of mine since I was elected. When I had the good fortune to serve as Governor of New Hampshire, I believed that the single largest unfunded requirement the Federal Government was putting on us, outside of some of the environmental requirements, was this issue of how we paid for special education. I did come here with the intention, and have, I believe, had reasonable impact on getting those dollars up, getting the Federal dollars up, the commitment up. It has been a long and very difficult road, but it has been a road where significant success has been accomplished also.

I do not think we should ignore the fact that we have dramatically increased funding in the special education accounts. In fact, if you look at the special education funding accounts, I believe you will find they are, as a percentage—obviously, not in gross dollars, but as a percentage—the fastest growing funding area in the Federal Government, and have been in that arena for the last 4 years during this President's time, and even prior to that since the Republicans took over the Senate.

I think it is important we refer to some of the history of what was happening, and how we have increased funding in these accounts. First off, in 1996, when we Republicans retook control of the Senate, myself and other Members of the Senate, including Senator LOTT and Senator SPECTER, decided to make it an absolute priority.

In fact, it became S. 1 at that time, the first bill we introduced, that we would increase the funding for special education programs.

We started a process of increasing the commitment to funding to those programs, which was significant. This chart reflects that increase. We have gone from $2.3 billion—and each one of these increases represents very substantive and dramatic increases. By the way, almost $1 billion a year, since 1996, on a compounded basis, has been going into the special education accounts. So we went from $2.3 billion, when we started this aggressiveness—and I would like to think I was one of the initiators of this, as was Senator JEFFORDS at the time—and have now moved it up to $11.3 billion.

As a percentage, in 1996, when we started, the Federal Government was paying maybe 6 percent of the cost of special needs children. Now we are paying about 20 percent of the cost of special needs children.

I think it is very important in the context of the debate to put this in perspective relative to what the commitments made by the Clinton administration were during this time because what happened during this period was that, actually, President Clinton did not send up any budgets which increased special education funding until the last 2 years of his administration. In fact, he was flat-funding special education throughout his administration, for all intents and purposes. It was not until the Republican Senate insisted that dollars be put into special education, and we increased the funding by $1 billion a year, as I mentioned, starting in 1996, that President Clinton actually responded to that, and in the last 2 years of his administration started to put funds into this account.

If you look at it by year, you will notice essentially the Clinton administration's funding levels were basically flat. If you look at our funding, you will see that it increased dramatically during this period. In fact, in gross terms, over the 8 years of the Clinton administration, his commitment to special education was $29 billion. In the first 4 years of the Bush administration, the increase is $38 billion. So just in a period of 4 years, President Bush has dramatically increased—almost by 50 percent—the total increases which were made to special education funding during the 8 years of President Clinton's administration.

This reflects the fact that once the Presidency changed, and President Bush came into office, there was actually even an acceleration of funding into the special education accounts beyond what was occurring when we had a Republican Senate and a Democratic President and the Republican Senate was pushing the issue. Now we had an actual President who was in agreement with accelerating special education funding, and we accelerated that funding rather dramatically.

President Bush, in every budget he has brought forward since becoming President, has proposed an increase of at least $1 billion—and that is a compounded number—so that we have seen this rather dramatic increase in funding from the administration over this period of time which has led to this huge increase—significant increase—which, as I said, is one of the fastest growing percentages in the Federal budget, if not the fastest growing percentage in the Federal budget of funding for any account. And that has occurred in the special education accounts.

In fact, when I looked at Senator HARKIN's chart, I found it interesting that at least he gave credit to the fact that the President was increasing funding $1 billion a year—$1 billion a year; $1 billion on top of $1 billion. That was not enough to reach the goals that we had hoped to reach. But it was those big increases that he was reflecting there. And it is ironic that that would be attacked, that the President would be attacked for only increasing funding $1 billion a year—''only,'' using the term from the other side—only increasing funding $1 billion a year and $1 billion the next year which is $2 billion, and a billion dollars the next year which is $3 billion, that he would be attacked for that. When the Democrats controlled the Senate and the Democrats controlled the Presidency, they flat-funded this account. When President Clinton was President and we controlled the Senate, we had to really pull teeth to get the funding up. Now we have a President who has been actively promoting the expansion of funding in these accounts, aggressively and rather dramatically expanding it, and what do we hear from the other side: You are only doing $3 billion, $1 billion 1 year, $1 billion on top of that, $1 billion the next year. It is a little inconsistent, to say the least, if not a touch hypocritical to make that statement in the context of the last time the budget was actually under their control.

In fact, if you go back to the last time Senator HARKIN was the appropriating chairman—there was a period here where the Democratic Party did control the Senate, while President Bush was President, has been President. During that period Senator HARKIN brought forward an appropriation, when he had control over the appropriations accounts that deal with special education, which did not come anywhere near the number which he now claims should have been funded. He is claiming the funding increase should have been $2.2 billion a year under his own chart. That is what he is saying.

Under his budget, as he brought it out—actually he never brought it at the floor of the Senate. It was passed through committee. They never actually brought a budget to the floor and they never brought an appropriations bill to the floor. Under his appropriations bill as it passed out of his committee, I believe his number was $875 million that he had for an increase in the account. It might have been $1 billion. Whatever it was, it was less than the full funding he now says has to be given or should have been given, even during that time under his own charge, to special education.

So there is a disconnect. When they are in charge, when they control the Presidency, when they control the Senate, they flat-fund special education. When they control the Presidency and we control the Senate, we have to pull teeth to get their President to send up a budget that increases special education. When they control the Senate and we control the Presidency, they send out an appropriations bill which is at least $1 billion less than what they claim we should be doing. There is, to say the least, a disconnect.

The fact is under this President we have seen the fastest growth in special education funding that has occurred in the history of the accounts. We have seen growth in special education funding in 4 years of $38 billion by President Bush as compared with $29 billion over 8 years of the Clinton administration.

I believe when we make the case on this side of the aisle that we are committed to special education funding, that we are doing what we think is reasonable and capable within the context of this budget process—remember, we are running a deficit—to fund special education, where we are giving it the single biggest increases of any account in the Federal Government year after year after year on a percentage basis, that we come to this argument with significant credibility on our commitment to fund special education and fund it aggressively.

That brings us to the substance of the debate on the amendment today. What Senator HARKIN has proposed is we take prospective payments to special education accounts and make them mandatory. Remember, this creates a whole new concept of how we fund things around here. This is a brand new idea—and not a very good one—which suggests we create a new highway where you are going to have discretionary accounts funding the vast majority of the spending, and then you are going to put on top of the discretionary accounts, like a layer cake, a mandatory account. This creates some pretty significant problems.

The first problem it creates is it creates a new mandatory account. Mandatory accounts are not a good idea when you are running a deficit because they basically mean you do not set priorities. We as a government, when you are running a $300 billion deficit, maybe more, $400 billion—according to Senator KENNEDY, we are going to save $100 billion this year, so maybe we are down to $300 billion or we may be at $400 billion—but when you are running this type of deficit, we as a government have some responsibility to our constituents to be responsible and to make choices, to prioritize needs.

We, as the Senate, have historically prioritized special education very highly, at least whenever the Republicans have controlled the Senate. And we have asked for what would amount to a pathway to full funding by 2010. We have put in Senate proposals that have represented that approximately $2.2 billion in annual increases. We have done it the right way. We have, when we have done that, cut other accounts. When we have passed these increases in our budget proposals that have been at $2.2 billion, we have reduced other accounts to offset those increases. That is the priority we should set as a government.

But when you set up a mandatory account, you basically ignore priorities and you essentially say, let's add the money to the deficit, which is exactly what the Senator from Massachusetts is suggesting. That is a different approach. It doesn't happen to be our approach on this side of the aisle.

We think fiscal responsibility requires, especially in a time when we are running a deficit, that you set priorities. We believe we have shown, beyond any question on the facts, with these dramatic increases in special education funding, which we have done under Republican Presidents, under a Republican Senate, that in a competition for funds, special education wins and has won and will continue to win.

So to set up a mandatory account is a mistake, especially when you are running a deficit. It also creates a couple of other problems. One is that under the rules of the Senate, when you set up a mandatory account, you must reduce discretionary accounts dollar for dollar for that mandatory account. That is our budget rule. So as a practical matter, it is very possible that unless we decide to waive that budget item, we will actually end up reducing the discretionary spending that is committed toward special education, the $11 billion, in order to fund the mandatory spending. And we will probably end up or we potentially could end up, because this bill calls for $2 billion of mandatory spending, with a $2 billion reduction in discretionary spending so you would level-fund the mandatory. You would level-fund special education if the budget rules kick in the way they are written.

The practical effect would be there would be no net gain for special education funding, or it would be very limited. So this becomes a bit of an illusory term, when you are using mandatory and you merge it with discretionary accounts. If it were pure mandatory, I guess you could argue the funding would occur. But under our rules, it is not going to be pure mandatory. It is going to be this new hybrid, this layer cake, half mandatory, half discretionary.

The practical implication under our rules is you have to reduce dollar for dollar the discretionary accounts by the mandatory increase. What does that mean? Zero increase for special education, if these rules are applied in their present form.

There is another problem this creates, this new hybrid animal. For example, if we accept the fact the mandatory money is coming through and that the discretionary accounts are not reduced—in other words, say we waive this budget rule—we will create a scenario where the appropriators—of which I happen to be one and am very proud, and we do a wonderful job, but as an appropriator, I will tell you what I am thinking. I am thinking I just got $2 billion I don't have to spend on this discretionary account. I can put it somewhere else. Basically you are not guaranteeing this money at all. What you are doing is you are creating more dollar availability for the appropriator who has that discretionary account to use in some other area.

That is the distinct potential here because there is no—let us call it ''maintenance of effort'' language in this amendment for the Appropriations Committee. So as a practical matter, you don't resolve the problem this way. The only way you resolve the problem is to do it straight up, which is to say we should fund this account on a glidepath toward full funding, which is what the Senate has said.

We should use our appropriations authority and keep that discretion within the appropriations authority to accomplish that. We should set the priorities so that special education gets fully funded. That is what my amendment does. It sets up the authorization levels to allow the Appropriations Committee to proceed down that path.

Why do I think it will occur? Well, primarily because of the history here, which is that when we as Republicans control the Senate—and now we have a Republican President—we are making these huge increases in the special education accounts. So the alternative that we presented here is the more fiscally responsible way to do this. I think it is the more practical way to get to the ends at which we are aimed.

You can throw out this term ''mandatory.'' When you go home to your town meetings, it resonates well. I don't deny that for a second. But it is illusory when it is used in conjunction with the discretionary funding accounts and when used in conjunction with the budget rules as presently structured in the Senate. It literally means nothing. The only thing that is going to accomplish full funding for special education is the willingness of the Senate and the House, hopefully, which has not joined us in the past, to assert the $2.2 billion increase and move down that road and protect ourselves in conference with the House.

To pass the Harkin amendment may make us feel good politically, but it creates bad policy and doesn't accomplish our goals, which is to get full funding of special education. That is why I have put forward this alternative, which I think is a much more constructive approach.

I reserve our time and yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Delaware is recognized.

Mr. CARPER. Madam President, I ask to be recognized for 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. CARPER. Madam President, as a former Governor for Delaware and chairman of the National Governors Association, for a long time I have supported full funding for IDEA. In fact, when Senator GREGG was Congressman GREGG, we served together in the House, and we talked about full funding for IDEA. We talked about the Government's commitment to 40 percent of the funding for special education and that we weren't coming close to it. Today, we are actually making progress in getting closer to that number. We are about halfway there. We have a good way to go. Senator HARKIN's and Senator HAGEL's amendment will take us where we need to go.

I rise to say I would like to be able to offer an amendment to the Harkin-Hagel amendment, but I cannot do it. Under the unanimous consent agreement, this pay-go amendment is precluded. Since I cannot offer it, I ask unanimous consent that this amendment be printed in the RECORD.

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

(Purpose: To pay for mandatory full funding of part B of the Individuals with Disabilities Education Act by restoring the top income tax rate to its pre-2001 level)

At the end add the following:

SEC. ___. RESTORATION OF HIGHEST INCOME TAX RATE TO PRE-2001 LEVEL.

(a) IN GENERAL.—The last column in the table contained in section 1(i)(2) of the Internal Revenue Code of 1986 (relating to reductions in rates after June 30, 2001) is amended by striking ''35.0%'' and inserting ''39.6%''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

Mr. CARPER. Madam President, I printed this amendment for Senator CHAFEE, myself, and Senator FEINGOLD, who have been among the champions for the pay-go principle. I think if things are worth doing, we ought to pay for them. If it is worth investing more money in our efforts in Iraq, we ought to pay for it. If it is worth funding special education, we ought to pay for that. I think that argument goes for both meritorious causes.

The thing about pay-go is that it calls for a 60-vote margin in order to bust the budget and the caps. We used to operate under these guidelines throughout the 1990s, when we went from huge deficits to balancing the budget.

Pay-go lapsed in 2001. We need to restore it. One of the issues being discussed and debated now in the conference on the budget resolution is whether to reestablish the pay-go principle. It ought to be restored and reestablished.

Today, rather than being denied the opportunity to offer this amendment

because of the procedures we are operating under, we would be able to cite the Budget Act pay-go principles and automatically have a 60-vote procedure before us. Having said that, we are operating under a rule that will—in this instance at least—require 60 votes, so that threshold of a 60-vote supermajority will apply even without pay-go.

I will vote for this amendment. I just wish we had the pay-as-you-go principle in place so we would not be denied the opportunity to offer this amendment and we could offer it routinely. That is what I wanted to say today. I especially thank Senator BAUCUS who was in line ahead of me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Madam President, I ask to speak for 5 minutes in favor of the amendment.

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

Mr. BAUCUS. Madam President, I thank my friend from Delaware. I agree with him. I believe we should have pay-go principles in the Senate. I hope the Budget Committee adopts pay-go. I think it would be a dereliction of duty not to. I also support his view on this amendment.

For the last 10, 15 minutes I have heard a lot of complaints against the Clinton administration, against Democrats, how they have not really helped special education. One can use that argument and point the finger, playing one party against the other. I have all kinds of data that resoundingly refute the allegations made by the chairman of the committee. It is just not accurate. But I will not get into that. That is not why we are here.

We are not here to blame and say who is doing a better job, Republicans or Democrats. People back home don't care two hoots about that. They care about whether we are doing our job as a body. I submit that we are not doing our job with respect to providing the dollars for special education. I don't know about you, Madam President, but when I am in my State, I hear constantly from school districts, school administrators, about how pressed they are and their inability to meet costs and the cost increases.

As you well know, we have in America a system where elementary and secondary education is paid for basically by taxpayer dollars, property taxes. That is what it comes down to. People are stressed, with the economy not doing too well in our States. School levies are not going through. People cannot pay more property taxes to support anything. They would love to support their schools, but they cannot afford it.

Costs for school districts in Montana have gone up over 1,000 percent in the last 20 years; that is for special education and elementary education in general. That is the cost increase. School districts in Montana—and I daresay most school districts across the country—are facing this. What do we do about it?

As you know, Madam President, back in 1975, Congress passed a law—IDEA—regarding special education. What did that law provide? It provided for ramping up 40 percent payment of IDEA, of special education costs. That was the law in 1975. Beginning in 1978, there would be a 5-percent increase; in 1979, 10 percent of the funding; in 1980, 20 percent would be paid; up to 1982 when 40 percent—the full amount—of special education costs would be provided for by Uncle Sam. That was back in 1975 when that statute was passed.

Here we are in 2004, and I think we are only at 18 percent. We have not made good on our promise. We are way off base. So a lot of the data we have heard about a 365-percent increase is misleading. You can do anything with statistics. Those statistics start from a very low base, and I am just telling you what the law is. The law was that back in 1975 we would ramp it up to 40 percent by 1982. That is why it is our failure to do so. We are only at 18 percent; that is all we come up with. With costs going up so much at home, that is why I believe the Harkin approach makes sense. We need mandatory increases up to 2014—not discretionary, because it has been discretionary. And when the President is given discretion what has happened? Virtually nothing.

Sure, we are getting some increases, just a little bit, but it is virtually nothing. Congress always finds a way, Presidents always find a way, not to spend money on education. Other things seemingly are more important.

If we do not pass the Harkin amendment, mark my words, there is no way we are ever going to get up even close to 40 percent. We are not going to get up to 25 percent by the year 2014. It is not going to happen. It is only going to happen if we keep our feet to the fire and force the President and the Congress to come up with the promise that we should fulfill. We should fulfill it because we made that promise.

I ask for an additional 2 minutes.

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

Mr. BAUCUS. That is a promise we made. We should live up to our promise. No. 2, we are coming nowhere near living up to our promise. No. 3, costs are going up dramatically in all our States for special education, and we are not helping address that. And No. 4 is the tremendous importance of education in this country. We are competing worldwide with elementary and high school students in Pusan, Korea, in Czechoslovakia, high schools and elementary schools all around the world. Education is going to be the key to America's economic success in the future. It is going to have to be education. It cannot be anything else.

We need to educate our kids. We ought to set priorities for educating our kids rather than spending money elsewhere.

We have a lot of programs on which I do not think money should be spent. I think most Americans think our priorities are a little askew and that we should spend more on education, helping our kids, than we are thus far.

I heard the argument, well, gee, if it is mandatory, first, that is not necessary. That is the main argument to be made. I have shown how necessary it is.

The second argument I hear is, well, it is illusory, that perhaps the discretionary portion will not be provided. That is a false statement. First, we are talking about the very worst case scenario. The mandatory portion will be provided for. It is possible that the discretionary portion may not be provided for by Congress. That is possible. The very worst possible situation is that we only get the mandatory increase under this amendment, but sure as I am standing here, my colleagues know doggoned well that Congress is not going to provide the discretionary money, too.

We are talking about education, and with the mandatory increase provided for we are certainly going to provide for the discretionary portion, too. This amendment is a no-brainer. It is clear to this Senator this amendment must and should pass, for the sake of our kids. We have a duty on the face of this Earth, I believe a moral obligation, to leave this place in as good a shape or better shape than we found it. Clearly, that includes making sure our kids, special education students, are in as good a shape or better shape than we had when we were being educated, particularly given the competitive forces in the world.

I strongly urge the passage of this amendment.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I thank Senator JUDD GREGG for his leadership on this issue. When I came to the Senate some years ago, there was no greater champion for IDEA funding by the Federal Government or improving IDEA than Senator GREGG. He has maintained that and he continues to be an expert, as my colleagues can tell when they hear him speak about it.

We have made tremendous progress since I came to the Senate in funding special education. We have seen the numbers, how much they have increased since 1996, and we will continue to make progress. We have gone from 7 percent of the funding for this education program for our schools around the country to almost 20 percent. We are going to keep on increasing that.

The legislation we have before us today, however, unanimously came out of our HELP Committee, of which I am a member. It was a product of a lot of hard work and hours and hours of discussion. There are a number of provisions in the bill that I would like to see improved and strengthened. Maybe some on the other side think it could

be improved more, but we hammered out this agreement because we need to move this bill forward. We need to increase funding, once again significantly, for IDEA. We need to give more control and make a better commitment to the practical application of the law.

The special education bill was enacted in 1975 with the goal of encouraging schools to mainstream students with disabilities, keep them in the normal classroom where possible and give special treatment where necessary.

States that follow Federal rules receive federal financial assistance, and in 2002, 6.5 million students were served through IDEA. Schools have responded to this challenge positively, and they are expending very large sums of money to meet the goals of this law. In fact, I remember distinctly several years ago the school board superintendent of a county in Vermont testifying that 40 percent of his county's budget for that school system went to the IDEA program.

In recent years, the President and Congress have increased the federal investment in this program. If the President's proposed budget is enacted, IDEA funding will have increased 376 percent since 1996, 8 years ago.

I have been repeatedly told, however, when I travel in my State, and I made this a special project of mine, that this funding is not the only problem. Repeatedly I have been told there are things bigger and more important than funding. One teacher who had been working in special education for many years, who is very bright and has a master's degree, told me: Jeff, we are not looking out for our children. We have lost sight of what is good for the students. What we are doing is filling out paperwork and keeping our sight on the lawyers. It is threatening the integrity of the system, and we are not focusing on how to help each individual child achieve their highest and best skills.

The paperwork procedures are burdensome to a significant degree. I have asked them about it. Too often teachers and principals are faced with a literal maze of regulations and laws that must be met before a disruptive child can be removed from a classroom. Too often school districts are forced to spend thousands of dollars on attorneys and litigation costs that could be avoided if the parties simply sat down and discussed the issues rather than forcing the disputes to court. These problems not only distract our dedicated educators from the core mission of teaching our children, they cause stress and confrontation that can be avoided if common sense were applied.

I have received letters from hundreds of teachers in my State, from parents and educators, who are concerned about the current management of this system. The frustration, the anger, and the compassion in these letters are powerful.

I have also visited schools across the State of Alabama and heard firsthand from educators about the problems the current law creates for students, parents, and teachers. I go into schools and I ask them to tell me what the problems are, what frustrates them the most. Almost universally special education, IDEA, comes up as one of the top examples of a program they believe is micromanaged from Washington, does not allow teachers who love children to be able to have the freedom to help those children in the best way possible. They have told me that problems with the current law are going to drive them out of the profession. They are going to leave the profession over these frustrations. They have dedicated their lives to improving the welfare of disabled children.

A veteran special education teacher wrote me this:

> I consider myself on the front lines of the ongoing battles that take place on a daily basis in our Nation's schools. I strongly believe that the current IDEA law fuels these struggles. The law, though well intended, has become one of the single greatest obstacles that educators face in our fight to provide all of our children with a quality education delivered in a safe environment. I have dedicated my life to helping children with special needs. However, at times my frustration has been so high that I have literally gotten in my car to leave—

Leave the profession, she means—

> but my moral responsibilities to the children I have in my class have kept me there. The law must be reformed now. As my grandmother said, ''right is right and wrong is wrong'' and to enable the current system to continue is just wrong.

Another 32-year special education veteran wrote:

> If IDEA is not revised to be less restrictive and burdensome, we might as well as kiss public education good-bye. If changes are not made, we will have one of the largest teaching shortages on record. In the past I have had 5 to 10 college students coming to me in the spring to apply for positions. This year I have none. Most are fearful of entering the special education field because of the threat of litigation brought about by IDEA.

They are afraid of being sued. The regulations are complex and there are a group of lawyers and specialists in this who descend on the system on a regular basis. So it is time for a change and Congress should be leading the charge for positive change, to make it better.

I have a number of other letters from teachers and students who fear for their safety every day. They feel handcuffed by the current rules and feel overwhelmed with the requirements of the current law. I believe it will be a tragedy if we lose proven, dedicated teachers because of the shortcomings of a Federal law that is not adequately fulfilling its purposes.

I saw a poll recently, I think in the State of Washington, of special education teachers. An astounding number said they did not expect to be in the profession in 5 years. This is the reason that is occurring.

President Bush has recognized the importance of the IDEA law, and the need to bring real reform to the system. In order to get an accurate picture, the President appointed a commission to review the law and provide recommendations. The commission held 13 hearings and meetings throughout the Nation and listened to the concerns and comments of parents and teachers, principals, and so forth. Over 100 expert witnesses and more than 175 parents, teachers, students with disabilities, and others addressed the commission. Hundreds have provided letters and written statements.

The commission distilled this information into a set of principles that were used during the reauthorization process. First, decrease the emphasis on compliance with procedure and increase the emphasis on results. That means decrease paperwork and that kind of thing, and ask whether children are benefitting to the maximum extent by the special efforts we are expending.

Second, simplify the law's burdensome due process requirements, which create inordinate amounts of paperwork, limit the ability of schools to properly discipline children with disabilities for inappropriate behavior, and intensify adversity between parents and schools. This is a big problem. Put two children in a classroom, one a disabled child, that child has substantially greater expectation of not receiving the same discipline as another child for the same offense. Sometimes the disability is totally unconnected to the discipline problem that shows up in a classroom.

A child who sells drugs, for instance. That behavior is very unlikely to be a part or product of the disability and that child should be disciplined as other children where that makes sense, and under the appropriate rules of the school.

Third, reduce misidentification of students, which has fueled growing IDEA costs. Too many students are being placed in IDEA programs who do not need to be there, and that is not good for the children and it is not good for the school system.

Finally, increase the role of parents in determining the most appropriate setting for their child's education.

This legislation does much to achieve those principles. It reflects a balanced approach that, as I said, was voted out of our committee unanimously.

On the question of discipline, that is something I have talked a lot about and our committee has worked on it. We didn't make big changes in the bill that came out of committee. We made some changes. We made some improvements in the law that I think certainly will put us on a more rational basis and will help reduce excessive litigation.

One of the things, for example, is this: Before a lawsuit is filed and a school board has to go to court, they have to be notified specifically of what it is the school is alleged to have done improperly with regard to their child, and the school board has a chance to

correct it. What we are finding is lawsuits have been filed all over the country, schools have been taken to court at great expense, and by the time they finish the litigation not only do they have to pay their own attorneys, not only are their own principals and teachers called out of classrooms to testify and prepare for trial, but they have to pay the costs of the plaintiffs' attorney if one thing they did was wrong. They may make eight allegations, but if they are wrong in any way and are found liable, then they have to pay the child's attorney.

We need to figure out how we can avoid some of this litigation. It is money out of the pocket of the school system. It is money not being spent to educate children but to litigate in court, and sometimes these cases cost hundreds of thousands of dollars in expenses for school systems. Nearly 8 in 10 teachers say there are persistent troublemakers in the school who need to be removed and we have created a system that is so complex and so litigious it is not working and it is driving up costs in an unwise way.

I will offer some more comments for the RECORD, but I will conclude by saying this: Special education is a big program in America today. This Congress, this Senate is increasing funding steadily for this program. We need to continue to do that and need to continue to reach toward that commitment Congress made before I came here to pay 40 percent of that cost. I think we should do that and we should be on the road to that.

However, as Senator GREGG knows—who is the senior member of the Budget Committee also and knows how things work here in reality—this is a weird deal, to mix and match discretionary and mandatory spending. In fact, we are criticized substantially in this body for going toward mandatory spending for too many programs. In fact, most objective observers in Congress believe that has diminished the ability of Congress to set priorities and accomplish good things for our children. We do not need to put this in mandatory spending. We need to continue the steady goals and progress we have made to reach the highest level of funding, reach the full funding we are committed to do.

I believe we can do that. I believe this bill is a tremendous step in the right direction toward that goal. I will continue to work for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BAUCUS. On behalf of Senator KENNEDY, I yield 4 minutes to the Senator from New Jersey.

Mr. CORZINE. Madam President, like many of my colleagues I rise in strong support of the Harkin-Hagel amendment to require full funding of IDEA, providing these increases over 6 years on a mandatory basis. It is straightforward. I think it is absolutely necessary. As a number of my colleagues have said, there is nothing that strikes more at the heart of my dialog with my constituents and those who are involved in the educational system than getting to full funding on IDEA. It is absolutely essential.

Before I go into some of the reasons, I also want to say how pleased I am with the work of the committee, for taking up this legislation, structuring it, and moving it forward, and with reform, but also for including some things I think were essential. There are provisions that were added at our request with regard to making funds available to improve programs for autism spectrum disorder, which is a very significantly growing, recognized disability many children are facing. We need to have funding in addressing it, particularly the early childhood elements.

I am also pleased the committee was willing to work with us to clarify parents' rights to represent their children in due process hearings.

I think it makes a huge difference as we go forward in making sure all of our children are represented. But my main point is it is not enough to say we all embrace dealing with special education. This program is drastically underfunded, and it is posing a significant burden on the citizens of my State and across our Nation.

It gets at the heart of the tax question. We put down what I think is a terrific legislative initiative in 1975 to deal with disabilities among children and to improve their educational opportunity. But we also put down an objective that we were going to move to 40 percent of the average funding for each child with disabilities. We are nowhere close. I think it is 18.5 percent or so. We are way behind. That is why it is mandatory to step it up over the next 6 years. It is so important. It is real common sense.

I have to tell you in my home State of New Jersey, school budgets are capped at only 3 percent annual growth per year. When the spending on special education goes up more, we end by accommodating mandates which are required by cutting other costs in our educational system. We set up a horrific dynamic in our local communities. The only other out on that is local property taxes, which at least in my State are the highest in the Nation, and we are already extraordinarily burdened by them. That is true across the country.

It is absolutely essential that we get to full funding. The difference in 2004 versus where we are today and where we would be if we had fully funded 40 percent is almost $300 million—$320 million, $319 million is what we are going to receive, and $641 million is what we would have received if we had full funding. It is a huge difference on the tax base in our community.

I cannot tell you that there is any other issue which generates more heat because it sets neighbor against neighbor in the school districts about how they have to make tough choices, or it forces us to go to the taxpayer and raise local property tax burdens which are already extraordinarily high in my State. But it is also true in other places.

I have an example of a situation in New Jersey where an individual talks about her son whose needs are being addressed in special education but also reflecting what it has translated into not only for her son but to the special education programs and the rising burden on individual property taxes. It is setting up a system of failure and conflict in our communities. That is unacceptable.

We need to accept our responsibility here in Washington to fulfill our pledge and our promise to move to that 40 percent so we don't have these dynamics. It is time it happened.

I fully support and compliment the distinguished Senator from Iowa. I hope my colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, we are going to hear a lot of rhetoric today. I want people to know exactly what it is about.

I will be opposing Senator HARKIN's amendment. I will be supporting Senator GREGG's amendment. Senator GREGG's amendment will actually work us toward achieving the goal of full funding for IDEA. It is not a political statement. We have been having this debate for some time. There hasn't been the kind of progress any of us would like to have on it, but there has been steady progress. There has been more steady progress since this President and Senator GREGG have been working on this issue.

During the 8 years President Clinton was in office, the increase in part B funds was $1.4 billion. Under this President—a much shorter time—it has been $3.7 billion. That is reality versus rhetoric.

I want to make a few comments about the bill as a whole because we haven't had a chance to actually debate that. I want to point out how bipartisan the reauthorization was that came out of committee, how well people worked on it, worked on it together, resolved differences and made it possible for it to come to the floor and now to pass the floor in a relatively short time, I hope, so we hopefully can have a conference committee and work out any differences with the House and get this legislation into place.

This reauthorization is past due. I am pleased the Senate has begun consideration of S. 1248, the Individuals With Disabilities Education Improvement Act of 2003. There are few issues as important as the education of our Nation's youth. Making sure all children receive a good education has been a longstanding goal of this body. I am pleased the committee was able to reach unanimous support of the underlying bill, and I hope this body will act

quickly to agree to this important legislation and send it to conference.

Since Congress first began providing State grant funding for the education of disabled students in 1966, the process for ensuring every disabled student receives a free, appropriate public education has been refined and improved from one reauthorization to the next. I believe this legislation is another important step in that process.

While there are many improvements to the law in this legislation, I want to highlight four changes which I feel are most important to my home State of Wyoming.

First, there is an increased emphasis on early identification and intervention. Wyoming currently uses the model that identifies students as disabled once they fall more than two grade levels behind. Many States use the same method, or a method called the IQ discrepancy test. Both of these models tend to limit the positive effects that timely services will have on a student's growth. Unfortunately, States are compelled to use these models because of the requirements that exist in Federal law.

This bill provides for a set-aside of part B funds that can be used for services such as tutoring or other special assistance to students who are at risk of being identified as needing special education. That will help these students meet their potential.

Research by the President's Commission on Special Education and the National Research Council has identified important benefits to providing early educational intervention. They suggest early educational intervention can reduce the number of children referred to special education.

That research also shows students receiving early educational intervention and who are referred to special education frequently require less intensive services.

I believe this is an important step toward ensuring that other disabled students receive the services they need without placing children in the special education programs unnecessarily. By using funds for early intervention services, schools will be able to provide services in a very seamless fashion to students with disabilities or students who may be unnecessarily referred to special education programs.

Second, this legislation addresses the needs of rural States by clearly defining what is a highly qualified teacher. Under the No Child Left Behind Act, which received large bipartisan support in Congress, all teachers in public elementary and secondary schools must meet the highly qualified teacher standard.

In rural States such as Wyoming, many teachers, including special education teachers, are responsible for multiple subjects. In my home State, they are sometimes responsible for multiple grades as well. The legislation we are considering would work hand in hand with the No Child Left Behind Act to help address the concerns of teachers in this challenging position.

This bill requires every disabled child to be taught by a highly qualified teacher, but it also maintains State flexibility to determine what constitutes highly qualified. The only requirement is that special education teachers have an undergraduate degree and be fully certified as special education instructors, and that the students have a chance to be taught by an instructor who is highly qualified in the subject area. The bill does not even require that be the same person.

In many schools, disabled students are placed in classrooms with their non-disabled peers, and they receive instructions from more than one teacher. Students with disabilities would be instructed in the appropriate subject area by a highly qualified teacher who has demonstrated mastery of the subject, but they would also receive support from a teacher who meets the highly qualified standard for special education. It is a very important distinction.

For teachers who are responsible for both the special education and the content area, this legislation preserves the flexibility of the State that was created under No Child Left Behind to define what constitutes a highly qualified teacher.

I continue to be impressed that more than 95 percent of Wyoming teachers meet the highly qualified teacher standard, including its special educators.

This legislation will support the commitment of States such as Wyoming with a 95-percent rate to place a highly qualified teacher in every classroom, whether it is a special education classroom or not.

The third point of the bill, that I want to address is that this legislation makes improvements to the disciplinary system that operates under current law. A concern I have heard from parents and educators is that the discipline of students with disabilities has led to the creation of a two-tier disciplinary system. Students with disabilities are treated differently from their peers because it is required by law.

I don't believe that is in the best interest of these students when we are asking, for academic purposes, that we place them in the least restrictive environment. It is inconsistent to say we would treat disabled students as we treat their peers until they are in need of discipline. Disabled students are able to learn responsibility just like their peers. We should give them a chance to learn the same kind of responsibility we expect of other students.

Many parents I talk with about discipline are concerned that we not allow teachers to discipline disabled students too harshly. I agree. I think everyone agrees. I support the bill we are considering because it preserves protections for disabled students, like the protection that schools must abide by the manifest determination standard, which requires schools to determine if the student's disability led to the behavior—that is a key—if the student's disability led to the behavior.

This bill also preserves the rights of parents to question the school's decision. I also believe this legislation makes significant improvements in permitting teachers and school administrators to properly discipline students with disabilities when a need is identified.

Schools are given a margin of flexibility to remove disabled students from their classroom when a dangerous situation presents itself. The school is still accountable to the parent, however, and must make every effort to return the student to the classroom as soon as possible.

Finally, I wish to highlight the issue of State flexibility. For years, local educational agencies have been permitted to use flexibility with their funding. As the Federal Government increases its commitment to funding special education programs, local districts in most States are able to shift funding into other priorities. Traditionally, their funding has not even been limited in its use to educational purposes.

This flexibility has never benefitted Wyoming. That is because Wyoming has decided to use an alternative financing method for its special education programs.

Instead of the State passing Federal funding on to the local districts, Wyoming retains the bulk of the funding at the State level and reimburses districts for their special education expenses. Part of the reason for this approach is we do not pay for our education with property taxes as most States do. We use mineral taxes, which come from a few spots in the State. This system has worked in Wyoming for several reasons, including the help it provides to shield local districts from the cost of services for severely disabled students.

Some of the districts in Wyoming are so small that a single student with a severe disability would require all of the funding available to that district to be spent on a single student. That would threaten the services to other children with disabilities and subject the district to due process hearings under the law.

Instead, Wyoming has elected to use its allocations under part B of the special education program as reimbursements. Even very small districts can confidently provide services to students with disabilities with the understanding that the State will reimburse them for those services.

Even though the system is much more effective at providing services to students with disabilities, the lack of flexibility in the use of Federal funding has tied the hands of the State's administrators who would like to use the funding for early identification and other educational programs. The irony

is, if Wyoming were to operate their special education programs differently, and less effectively, they would enjoy much more flexibility with their funding. Right now in Wyoming, families of students with disabilities are moving from other States to enroll their children in Wyoming schools because we have done so well at meeting their needs. Even though our programs are among the best in the region—and, I argue, among the best in the country—Wyoming is penalized for doing a good job just because we do it differently than Federal law suggests we do it.

The phrase ''one size fits all'' has been used a lot in the Senate lately on the subject of education. But at the risk of abusing the term, this is a perfect example of a one-size-fits-all program that does not fit Wyoming. If Wyoming were to pursue a less effective model of providing services to students with disabilities, the State could use more flexibility. Instead, because the State decided to use a system that places the needs of the students first, we are denied the same flexibility provided every other State.

The legislation we are considering now would address this concern. It would allow States that are responsible for the largest share of non-Federal special education funding to enjoy more flexibility at the State level. It is important to note that this flexibility is only applied to educational programs so no State can drain funding away from its educational programs for other purposes. The funding has to be used in conjunction with State educational efforts.

This is a critical piece of legislation, and one I feel strongly about retaining both in this legislation and the bill that is produced by the conference process.

Those are the four main points of the actual legislation. That is legislation, again, that we unanimously supported out of the Health, Education, Labor and Pensions Committee—that is no small achievement. It is important we move forward in the process. That is what we are doing now.

Of course, we are debating two amendments, the Harkin amendment and the Gregg amendment, which will each be voted on this afternoon. I will make a few comments in support of the Gregg amendment to fully fund the IDEA program.

According to assumptions in the Senate budget resolution this body passed earlier this year, we will have increased spending by 75 percent from 2001 levels. The Gregg amendment builds on those increases and sets us on a path to reach full funding by 2011. That is a very realistic path, one that we can do, one that we can slightly accelerate. It is not just a statement but something that can happen.

I have heard colleagues comment that we can do anything with statistics. That is a common perception. But if my colleagues would rather look at the real dollars, we spend more now on education than we ever have in this country at the Federal level. Right now, under the assumptions of the fiscal year 2005 budget, we will be at 20 percent of the share of Federal special education. The Gregg amendment would take us to the 40-percent mark in 7 years. That is the mark we have in the original legislation.

I have mentioned, again, that happened in 1966. We are at a higher level now than we have ever been. It is pretty remarkable since it took over 30 years to get to 20 percent, but most of the progress that has occurred has occurred under this President in the past 4 years.

I want to make it clear, we are closer to full funding now than we ever have been in the history of this IDEA program. To get there within 7 years is within reach, but we should not be confused that mandatory spending is the right solution. I can hear the Members who made previous speeches saying: No, no, this is not mandatory. The way I read it, it is mandatory. But even if it were not mandatory, I am not aware of a program, particularly not this program, where we reduced spending. Whatever level we take it to at this moment is where it will stay. Then we will fight to show we are more concerned than anyone else in raising the revenues in the future.

So we need to have a rational, realistic, and regular approach to raising the level of IDEA funding until we can come in compliance with the 40 percent that we promised.

We have made significant progress in the past 4 years toward full funding under the current administration and congressional leadership. There is no reason to assume we will not continue to make significant progress in the near future.

I want to mention again that under the previous President, during his 8 years, we increased part B funding $1.4 billion. Under this President, in 3 years we have increased it $3.7 billion.

I have to point out, under the previous administration we were funding during a surplus. We were funding in period of growth, not a recession. We were not funding during a time of terrorism. We were not funding during a time of war in Afghanistan. We were not funding during a time of war in Iraq. We were funding during a surplus, and we did not meet that 40-percent goal.

Now, when we have severe budget constraints, there is a political statement that says: Give it all to them. And then there is a balanced approach that Senator GREGG has that says: Let's grow it and really get it done and quit making the political statements on it.

We have an opportunity to advance IDEA and to advance the funding on it. I know we will take advantage of both.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER (Mr. HAGEL). Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Massachusetts has 17 minutes 40 seconds remaining.

Mr. KENNEDY. How much time is on the other side?

The PRESIDING OFFICER. The other side has 25 minutes 15 seconds.

Mr. KENNEDY. Mr. President, I yield 7 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I did not hear that. The Senator from Massachusetts yielded me?

The PRESIDING OFFICER. The Senator from Iowa is yielded 7 minutes.

Mr. HARKIN. I thank the Presiding Officer. I did not hear that.

Mr. President, first, I would like to respond to my friend from New Hampshire who was in the Chamber earlier, and maybe some others, who talked about the GOP record. He had a chart that said Republicans have done more any way you slice it, and then went on to say that President Bush is attacked for increasing spending by $1 billion a year.

I want to address that with my friend from New Hampshire in the Chamber. I never attacked President Bush for this. I have not heard anyone on this side attack Republicans or President Bush for this. In the 30 years we have been discussing, amending, and fashioning disability policy in the Senate and the Congress, it has never been a partisan issue. It was not when we first did IDEA. It was not when we did the Americans with Disabilities Act. We may disagree on funding and stuff and how we do it, but I have never known it to be a partisan issue. I have purposely not attacked the President, the Republicans, or anyone else for this. No one on our side has on this point, and we are not attacking anyone.

So I refuse to look upon this as any kind of partisan issue. You can go back and look at who did what when, and all that, but what I want to focus on is the here and now. Where are we now? What did Congress promise? What kind of situation are we in? Let's look at the future.

I am sorry somebody is trying to put this in a partisan framework. It has never been that way. It has always been a bipartisan issue. We ought to continue on that approach. Yes, we can disagree on whether or not it would be discretionary or mandatory, but not on a partisan basis.

I want to talk also about the mix of mandatory and discretionary. There has been some talk that this is some kind of—I heard it said—''weird mix'' of mandatory and discretionary money. We have done that before. We have the childcare block grant. We have safe and stable families. We have some NIH funding. I have come up with this right now. There are probably a lot more programs for which we have both mandatory and discretionary funding.

Also, my friend from New Hampshire said there is some kind of budget rule—I did not get this clear—that means our amendment would result in a reduction in discretionary spending. That is absolutely not so. It is only so if you move money from discretionary to mandatory.

That is not what we are doing. We are adding money over and above discretionary. So there is no cut in any discretionary funding. So what the Senator from New Hampshire says is just not so.

I responded earlier to a question from Senator JEFFORDS that on the discretionary side we have never cut funding for IDEA, and we are not going to do so in the future.

Now, the Gregg amendment before us simply authorizes more money. But we have been doing that for 30 years—30 years—and we are still only at 19 percent of the 40 percent we had promised. The Gregg amendment does not change one thing. It does not change a thing—nothing. Kids, families, and schools will still be sold short.

Now, if anyone wants to know what authorizations mean around here, I would just use a statement from the Senator from New Hampshire that he made last September on a Byrd amendment. The Senator from New Hampshire himself said:

> Now, let's go to another issue, this concept that the authorized level has to be funded. This is a very unusual concept for Congress because for all intents and purposes Congress does not fund anything to the authorized level.

The Senator then went on to say: Authorizations simply are statements of intent, purpose, and good will.

Well, that is exactly what the Gregg amendment is. It is a statement of intent and good will, but it does not do anything. The Senator from New Hampshire himself said we do not fund to authorized levels. And that is all he has done, just raised the authorized level. It does not do one thing. If we want to meet our obligations and fulfill our promise, we have to adopt the Hagel and Harkin amendment to provide for mandatory funding.

Mr. President, let's get off all this talking about money and stuff and shifting it around. Listen to what Julie Reynolds said. She runs the Parent Training and Information Center in Iowa. She said to me that families and kids with disabilities are unfairly blamed for the shortfalls in schools. Parents are told not to ask for what the child needs because it costs too much. Parents are told their children with disabilities take away resources from other kids.

Families with kids with disabilities are not to blame. If there is anyone to blame, it is us in Congress for shirking our responsibilities for 30 years and not meeting that 40-percent level.

I am hopeful the Senate will step to the plate. I repeat, 2 years ago, this Senate unanimously—unanimously—adopted the same amendment that the Senator from Nebraska and I are offering today to provide for full mandatory funding up to that 40-percent level. Unanimously we adopted it. It was cut out in conference, and we were told we should come back when IDEA is reauthorized. Well, reauthorization is here. I hope the Senate will speak again with that same forceful voice.

Mr. President, I yield the floor and reserve the time I may have.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SUNUNU. Mr. President, I ask unanimous consent that I be allowed to yield myself time from the majority side.

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

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise in support of the Gregg amendment and in opposition to the Hagel-Harkin amendment.

I begin by commending the leadership of my State's senior Senator, Mr. JUDD GREGG, on this issue. IDEA and special education funding is an issue that has been a hallmark of the leadership provided by Senator GREGG in New Hampshire and across the country.

In New Hampshire we still fund education locally. That is one of the reasons we have had historically such a strong school system. That means people really understand the shortfalls, the problems associated with education funding.

In New Hampshire people have recognized we have not done our job as a Congress and as a nation in funding the original commitment made well over 20 years ago to support IDEA and special education.

Since 1996, we have made enormous steps forward, again, under the leadership of Senator GREGG, Senator JEFFORDS, and others in this body, Congressman CHARLES BASS in the House, working on the Budget Committee, where I was privileged to serve as well. We have increased funding $8.7 billion for IDEA since 1996, increased funding $4.7 billion since 2001. That is the kind of leadership on meeting a funding obligation that had not been seen in this Congress in 20 years under Democratic support. I think that, to use a phrase, is putting our collective money where our mouth is, recognizing that IDEA funding needs to be a priority for American education.

The President's leadership on this issue has been outstanding. Those on the other side of the aisle might not like to admit this, but it is hard to argue with the budgets that President Bush has sent up where IDEA funding is concerned. There have been historic increases year after year since President Bush took office, increases in commitments in funding for special education that put the prior administration's budget requests to shame. That needs to be recognized as well as part of the debate.

We have a lot more work to do. Senator GREGG has outlined the need to continue these funding increases and, in the 2005 budget, that commitment is there, continuing the fight to meet our funding obligations. But putting the spending on autopilot, creating a new area of mandatory funding is not the solution.

Even more to the point, to the Harkin amendment, this new idea where only the increases are mandatory is effectively a shell game, where current funding is left as discretionary, only the increases are mandatory. Under our current budget resolution and the 2005 budget resolution, these mandatory funding increases would require a dollar-for-dollar cut in other discretionary programs, of course, that are not specified in this legislation. That is simply wrong.

Placing funding on autopilot rarely, if ever, is the answer to the problems that we wrestle with in Congress. Even more problematic, this amendment falls short on oversight. Throwing the funding on autopilot removes Congress from its oversight responsibility. Most everyone who has followed the debate on this program recognizes that more needs to be done to make sure the program works better for those parents and children who are truly in need of the program's benefits.

Second, the Harkin amendment enables Congress to avoid setting priorities. That is simply wrong. It enables Congress to put the funding on autopilot, this mandatory spending idea, and then not have to make sometimes very tough but important choices around funding priorities. I ask my colleagues on the other side whether they have ever voted for amendments that actually reallocate appropriations from other programs in the Department of Education or anywhere else in the Labor-Education bill and put it into additional discretionary special education funding, much less offered such an amendment? It is not always an easy vote to take, but it is a vote that I have taken in the House to actually stand up and say: Given a current level of spending, whatever our budget is, I am willing to vote to take funding from one program and put it into special education because we recognize that it is the most important funding priority we could have at the Federal level where education is concerned. I am willing to stand up and take that vote.

I am anxious to see whether the authors of this amendment bring other amendments to the Senate floor in the appropriations process that reallocate those funds. It is always easy to come to the Senate floor with an amendment that adds $2 billion or $3 billion or $4 billion or $5 billion, increasing the deficit without regard. It is a lot tougher to come to the floor with an amendment that moves funding from one area to another and show that we are willing to set priorities and make sometimes difficult choices we are elected to make when we come to serve in the Senate.

I believe putting this spending on autopilot takes us away from that commitment to make tough choices and set priorities. That is why I will not support the Hagel-Harkin amendment and will stand with Senator GREGG and the important work he is trying to do as chairman of our Education and Health Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand we have 10 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts has 10 minutes 30 seconds remaining.

Mr. KENNEDY. Mr. President, I yield myself 4 ½ minutes.

I join with my friend and colleague, Senator HARKIN, in making sure that this body understands, and our friends all across the country, that this really isn't a partisan issue. I, quite frankly, commend the fact that we had an increase in IDEA funding, and I give tribute to the Senator from New Hampshire for that increase in funding. It is true that under President Clinton we had the expansion, moving toward smaller class size, afterschool programs. We had enhancement of teacher training and other kinds of factors in terms of the previous administration. But there is no question that there has been an increase in IDEA funding. We grant that.

As Senator HARKIN has pointed out, the issue is what are we going to do in the future. This discussion is really at a rather significant time in our American history because next Monday we celebrate the 50th anniversary of Brown v. Board of Education, one of the most important judgments in terms of knocking down walls of discrimination in our country, recognizing that we were going to knock down the walls of discrimination on the basis of race.

Now for 29 years we knock down the walls of discrimination on special needs children, but we still have not fulfilled the requirement and the opportunity that presents. That is what the Harkin amendment is all about.

Pass the Harkin amendment and we meet that responsibility, and we meet that obligation in 6 years. That is what we do.

I am going to vote for the Gregg amendment that says he will increase the authorization. I am for it. If that is what passes, I will be there with Senator HARKIN and with Senator HAGEL battling to get the increased appropriations, but let's do it right. Why have we held these families up?

I have four books here, a foot and a half tall, with individual life stories that represent families and special needs children who are trying to make it in the United States. The question is, are we going to meet our responsibility? We have from newspaper reports now that we are going to have a bonus of $100 billion this June, $100 billion more. The Harkin amendment says, let's take $2.2 billion of that and commit it to these families right here who are struggling and trying to make it every single day.

Let me read from a typical letter, and it is replicated by the thousands. This is from Carla Leone of Arlington, MS:

> I have a 15-year-old son with Tourette Syndrome and associated disorders who is on an IEP,

—an individual education program—

> as well as a daughter in ''regular'' education. I had to quit my job in order to obtain special education services from the school district for my son—it was a full-time, complex job. First, the school didn't want to identify him as needing an IEP, then there was a several-year battle over what services he needed, and then once they agreed to services, there were a lot of problems with the school failing to provide the services (a common problem with implementation of IEPs).
>
> The basis for the problem is lack of funding, which pits regular education against special education, and gives the school major impetus from keeping the kids from being identified as needing special education . . . and most importantly fund this heretofore unfunded mandate.

That could not be any more clear or compelling. We ought to not only think of the children but of their mothers and fathers. That is what this is about. Certainly, this is a question of priority. We in this country cannot afford to not meet what we committed. This body committed to this. The House of Representatives committed to it. A previous administration committed to help those families all over the country. We are only reaching half of that commitment now.

The Harkin amendment will make sure we meet our responsibilities to all of them. What could be a better opportunity, a better priority? Money isn't everything, Mr. President, but it is an indication of a nation's priorities. That is what we have the opportunity to have in the Senate. That is why I believe the Harkin amendment should be approved.

I withhold the remainder of our time.

Mr. SUNUNU. Mr. President, I yield the Senator from Virginia 6 minutes.

Mr. WARNER. Mr. President, I ask unanimous consent that I may speak as in morning business.

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

PICTURES OF THE PRISONER ABUSE IN IRAQ

Mr. WARNER. Mr. President, I wish to address my colleagues with regard to the pictures of prisoner abuse in Iraq which will be sent up by the Department of Defense and will be available for all Members to review in room S–407 in 45 minutes.

Bottom line, I urge all Senators to avail themselves of the opportunity to examine this body of evidence. While I have not seen it specifically, it has been described to me. It is, in my judgment, another distasteful, nevertheless factual, part of this tragic incident regarding the allegations and the facts that document abuse by uniformed people of the U.S. Armed Forces against Iraqi prisoners. At 2 p.m., I urge your attendance.

I thank the leadership for their assistance in this matter. Yesterday, I contacted Senator FRIST and suggested that he and I and Senator DASCHLE and Senator LEVIN sit down and make the arrangements regarding these photos, and those arrangements were concluded late yesterday. The pictures will be brought up. They will remain in the custody at all times of the Department of Defense, and then they will be returned to the Department at the conclusion of our meeting.

Speaking just for myself, my guidelines as I look at these pictures are how I am obligated to address my constituents and indeed share my views with colleagues. These are the guideposts I will follow. First, at the hearing of the Armed Services—the first hearing on May 7—with Secretary Rumsfeld and the Chairman of the Joint Chiefs, as chairman, I was privileged to ask the first question. This is my question to General Myers:

> I would anticipate that you have consulted with your colleagues, not only the Joint Chiefs, but particularly in Central Command, and you are making, or have made, or will continue to make an assessment of the possible increase in risk to the men and women of the Armed Forces, the personal increase in risk to them, and indeed their colleagues in the coalition forces, regarding the release of these photos, and this story continues to reflect very deeply on the thinking and actions of other people.

We learned yesterday of the tragic event of the Berg family having lost that individual. You not only have to consider men and women in uniform, but that brave bunch of contractors who are taking a certain amount of risk to help rebuild the infrastructure in Iraq and to assist the men and women in the Armed Forces in carrying out their missions.

General Myers replied very clearly:

> Absolutely, we will. And we should not underestimate that impact.

Further, he said:

> I think we have a lot of troops in Iraq right now, after talking to General Smith and others, that are probably walking with—I mean, they're involved in combat, but they're walking with their head just a bit lower right now because they have to bear the brunt of what their colleagues up in Abu Ghraib did.

That is straight talk. We have had good, straight talk from the Secretary of Defense and all the witnesses in the course of our hearings. I commend the Department of Defense, from the President on down, for the manner in which they are dealing with this situation. That is my principal statement.

Second, we are a nation which operates on the rule of law. The Department of the Army and the Department of Defense are bringing accountability to those who allegedly have perpetrated these situations. That trial process must go forward in such a way that the release of these photos does not adversely impact or jeopardize their rights. It is for that reason that I

simply say to my colleagues that I think we have to be extremely cautious as we finish our work this afternoon, and then fulfill our obligation, in verbalizing—the pictures cannot be copied—our own interpretations and meaning of these photos, so as not to incite anger, in any way further, against our forces or others working in the cause of freedom. That is my view.

Further, I think caution should be used so as not to jeopardize under the Uniform Code of Military Justice and such other laws—and others may be brought to bear in accountability—in any way to jeopardize those trials. This Nation is a nation of laws. We are a strong democracy.

Secretary Rumsfeld, in his opening remarks, said:

> Mr. Chairman, I know you join me today in saying to the world, judge us by our actions, watch how Americans, watch how a democracy deals with wrongdoing and with scandal and the pain of acknowledging and correcting our mistakes and our own weaknesses. And then, after they have seen America in action, then ask those who teach resentment and hatred of America if our behavior doesn't give lie to the falsehood and the slander they speak about our people and about our way of life . . . Ask them if the willingness of Americans to acknowledge their own failures before humanity doesn't light the world as surely as the great ideas and beliefs that made this nation a beacon of hope and liberty for all who strive to be free.

The strength of America will be brought to bear as we address these problems in our military and go about handling this situation under the rule of law and holding those accountable. That shows the strength of a democracy. I think that is very important.

There is a Privacy Act which, in the minds of some lawyers, protects these pictures in a certain way from public disclosure.

So I simply counsel Senators—to the extent the executive branch has a responsibility to deal with future distribution of these pictures—to err on the side of caution. I think it would not be wise at this time to publish them. I believe the time to publish such photos should be during the course of the trials when the prosecution has a right to bring out certain photographs, the defense has a right to go and bring out other photographs, so you will have a balance of interests as to the photographs that are made public. Those trials will be public. At that time, no one could accuse the United States, for whatever reason, having released these photos earlier, of either jeopardizing the trial or trying to influence public opinion. Those procedures would be in accordance with the procedures of the Uniform Code of Military Justice.

Sadness, I know, fills the heart of all Americans regarding this episode in the otherwise very proud history of our military. Going back more than 200 years in our Republic, and looking forward, today 99.99 percent of the men and women in uniform are carrying out their missions in accordance with our finest traditions. They are going into harm's way, taking risks, and performing their missions. We must think of them. That is very much on my mind, and I hope it is in the minds of others as we look at this.

The Berg case has a specific reference to that heinous crime being committed to avenge the treatment of the prisoners in that prison. That is why I think further release at this time of these photographs, indeed, would put on another layer, but basically I don't think it will contribute materially to a further understanding of this tragic problem, to the extent that it overrides the other concerns of the safety of our forces, the safety of the civilian backup infrastructure, and the need for these trials to go forward in such a manner that no one can contest the integrity of the Department of Defense and the Army as they proceed to address this and hold those responsible accountable.

Mr. President, I suggest that the release of this material, which is not before the Senate—I repeat, we do not have custody of the photos—be considered by the executive branch—and perhaps wiser minds than I have a different perspective, but in the end, I counsel all caution as we verbalize our own views and understanding of these pictures, and as the executive branch moves forward with a decision regarding release.

I yield the floor.

Mrs. CLINTON. Mr. President, I rise today in support of the Harkin-Hagel Amendment which will meet the funding promises in the Individuals with Disabilities in Education Act, IDEA.

Almost three decades ago when Congress passed IDEA, this legislative body understood the additional costs that would be associated with providing an appropriate education to children with disabilities. Congress agreed back then that this fiscal responsibility should not fall entirely on the States and local communities. It decided the Federal Government would pick up at least 40 percent of the total cost of educating these children.

This promise was made nearly 30 years ago. Yet Congress has never fulfilled it. The Harkin-Hagel amendment, which has strong bipartisan support, will right this wrong by ensuring the Federal Government provides its fair share of the cost to educate all children with disabilities. That is why I am proud to cosponsor it.

The funds provided by this amendment will ensure that every child with special needs receives a free, appropriate public education. Today, all over New York and the Nation, children with special needs are being shortchanged because schools are wrestling to fulfill the competing demands on their budgets. Deficits are rising and State budgets are shrinking. And the funds provided by these amendments are crucial to ensuring all children receive a world-class education.

The Republican substitute for this amendment keeps funding for IDEA discretionary, which does not guarantee full funding. As we have seen with funding for No Child Left Behind, authorizations are an empty promise with this administration and the Republicans in Congress in control.

According to a report issued by the National Education Association last month, States and schools received only $18.6 billion of the $26.8 billion in Federal money authorized under the law during the last fiscal year. This amount falls significantly short of the total cost to implement No Child Left Behind, which, according to the NEA, will reach $41.8 billion this year. As one example of the high cost of NCLB, the Ohio Department of Education released a study last month estimating that the State will spend about $1.5 billion a year—more than twice as much as it now gets from the Federal Government to fund NCLB. And a recent Phi Delta Kappan article reported that public K–12 spending needs to rise by at least 20 to 35 percent to meet the goals of NCLB—an increase of $85 to $150 billion a year.

We cannot allow IDEA to continue on the same path as NCLB. Mandatory spending is the only way to ensure that Congress will actually fund the real costs associated with meeting these requirements so that our children and their families do not shoulder this burden.

Now more than ever, our school districts desperately need this support as they grapple with deep budget cuts and rising student enrollments. It is unconscionable for Congress to stand by and continue to fail to meet its funding commitments while schools in New York and across the Nation are laying off teachers, cutting critical classes and eliminating academic services.

Let me paint the picture of what is happening in school districts in some school districts in New York.

The Buffalo School district, where 80 percent of students come from families that are at or below the poverty index, is facing a $9.7 million cut in its education budget. To balance its budget, the Buffalo School District has had to lay off approximately 700 school personnel, cut vital services to students, and close down 5 schools this year. These choices will ultimately lower the quality of education for all of the 44,000 students enrolled in Buffalo schools, including the 9,266 students with disabilities.

However, this issue is not about budget cuts. It is about broken promises.

The Harkin-Hagel amendment says simply—the Federal Government's going to keep its word. It ensures that children with disabilities receive the programs and services they need to learn by providing the 40 percent of the cost that was promised back in 1973.

These funds mean children with special needs will achieve at higher levels and transition into the workforce as productive citizens. It guarantees the resources to recruit qualified personnel, provide teacher training and

ongoing professional development and provide supplementary services to effectively educate these children. Schools need actual resources to provide these services, not empty promises.

Before the passage of IDEA, children with disabilities received woefully inadequate schooling or no schooling at all. Each year Congress fails to live up to its commitment to adequately invest in IDEA our schools fall further behind in meeting their special education costs and our parents of children with disabilities have to fight harder to ensure their children receive appropriate educational services.

Children with special needs and their families should not have to shoulder this burden. We must do better by our children and their parents. I therefore urge my colleagues to vote yes on the Harkin-Hagel amendment.

Ms. COLLINS. Mr. President, I am pleased to be a cosponsor of the Harkin-Hagel amendment to fully fund the Federal share of the individuals with Disabilities Education Act. This proposal is long overdue and will help every school district in Maine.

IDEA is based on two fundamental principles: First, that all disabled children are entitled to a free and appropriate public education; and, second, to the maximum extent possible, these children should be educated alongside their nondisabled peers.

To help States achieve these principles, in 1975 Congress authorized funding at 40 percent of the average per pupil expenditure. Unfortunately, this funding level has never been realized, leaving States with insufficient resources and jeopardizing the achievement of IDEA's worthy goals.

In 1996, the year I was first elected to the Senate, the Federal Government provided only $2.3 billion for IDEA funding, about 7 percent of the promised level. Through our efforts in the Senate, IDEA funding has steadily climbed, reaching nearly $10.1 billion in fiscal year 2004, an increase of more than 300 percent. Despite this considerable progress, current IDEA funding still represents only half of the original 40 percent promised by Congress. This is an unfunded mandate that affects every State in the Nation.

Over the years, this shortfall in IDEA funding has placed a tremendous financial strain on communities in providing these services, and in particular, on small rural towns, such as those in Maine. According to recent CRS estimates, if IDEA were fully funded, Maine would receive approximately $104 million in part B funding, an increase of approximately $56 million over current levels.

While the shortfalls affecting Maine and other States are startling, they fail to convey the crushing financial blow which can result to a small community when a medically fragile, high-cost child with special needs locates there.

In these cases, school systems are often forced to cut back in services to all children in an attempt to meet their legal obligations. Unfortunately, this can result in resentment of these special needs children by members of their own community.

During my time in the Senate, I have consistently supported efforts to fully fund IDEA. In 2001, during Senate consideration of No Child Left Behind, I was pleased to join Senators HAGEL and HARKIN in sponsoring another amendment to fully fund IDEA. Although the amendment passed the Senate, unfortunately, it was removed during conference with the House.

After over 2 years of work, we now have before us a bill to reauthorize IDEA. S. 1248 has strong bipartisan support and reflects a bipartisan commitment to make the improvements necessary to ensure better educational services for disabled students.

For example, it contains modifications designed to improve parental involvement, to resolve conflicts more effectively and without litigation, and to reduce unnecessary paperwork. With these reforms in place, it is time for Congress to step up and meet its funding obligations under IDEA.

Our amendment would provide crucial resources necessary to support communities and special education students throughout the country. Specifically, it would provide mandatory funding increases of $2.2 billion each year for the next 6 years to reach full funding by 2010, and then maintain full funding in subsequent years.

I urge my colleagues to join us in support of this amendment. Let's make this the year where we finally make good on the promise to fully fund IDEA.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 5½ minutes remaining, and the other side has 9½ minutes remaining.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I presume the Senator from Iowa wants to close.

Mr. HARKIN. Yes.

Mr. GREGG. I have no problem with that.

We have talked a lot about, and I think debated rather extensively, the issue of what the proper way to fund this bill is. Again, I think our track record on funding is strong and reflects a very deep and aggressive commitment to getting the money that is necessary to address special needs children.

While we are discussing this bill and there is some attention on the bill, I did want to, however, mention—and I know we are going to discuss it later on—this commitment in this bill. There are a couple of items which are very important. The first is the commitment to go to basically an accountability system which looks at what a student learns versus what the procedure may have been to teach them. Rather than checking inputs, we are interested in outputs. We are interested in whether a special needs child is actually improving their academic ability.

This bill changes the focus of how we view the plans that are developed for children. It eliminates the very burdensome and unreasonable 813 procedural checklist that States have to follow in order to be deemed in compliance with IDEA. This type of checklist, in our opinion, was excessive bureaucracy and counterproductive to the basic goal, which is to get a child in the classroom and teach them to the fullness of their capabilities. So I think it makes significant progress in that area.

It also addresses a number of other issues, but specifically the overidentification of children into special needs. This is a real problem, excessive coding of children. It is especially a problem in minority communities where quite often children simply get coded because they do not have the skills when they get to school to be competitive with their peers and make a presentation on an IQ test which is adequate. This bill takes the IQ test and deemphasizes it as a way for coding these children and rather allows a variety of different proposals which came out of an extensive study in this area, the Commission on Excellence in Special Education, to be used for the purposes of deciding whether a child should be moved into the special education classification.

It is critical that we get control over this coding area because in some school systems upwards of 30 percent of the kids are being coded, and this is clearly inappropriate. It means the resources which should be focused on the children who really need assistance are being spread to a lot of kids who maybe are being coded because it is the easiest way to handle them and to move them through the system, not necessarily for their benefit but for the benefit of the administration of the school system. So we have tried to address that issue.

I happen to see that specific issue of overcoding as probably being the biggest problem we have in the whole structure of special education because not only does it mean that resources are spread too thin, but equally important, it means kids end up being stigmatized unfortunately early on with a special education status which affects their educational experience for the rest of their schooling, and that is not good for them if they did not need that sort of assistance.

Thirdly, it basically continues to move the goalpost. It is virtually impossible for us to get the full funding if every time we start to move toward full funding the goalposts of what full funding means get moved down the field further. That is what happens when there is this excessive coding.

So it has a debilitating effect not only relative to the child's experience

but also on the ability of the school system to get the funds where they need to be and also on the basis of how we are going to get enough funds into the school systems to meet our commitments. So this is a big issue. I think it is one that we have tried to address. We obviously have not solved the problem, but we have at least moved down the road toward addressing the issue in a constructive and bipartisan way in this bill.

So with those two points being made, I will reserve the remainder of my time and turn to the Senator from Iowa to close. If the Senator from Iowa is the last speaker, we will simply run the clock until we get to the time for the vote.

Mr. KENNEDY. I yield the remaining time to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I thank Senator GREGG for his generosity in letting me close the debate. I also thank the Senator from New Hampshire and the Senator from Massachusetts for putting together a good bill. This is a good bill, except for the funding. There is a lot of good in this bill, and the Senator from New Hampshire and the Senator from Massachusetts have worked together, as we all have, to come together with a nonpartisan approach.

As I have said, this is the way we ought to deal with disability issues. We have in our long history, and we have continued that again in this bill, too.

When this Congress passed the Americans with Disabilities Act 14 years ago, we stated four goals. For people with disabilities we wanted equal opportunity, full participation, independent living, and economic self-sufficiency. Those were basically the same goals of the Individuals with Disabilities Education Act. We now see people working more in our society, people with disabilities being employed on jobs, but the basis of it all is education. That is where it starts.

If families with kids with disabilities are not getting the supportive services and the kind of teacher training that is needed to be able to teach kids with disabilities, if they do not have the materials, say, in Braille for kids who are blind, or interpreters for kids who are deaf, or if they do not have some mental health providers who can help kids who have perhaps mental problems in school, then all of the promises of the Americans with Disabilities Act is for naught because these kids will not get the education they need that will give them equal opportunity, full participation, independent living, and economic self-sufficiency.

The occupant of the Chair, my colleague and cosponsor of this amendment, Senator HAGEL, stated in his comments earlier about this being an unfunded mandate. This is one of the largest unfunded mandates that we have in our country. We hear about it all the time from the schools, from the parents, from the school boards. We have mandated that they must provide these services and then we said we are going to provide up to 40 percent. That was 30 years ago, and we are only at 19 percent.

So we have to ask ourselves about our priorities. This is an unfunded mandate. We made a promise; we have not kept the promise. Some say but the Harkin-Hagel amendment will add to the deficit. Well, it will add $2 billion on a budget next year of $2.3 trillion—less than one-tenth of 1 percent. When one looks at the whole national debt of $8 trillion, we are talking about a minuscule amount. For that minuscule amount, it means kids will get the services they need.

It means we will have more Danny Pfiffers, the young man I knew in Iowa who went to school, who was mainstreamed, the manager of his football team, acted in a school play. Danny suffered from Downs Syndrome. He got out of school. He got a job. He lived by himself. He was a taxpayer. This is what we want. It saves our society countless dollars in the long run, but even more important than that it enriches Danny Pfiffer's life, and it will enrich more kids' lives.

We have waited too long to make good on our promise. Now is the time to do it. It has to do with priorities. It has to do with integration. It has to do with all of us living together, sharing and caring about one another. We are all better off as a society when kids with disabilities are educated and mainstreamed in our public schools.

Lastly, the Gregg amendment will be the first vote. I do not see anything wrong with the Gregg amendment. It is authorization as a statement of intent, purpose, and goodwill. To quote my friend from New Hampshire who used the words to describe authorization last year, there is nothing wrong with it.

The Senator from New Hampshire is authorizing more money. That is fine, but it does not add one nickel to this unfunded mandate.

So the Gregg amendment is fine as a statement of purpose and good will and intention, but statements of purpose and intention and good will do not get the funds out to meet our obligation.

We said 30 years ago we would provide up to 40 percent. We are at 19 percent. This is the vote that will say to the families of kids with disabilities, we are going to meet our commitments and fund this unfunded mandate.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I ask unanimous consent that we now proceed to a vote. I ask for the yeas and nays, and we will yield back the remainder of our time.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HARKIN. Mr. President, I ask unanimous consent to add Senator PRYOR as a cosponsor.

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

Is there a sufficient second? There is a sufficient second.

Mr. KENNEDY. Could we ask consent that be for both of the amendments?

The PRESIDING OFFICER. Is there objection pertaining to the yeas and nays on both?

Mr. GREGG. I intend to make a point of order on the second amendment. That will not be of prejudice to us?

The PRESIDING OFFICER. It will not be prejudicial. Without objection, it is so ordered.

The question is on agreeing to the amendment No. 3145. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Pennsylvania (Mr. SANTORUM) is necessarily absent.

Mr. REID. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. SUNUNU). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—96

Akaka	DeWine	Lieberman
Alexander	Dodd	Lincoln
Allard	Dole	Lott
Allen	Domenici	Lugar
Baucus	Dorgan	McCain
Bayh	Durbin	McConnell
Bennett	Edwards	Mikulski
Biden	Ensign	Miller
Bingaman	Enzi	Murkowski
Bond	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Fitzgerald	Nelson (NE)
Brownback	Frist	Pryor
Bunning	Graham (FL)	Reed
Burns	Graham (SC)	Reid
Byrd	Grassley	Roberts
Campbell	Gregg	Rockefeller
Cantwell	Hagel	Sarbanes
Carper	Harkin	Schumer
Chafee	Hatch	Sessions
Chambliss	Hutchison	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden

NAYS—1

Nickles

NOT VOTING—3

Hollings	Kerry	Santorum

The amendment (No. 3145) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. GREGG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3144

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes equally divided prior to a vote on the Harkin amendment, on which the yeas and nays have been ordered.

The Senator from Iowa.

Mr. HARKIN. Mr. President, we just voted—I did, and so many of us—to say

we want to get more money into special education. That is what the Gregg amendment says, that we want to increase authorizations.

Right now, under present law, we can do whatever we want because it authorizes such sums as necessary. The Senator from New Hampshire put in there specific amounts, but it does not add one nickel to special education.

The next amendment, the Hagel and Harkin amendment, does that. It adds real money in mandatory spending, $2.2 billion a year for 6 years to get to that 40-percent level we promised 30 years ago.

This is one of the biggest unfunded mandates we have in our country. It is time that Congress lives up to the promise we made 30 years ago to help fund special education.

I ask for an aye vote on the Harkin-Hagel amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, this Congress and this President have an exceptional track record on increasing funding for special education—over $1 billion a year, on a cumulative basis.

The issue of how you fund special education is a priority, and we have shown a commitment to that priority. It should be done within the context of setting priorities. Putting it into a mandatory account would take it out of the ability of this Congress to have the priority-setting process which is appropriate.

Furthermore, the way this amendment is structured, it might actually end up leading to a cut in discretionary funding in the special education accounts because of the uniqueness of our budget rules.

But, in any event, I make a point of order against the amendment. The pending amendment No. 3144, offered by the Senator from Iowa, increases direct spending in excess of the allocation to the HELP Committee under the most recently adopted budget resolution, H. Con. Res. 91, the concurrent resolution on the budget for fiscal year 2004. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. A point of order is made.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I move to waive the relevant portions of the Budget Act to permit the consideration of my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested.

Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Pennsylvania (Mr. SANTORUM) is necessarily absent.

Mr. REID. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 56, nays 41, as follows:

[Rollcall Vote No. 93 Leg.]

YEAS—56

Akaka	Dorgan	McCain
Baucus	Durbin	Mikulski
Bayh	Edwards	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham (FL)	Nelson (NE)
Breaux	Hagel	Pryor
Byrd	Harkin	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Roberts
Chafee	Johnson	Rockefeller
Clinton	Kennedy	Sarbanes
Coleman	Kohl	Schumer
Collins	Landrieu	Snowe
Conrad	Lautenberg	Specter
Corzine	Leahy	Stabenow
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
Dodd	Lincoln	

NAYS—41

Alexander	DeWine	Lott
Allard	Dole	Lugar
Allen	Domenici	McConnell
Bennett	Ensign	Miller
Bond	Enzi	Nickles
Brownback	Fitzgerald	Sessions
Bunning	Frist	Shelby
Burns	Graham (SC)	Smith
Campbell	Grassley	Stevens
Chambliss	Gregg	Sununu
Cochran	Hatch	Talent
Cornyn	Hutchison	Thomas
Craig	Inhofe	Voinovich
Crapo	Kyl	

NOT VOTING—3

Hollings	Kerry	Santorum

The PRESIDING OFFICER. On this vote, the yeas are 56, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained and the amendment falls.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3146

Mrs. CLINTON. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mrs. CLINTON] proposes an amendment numbered 3146.

Mrs. CLINTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the Department of Education to participate in the long-term child development study authorized under the Children's Health Act of 2000)

At the end of the bill, add the following:

TITLE V—MISCELLANEOUS

SEC. 501. AMENDMENT TO CHILDREN'S HEALTH ACT OF 2000.

Section 1004 of the Children's Health Act of 2000 (42 U.S.C. 285g note) is amended—

(1) in subsection (b), by striking ''Agency'' and inserting ''Agency, and the Department of Education''; and

(2) in subsection (c)—

(A) in paragraph (2), by striking ''and'' after the semicolon;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.''.

Mrs. CLINTON. Mr. President, I rise in support of my amendment to the Individuals with Disabilities Education Act that is being considered today. Before I get into the amendment, I thank the chairman and the ranking member of the committee, Senators GREGG and Kennedy, for all their hard work in bringing this bill to the floor. It has been a long and, at times, I know a tedious process.

The issues inherent in this bill are complicated, and I respect the strong effort of both Senators GREGG and KENNEDY to work together in a bipartisan fashion to move the process forward. I also thank their two key staff members, Connie Garner for Senator KENNEDY and Annie White for Senator GREGG, because they have worked extraordinarily hard and diligently to ensure that this legislation, which affects millions of children with disabilities, will be reauthorized and will improve the lives of so many of these children and their families.

I also thank Senators GREGG and KENNEDY for being supportive of this amendment.

My amendment is very simple and straightforward but I think very important. It proposes to make the Department of Education a key partner in the development and execution of the National Children's Study.

The National Children's Study will be the most important study of children with disabilities ever undertaken. It will provide a comprehensive examination of the effects of environmental influences, as well as many other factors affecting growth and development, from birth until age 21. The overarching goal of this study is to give us information to enable us to improve the health and well-being of our children and, in particular, what more can be done to prevent, treat, ameliorate, and cure disabilities.

The National Children's Study was authorized by the Children's Health Act of 2000. All of the key Federal departments with jurisdiction over children's health and welfare, including

the National Institute of Child Health and Human Development, the National Institute of Environmental Health Sciences, the Centers for Disease Control and Prevention, and the Environmental Protection Agency, are sponsors and partners in the completion of this critical study.

It is absolutely essential that these agencies work together, but missing from the list is the Department of Education. Despite the fact that children in our country spend 6 to 8 hours or more in school, the Department of Education is not one of the agencies explicitly included as a participant in the national children's study.

I believe this study has the potential to provide significant value, but it will be missing a critical source of information if the Department of Education is not a full partner.

Two studies that I would remind my colleagues of, that are similar to what we are attempting to do with this national children's study, is the Framingham study that followed a number of people in Framingham, MA, for a very long period of time. From that, we learned all kinds of information about heart attacks, cancers, and other factors that affect our health. Similarly the nurses study which followed several thousand nurses gave us other useful information.

So now we are trying to provide this information, based on very well run studies, to not only parents but practitioners, public officials, and others.

The participation of the Department of Education will ensure that school records can be, with appropriate permission, incorporated into the findings. Why is that important? Because only schools have information about children's educational outcomes, about special education classifications and the special services that children are receiving. Without this critical piece of information, the study would be incomplete.

The Department also needs to be a key player in order to get in on the ground floor of the planning for this study. We need to make sure that the educational component is considered from the very beginning.

It is also possible, through this amendment and the inclusion of the Department of Education, to compare how different States and schools classify children with disabilities. Currently, every State has a different standard for how they classify children with disabilities. That makes it very difficult, if not impossible, for researchers and advocates to compare data on children with disabilities across State lines. It is also very frustrating for parents who may live in one State where their child is classified as special education and eligible for services but because of a job change or other reason for a move, they move to another State where that is no longer the case.

If the national children's study were to collect data directly from schools on children's disabilities and how they are classified, we would have valuable information that I think would be very informative for our States and local school districts, as well as parents and others.

In addition to all of these reasons, the participation of the Department of Education will help us better understand how environmental factors are associated with the development of disabilities in childhood.

Every single day children are exposed to environmental hazards. They are exposed in their homes, neighborhoods, communities, and even in their schools. It is important that we begin to understand how to figure out what it is that we need to prevent in order to deal with the increasing numbers of children classified as in need of special education.

I want to thank a number of groups that have supported this amendment, including the Council for Exceptional Children, and Easter Seals, the National Education Association, the Parents Support Network of New York, the Children and Adults with Attention Deficit/Hyperactivity Disorder, National Arc, the Council for Occupational Therapists, the Learning Disabilities Association of America, and the Consortium for Citizens with Disabilities, which is a national disability organization that is a coalition of 100 groups.

I ask unanimous consent that the letters of support on behalf of this amendment be printed in the RECORD.

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

THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, INC.,
Bethesda, MD, April 22, 2004.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: the American Occupational Therapy Association (AOTA) is writing in support of your amendment to S. 1248 that would expand the federal agency participants in the National Children's Study. Authorized by the Children's Health Act of 2000 (Pub. L. 106–310), this longitudinal study will investigate the effects of environmental influences on the health and development of children. Your amendment would add the U.S. Department of Education as a participating agency in the study.

AOTA agrees that there is a need for a long term comprehensive examination of children's health, development and well-being. Occupational therapists have long recognized the influence of the environmental context on children's ability to participate in everyday activities, or occupations, at school, at home and in the community. In fact, this is one of the hallmarks of occupational therapy.

AOTA believes with you that the study should include relevant data about children's learning and educational experiences and how that learning is affected by environmental factors. Without including education and educational outcomes in the comprehensive study, children's ''development'' cannot be fully and completely assessed. The addition of the Department of Education and its various areas of expertise will enable the study to develop a more accurate view of the child and provide for the inclusion of valuable school-based data that is already available from our Nation's schools.

Thank you for introducing this important modification to the National Children's Study. Please do not hesitate to let us know if we can provide any additional assistance.

Sincerely,

CHRISTINA METZLER,
Director, Federal Affairs Department.

COUNCIL FOR EXCEPTIONAL CHILDREN,
Arlington, VA, May 11, 2004.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Room 476, Washington, DC.

DEAR SENATOR CLINTON: The Council for Exceptional Children (CEC) is the largest professional organization of teachers, administrators, parents, and others concerned with the education of children with disabilities, giftedness, or both. CEC supports your amendment to S. 1248, the Individuals with Disabilities Education Act to include the Department of Education as one of the participants in the National Children's Study. As you know, the Children's Health Act of 2000 (Pub. L. 106–310) authorized the study of environmental influences on the health and development of children.

The National Children's Study will provide the most comprehensive examination to date of the effects of environmental influences on the health and development of children, from birth until age 21, across the United States. The overarching goal of the study is to improve the health and well-being of all children, although children with disabilities will be a special focus of the investigation. The National Children's Study will be one of, if not the, richest resources for answering questions related to children with disabilities' health and development and will form the basis of child health guidance, interventions, and policy for generations to come. Yet schools, where children spend more time than any place other than their homes, are not integrated into this investigation. It is important that the Department of Education participate in this study. CEC recommends that assurances be in place that provide for sufficient resources for the Department of Education to participate in the study.

Thank you for championing this important addition to the National Children's Study. For more information, please contact me at *debz@cec.sped.org*; 703–264–9406 or Dan Blair, Senior Director for Public Policy at *danb@cec.sped.org*; 703–264–9403.

Sincerely,

DEBORAH A. ZIEGLER,
Associate Executive Director, Policy and Communication Services.

COALITION FOR EQUITY IN SPECIAL EDUCATION,
Washington, DC, May 10, 2004.

Members of the U.S. Senate:

DEAR SENATOR: We write to you on behalf of our coalition of private and religious school-affiliated organizations to urge members of the Senate to support S. 1248—the reauthorization of the Individuals with Disabilities Education Act (IDEA) as it is considered on the floor this week. Because IDEA impacts elementary and secondary schools, completing work on it is essential to ensure implementation in the next school year.

All schools that serve learning disabled and other children with disabilities have a strong stake in the reauthorization of IDEA and we are very pleased that we have worked with Senators of both political parties to strengthen IDEA to better meet the special education needs of children enrolled by their parents in our schools. While issues of importance to our communities still exist, we are most eager to have Congress complete action

on this legislation so that it may be signed by the President and its benefit to our communities implemented in the next school year. Thus, we urge you to support S. 1248's final passage as well as the appointment of conferees and the immediate convening of a conference committee.

As you are aware, a unanimous consent agreement limiting the number of amendments to be offered on S. 1248 has already been entered into. We hope you will take this major step toward better serving America's special needs children this year. Many thanks for all of your work on behalf of America's children, including children attending private and religious schools.

REV. WILLIAM F. DAVIS, OSFS,
Deputy Secretary for Schools, U.S. Conference of Catholic Bishops.
NATHAN DIAMENT,
Director, Institute for Public Affairs, Union of Orthodox Jewish Congregations.

APRIL 7, 2004.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: Children & Adults with Attention-Deficit/Hyperactivity Disorder (CHADD) is writing to support your efforts to provide an amendment to the Individuals with Diabetes Education Act (IDEA) that will expand the participants in the National Children's Study. The Children's Health Act of 2000 (Pub. L. 106–310) authorized the study of environmental influences on the health and development of children. The Amendment would add the U.S. Department of Education as one of the participating organizations in the study. CHADD supports this amendment.

CHADD is intimately involved in the area of the relationship of children's health and their educational outcomes. The Centers for Disease Control and Prevention (CDC) funded CHADD's National Resource Center on AD/HD that was established to both be the national clearinghouse for science-based information on AD/HD and encourage and disseminate research on AD/HD's prevalence and treatment. The linkage between health and learning is of paramount importance to both this aspect of our mission and most other aspects as well. A May 2002 CDC Study (CDC Vital and Health Statistics) documented that over 50 percent of the children with AD/HD had a co-occurring learning disability. Without including education and educational outcomes in the comprehensive study, children's ''development'' cannot be fully assessed.

The outline of the National Children's Study represents a very expansive view of ''environmental influences'' and these must include these found within the school and related areas. The inclusion of the Department of Education and its various areas of expertise will enable the study to take a much more complete view of the child and provide for the inclusion of valuable school-based data that is already provided from the Nations schools.

Thank you for introducing this import modification to the National Children's Study.

Further information on this issue is available from Stephen Spector, CHADD's Director of Public Policy who can be reached at 301–306–7070, extension 109.

Respectfully submitted,
E. CLARKE ROSS, D.P.A.,
Chief Executive Officer.

Mrs. CLINTON. Over the last several years, I have become even more concerned about how the environment affects a child's health and cognitive development. I think we have a lot of work to do to understand this and then to act on it. We know that 25 years of research and experience with developmental disabilities has demonstrated the increasing threat that these disabilities pose to our children's learning and also to the costs and expenses borne by families, school districts, and other public agencies around our country.

Since 1977, enrollment in special education programs for children with learning disabilities has doubled, and 12 million children under the age of 18 are now diagnosed with a developmental learning or behavioral disability. Now, obviously some of that is due to our greater understanding and our willingness to admit that these kinds of disabilities exist, but there are other reasons as well.

A National Academy of Sciences study suggests that 28 percent of developmental disabilities are caused by environmental hazards. A recent study in the New England Journal of Medicine showed that even low levels of lead exposure can reduce a child's IQ by as much as 7.4 points. For many children, this literally could mean the difference between being developmentally disabled or not.

According to a General Accounting Office study, almost half of all children in our country attend schools with at least one unsatisfactory environmental condition. I have seen a lot of those in my own travels. I have seen horrible mold conditions. I have seen exposed dust and building materials. I have seen schools that were built over toxic waste dumps. It goes on and on.

We also know that one of the most prevalent environmental health problems is poor indoor air quality. According to recent studies, that is present in nearly half of our 115,000 schools. Almost a quarter of these schools have inadequate heating, ventilation, and air-conditioning systems, and about 21,000 have faulty roofs.

Now, poor indoor air quality severely aggravates allergies, asthma, and other infections and respiratory diseases. It is something we know more and more about but actually still have a lot of work to do.

I have worked to address these problems through legislation that crosses different jurisdictional lines. I introduced the act to prevent developmental disabilities in education, which has evolved into the amendment we have before us today. I have strongly supported the 12 centers for children's environmental health and disease prevention research funded by our Government because they are focusing on issues that are so critically important, such as studying the potential environmental causes of autism, a condition that we know is increasing.

We are looking at new ways of researching, identifying, treating, and ultimately preventing autism and other diseases that may or may not have an environmental link. We just do not know enough yet.

Similarly, I have proposed a general health tracking bill that would coordinate pollution and contamination data with disease data so we can learn more about the possible links between the two. I am not one who thinks there are as many different problems as one can imagine depending upon the environmental condition, but I think common sense tells us that there are a good number of them. Right now we do not know which. We cannot give good information to parents about how best to protect their children.

In the No Child Left Behind Act, a provision that I championed called the Healthy, High-Performance Schools Program was adopted. That would assist States in creating and disseminating information and technical assistance to our neediest schools to help them improve indoor air quality and energy efficiency, and we know it can make a difference.

In Greenwich, NY, a school renovation project left cement and construction dust all over the buildings, fiberglass exposed in the library, paint fumes in the elementary classrooms, heavy equipment and jackhammers outside, and electric wires and pipes exposed. In another New York school, a parent of an asthmatic child was so upset by the child's repeated absences because of being exposed to the toxic chemicals that were used in the installation of a gym floor.

These are just two of the multitude of examples that argue for us learning more about what we are doing inside our schools to perhaps better control these problems so that, if we cannot eliminate them, certainly the information will help us to decrease the health problems from which these children suffer.

I hope this amendment will be a real encouragement for the National Children's Study because it is one of the most important research studies we can undertake in our country.

As I said, the Framingham Heart Study, which has been going on now for 50 years, has yielded remarkable advances in the prevention of heart disease. The Nurses Health Study that began in 1976 has given women invaluable information about how to protect our health. The National Children's Study is the same. It will give us so much help, trying to figure out what we should do in the public health arena in our schools and in our homes.

I am hopeful we will fully fund this National Children's Study because it is important that we begin the hard work of getting answers to many of the questions my constituents ask me.

We need an additional $15 million for this study to be carried out. These are critical funds. I hope we will be able to appropriate them. This amendment will enable the study to take advantage of the expertise in the Department

of Education and particularly zero in on the needs of children with disabilities.

I thank my colleagues for their support. I appreciate their strong advocacy on behalf of this reauthorization of the bill and in particular this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, the amendment would call for the inclusion of the United States Department of Education in a consortium of Federal agencies that are working on a study regarding environmental influences on children's health and development, which may result in developmental disorders in these children.

This consortium, which is to be headed by the Director of the National Institute of Child Health and Human Development, also includes the Centers for Disease Control and Prevention and the Environmental Protection Agency.

This amendment ensures that, should any collection of information from the study involve student education records, parents must provide prior consent before the information is released. This ensures compliance with the Family Educational Rights and Privacy Act of 1974) (20 U.S.C. 1232g) (FERPA) and comports with the federal policy of preserving parental consent.

Quite simply, information in records maintained by schools about individual children should not be accessible by the CDC, or Federal agencies, or their contractors without the knowledge and prior consent of those children's parents.

We appreciate the amendment of the Senator from New York. It is constructive and positive and we are willing to accept it.

I ask unanimous consent that the amendment of the Senator from New York be agreed to.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3146) was agreed to.

Mrs. CLINTON. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I will take a moment to thank the Senator from New York for offering this amendment. She is quite right. This longitudinal study that will be done with regard to children's health will be the most important work outside the Academy of Sciences' work that will be done on the development of children's brains and what early intervention means, in terms of their educational capabilities.

There are a lot of different factors such as bus fumes, asbestos in the schools, lead paint in the playgrounds, let alone lead paint in the walls. There are a series of different issues regarding mental health and a wide range of different areas affecting children and children's health.

The fact the Department of Education was not included was a major oversight. The amendment of the Senator from New York addresses that. It is very welcome. It will make that study a much more comprehensive and accurate reflection of where children are in our society. I thank her for offering it.

We all know that what happens during a child's early years can mean the difference between lifelong success and lifelong struggle. Good nutrition, a nurturing home, a healthy and safe neighborhood, and countless other factors provide children with the foundation from which they grow into a productive adulthood.

But for too many children, the basic elements of a healthy start are missing. Children whose environments are lacking or even dangerous are at much higher risk of developing disabilities—disabilities that can be prevented if we understand more about the factors at play. That is why the Children's Health Act of 2000, and its study on child development, is so important.

But, as the Senator from New York has pointed out, the study has a major flaw. It is incomplete because the Department of Education is not included as a partner and school experiences are not examined. This study cannot put together the puzzle of child development when this crucial piece of every child's life is missing. The Senator from New York's amendment puts the final piece into place.

Including the Department of Education in this study is just common sense. School is a child's primary environment outside the home. From early childhood through adolescence, children spend a majority of their day in a classroom.

In fact, the school environment may be even more important for children with disabilities. Most disabilities are diagnosed in school, and most special education services are provided there. What happens for disabled children in schools has a tremendous lasting effect.

The Department of Education has data to share with the study's other partners that is critical to capturing every aspect of disabled children's development. When this data is being shared, the amendment is careful to protect children's educational privacy rights.

The more we know about how a child's environment impacts developmental disorders, the more we can do to prevent them and ensure that all children grow to be healthy adults. This study, and the Department of Education's participation in it, will provide us with important information for years to come.

I applaud the Senator from New York for her advocacy on this issue and on so many other issues concerning the health of our Nation's children. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 3147

Mr. GREGG. 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 New Hampshire [Mr. GREGG], for himself, Mr. ENZI and Mr. GRASSLEY, proposes an amendment numbered 3147.

Mr. GREGG. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for attorneys' fees)

On page 558, strike lines 7 through 12, and insert the following:

''(B) AWARD OF ATTORNEYS' FEES.—

''(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

''(I) to a prevailing party who is the parent of a child with a disability;

''(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

''(III) to a State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

''(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 432 of the District of Columbia Appropriations Act, 2004.

Mr. GRASSLEY. Mr. President, I rise in support of the Gregg amendment to provide a little more equity to school districts in the often overly litigious world of special education.

Currently, IDEA only allows parents who are prevailing parties to collect attorney's fees. Even if the school district prevails in court, it must pay its attorneys out of its own budget. Under the Gregg amendment, this would still be the case in vast majority of cases.

The Gregg amendment does not cap attorney's fees allowed under IDEA and it is not even a straight ''loser pays'' provision.

The Gregg amendment simply provides that State or local education agencies may be awarded attorney's fees, at the judges discretion, only in those very limited cases where the parent's case is—''frivolous, unreasonable, or without foundation, or the parent continued to litigate even after it became clear that the case was frivolous'' or—if the parent's complaint was ''presented for any improper purpose.''

This is a very strict standard and is based on existing laws and precedents.

This strikes me as a very limited, reasonable amendment.

I should mention that in Iowa, we do not have a great many due process hearings and they rarely go to court. In fact, Iowa is a model of dispute resolution in the area of special education. It also helps that Iowa schools generally provide an excellent education to all students.

However, I have heard from many Iowa educators that the Federal IDEA law is too litigious. School districts often find themselves at a disadvantage when trying to prove that they have done right by a child. School districts find that it is usually easier and cheaper to give in to parents' demands rather than to go to court, even if school officials are convinced they have acted properly.

I am not suggesting we tip the scales the other way so that parents of disabled children are less able to advocate for the education they feel their children need.

The standard in the Gregg amendment is strict enough that it would still be to the advantage of school districts to settle all but the most egregious, frivolous complaints.

This amendment would not discourage any parent from pursuing any legitimate complaint, even if the parent might ultimately lose the case.

Parents must be able to defend the right of their child to a free, appropriate public education, even in court if necessary. However, frivolous due process complaints under IDEA abuse the rights of parents and hurt children.

When a school district must spend money to defend against frivolous cases, it drains funds away from needed services for other disabled children.

This amendment also protects parents from unscrupulous attorneys who would prey on parents when they are most vulnerable by encouraging them to litigate or prolong litigation in order to collect fees.

The law should protect children, not the pockets of trial lawyers.

Again, this amendment would in no way limit or discourage parents from pursuing legitimate complaints against a school district if they feel their child's school has not provided a free, appropriate public education. It would simply give school districts a little relief from abuses of the due process rights found in IDEA and ensure that our taxpayer dollars go toward educating children, not lining the pockets of unscrupulous trial lawyers.

Mr. GREGG. Mr. President, IDEA currently allows only parents who are ''prevailing parties'' in disputes to collect attorney's fees, in the court's discretion. The law does not permit school districts that prevail in a case to recover their attorney's fees. In most cases, this is the right policy, as we do no want to discourage parents from seeking redress when they believe their child is not getting what is promised under IDEA.

However, there are sometimes cases where the parent's case was frivolous, unreasonable, or without foundation, or the parent continued to litigate the case even after it became clear that the case was frivolous. Or, there are sometimes situations where a parent or their attorney files a number of complaints and requests for due process hearings, triggering the school district to spring into action to prepare for the hearing. The parent subsequently drops the complaint, but the school has spent considerable time and money preparing for the hearing; a closer look at the facts reveals that the complaints were not filed for any proper purpose, but instead were done to harass or retaliate against the school district.

In these limited instances, school districts should be able to recover their attorney's fees.

This amendment makes such a change to the law. The amendment provides that a court, in its discretion, may award reasonable attorney's fees to a school district if the parent's complaint or subsequent cause of action is frivolous, unreasonable, or without foundation, or the parent continued to litigate after it clearly became so, or was presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The legal standards in this amendment are not new concepts, but are based upon well-established laws.

The first part of the amendment comes from the U.S. Supreme Court case of Christiansburg Garment Co. v. EEOC 1978, which involved an employment discrimination claim under title vii of the civil rights act of 1964. Christiansburg held that a plaintiff which brings an action that is frivolous, unreasonable, or without foundation may be held liable for the prevailing defendant's attorney's fees. It is fair to apply this same standard in IDEA. In fact, a 1985 senate labor and human resources committee report on the predecessor of idea stated the committee's intent

> to adopt the policy of christiansburg garment company v. eeoc, which is that a party which brings an action that is 'frivolous, unreasonable, or without foundation' may be held liable for the prevailing defendant's attorney fees.

It is important to note that this is a very high standard and prevailing defendants are rarely able to meet it and obtain a reimbursement of their attorney's fees. The Supreme Court has said: to award attorney fees to defendants in a civil rights suit, the plaintiff's action must be meritless in the sense that it is groundless or without foundation; the fact that plaintiff may ultimately lose his case is not in itself sufficient justification for fee award.

Finally, case law directs courts to consider the financial resources of the plaintiff in awarding attorney's fees to a prevailing defendant.

The second provision in the amendment—that relates to bringing lawsuits for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation—comes from another well-established Federal law: Federal Rule of Civil Procedure 11.

In interpreting this language from Rule 11, courts must apply an objective standard of reasonableness to the facts of the case.

Let me give you some examples of frivolous or improper lawsuits, where the school districts had no recourse.

In *DeLeon Indepen. Sch. Dist.* v. *Seth B.*, 4:CV–00–1770–Y (N.D. Tex. 2001), a school district asked for injunctive relief against a parent who had filed seven requests for due process hearings over the course of 2 years. The school district asserted that the parent required the school district to convene at least 20 IEP meetings during that time, and claimed that the parent had abused her entitlements under IDEA by filing repeated requests for hearings and later canceling or refusing to attend. The school district further alleged that it had spent over $154,000 in attorney's fees and costs to defend the parents' filings. The court held that the IDEA law did not give the court subject matter jurisdiction to provide the school's requested relief.

We heard from a small district with an annual budget of $10,000,000. At the end of the 2001 school year an IEP student graduated and failed to pass an exam for entrance into a postsecondary trade school. The parents sued the district demanding among other things $1 million in lost future wages because the school had allegedly failed to address his learning needs sufficiently for him to get into the trade school. The district believed that it followed all legal requirements properly for full parent cooperation and agreement during the child's years in school. A decision was made to settle for $140,000 spread over four years partially in fear of consequences if a court battle ended in favor of the parents. A demand of one million dollars would have the effect putting the district into a negative fund balances and the risk of no longer being able to function.

A director of pupil personnel with special education responsibility reports:

> Next month I will go to Federal court with an attorney who is seeking fees for a recent Due Process Hearing. The District prevailed on 100 percent of the issues, not even a hand slap was given to the District. Why are we going to Federal Court? Because the attorney wants fees and the only way he can get them is threaten Federal court and hope we settle the fees versus the cost of Federal court.

She described the situation as blackmail.

One principal says:

> Attorneys that drag out a hearing for weeks, do so because once the attorney fees equal the post of the placement, the case gets resolved. I was involved in a case 9 years ago in which an aggressive attorney insisted on a 10 day evidentiary hearing. When it was clear the hearing officer had no control over the hearing, the district caved to the parents' position and wrote a settlement agreement.

But the worst example of egregious conduct comes from a suburban school

district with over 33,000 students and 1,600 teachers. I will come to that in a minute.

Mr. President, we need to have a mechanism to protect schools in the rare instances in which the complaint filed against them is frivolous, or when litigation is being used to harass or retaliate against the school district.

This amendment is fair and reasonable. It would apply established legal principles and standards to protect defendants from burdensome litigation having no legal or factual basis.

The intent of this amendment is not to discourage parents from using the procedural safeguards under IDEA to bring complaints against school districts. And I don't believe this amendment will do that.

However, other Federal attorney fee statutes—(e.g., title vii of the civil rights act and section 1983 claims)—allow prevailing defendants to ask for attorneys' fees in egregious instances. Why can't we allow for the same mechanism under IDEA?

We want Government dollars targeted for IDEA to go to special education services for children with disabilities—not for school districts to pay attorney's fees to defend themselves in frivolous law suits.

This amendment will not chill representation—it does not put a new dollar limit on attorney's fees. Rather, this amendment is intended to give school districts some relief in those rare situations where a parent has abused their due process rights.

Let me tell you about the most egregious example of frivolous, groundless behavior against a school.

I know of a suburban school district with over 33,000 students and 1,600 teachers. Noted for excellence, student performance, and distinguished programs, this district has received local, State, and national recognition.

Within this district, ''Mrs. X,'' as I will call her for privacy reasons, has two children attending the schools in the district: a high school-age son, identified as a special education student, and a middle school regular education daughter.

In May of 1998, the district settled a playground injury claim brought by Mrs. X resulting from her daughter's fall from monkey bars. That incident has been followed by the most egregious and long-standing abuse of every form of complaint, fair hearing, and litigation processes.

In summary, Mrs. X has filed complaints with the office of civil rights, tort liability suits, and multiple district internal personnel complaints—ranging from senior district personnel ''dishonesty'' to a substitute teacher leaving the door open in her son's room. Mrs. X currently has six suits filed in Federal Court against the district—the Board of Education Trustees, the Assistant Superintendent, the Executive Director of Special Education, the Program Specialist, the Director of Special Education, the Deputy Superintendent, the Superintendent, the Attorney retained by the district; nine hearing officers; the U.S. Department of Education Office for Civil Rights, Region IX; and the California Department of Education Superintendent of Schools.

As difficult and vexatious as these proceedings may be, by far the most expensive and draining of all of Mrs. X's actions are those resulting from her rights under the IDEA. Since June 1998, she has filed 15 complaints and fair hearing requests. These demands are accompanied by a daily barrage of letters, faxes, and telephone voice messages left for various District employees. Because of IDEA requirements, these need a timely response.

The District has spent $195,000 on attorney's fees to defend against these cases.

In November 2001, the District office began a log these communications so that the level of harassment and disruptions to the organization could be documented. Since that time, 828 communications have been sent to District personnel, representing well over 2,440 pages.

Currently, one of the District's program specialists devotes the majority of her time handling the issues generated by this one parent. This detracts from the District's ability to deal with the urgent and legitimate special education needs of students and parents.

Here is the list of the due process filings by Mrs. X. I ask unanimous consent it be printed in the RECORD.

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

Case No. 1 filed: June 30, 1998. Issue(s): Denial of FAPE 1997–98. Resolution: Settled by agreement at mediation.

Case No. 2 filed: December 26, 1998. Issue(s): Untimely IEP. Resolution: Settled by mediated agreement at the hearing by hearing officer.

Case No. 3 filed: March 28, 1999. Issue(s): Denial of FAPE 1997–98 and 1998–99. Resolution: District prevailed on all issues on hearing officer determination.

Case No. 4 filed: February 10, 2000. Issue(s): Denial of FAPE by placement at certain school. Resolution: District Prevailed on all issues on hearing officer determination.

Case No. 5 filed: August 23, 2000. Issue(s): Denial of FAPE by placement at certain school. Resolution: Settled by mediated agreement at hearing, by hearing officer.

Case No. 6 filed: April 2, 2001. Issue(s): Denial of FAPE 2000–2001. Resolution: District prevailed on all issues except occupational therapy assessment, on hearing officer determination.

Case No. 7 filed: November 5, 2001. Issues(s): Placement, services, goals for 2001–2002. Resolution: Settled by mediated agreement at hearing.

Case No. 8 filed: May 7, 2002. Issue(s): Denial of FAPE for 8th grade year (2001–2002). Resolution: Withdrawn by parent.

Case No. 9 filed: May 29, 2002. Issue(s): Eight issues concerning FAPE in 2001–2002. Resolution: Dismissed in its entirety by hearing officer.

Case No. 10 filed: July 24, 2002. Issue(s): FAPE for 2002–2003 and assessment in occupational therapy and physical therapy. Resolution: District prevailed on all issues but occupational therapy goal inclusion, on hearing officer determination.

Case No. 11 filed: February 24, 2003. Issue(s): Denial of FAPE at January 17, 2003 IEP meeting. Resolution: District prevailed on all issues on hearing officer determination.

Case No. 12 filed: March 3, 2003. Issue(s): Timeliness of District's functional analysis assessment. Resolution: Dismissed in its entirety by hearing officer.

Case No. 13 filed: August 27, 2003. Issue(s): Denial of FAPE by failing to allow communication with WHS. Resolution: District prevailed on hearing officer determination.

Case No. 14 filed: September 5, 2003. Issue(s): District denied special ed. eligibility. Resolution: Withdrawn by parent before hearing.

Case No. 15 filed: January 16, 2004. Issue(s): Author of vision therapy goals on 9/18/02 IEP. Resolution: Dismissed in its entirety by hearing officer.

Mr. GREGG. Through all this IDEA litigation, the school district has never been able to collect its attorney's fees in defending any of these cases.

And because there is no disincentive or negative consequences of filing complaint after complaint, making call after call, flooding the district with thousands of pages of documents, Mrs. X has continued her actions against the district.

Now, we know that this example is the rare exception—however, we need to do something to help protect schools against frivolous, egregious behavior, which drains resources away from providing special education and related services to children with disabilities.

The District writes:

> The purpose of IDEA is to protect the interests of special education students. It would be in this interest to guard against the egregious and vexatious behavior of a very small minority of parents whose actions negatively impact the ability of a school district to provide service to all special education students.

Mr. President, that is exactly what this amendment is designed to do.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise today in support of this amendment because no one wants to see our courts abused by frivolous cases and everyone wants to see less IDEA litigation.

While I can support preventing abuses of our legal system, I cannot stand by and listen to a debate that unfairly characterizes the majority of parents and the majority of attorneys as eager to sue schools. This could not be further from the truth—and the record needs to be set straight.

No parent wants to have confrontation with their child's school. Despite what has been said on the Senate floor today, every parent would rather be a partner in their children's education instead of an adversary. However, there are times that a parent has no choice but to right for their disabled child's educational rights. There are times when a school's violation of the law is so extreme, or when a school refuses over and over to do the right thing, that a parent's only recourse is to seek help from the legal system.

Parents facing this challenge need the help of attorneys who can represent the best interests of their child. But for too many low- and middle-income families the cost of an attorney is simply out of reach. That is why the IDEA requires schools that violate the law to pay the legal fees of parents. Without these provisions, the cost of an attorney to advocate for a disabled child's educational rights can mean a family must sacrifice another child's college education or even their home.

For example, the Hannagan family from Florida has been seeking an appropriate education for their disabled daughter for 5 years. They owe $90,000 in legal fees and have had to get a second mortgage on their home, mortgage their parent's home, and use up all of their credit cards.

Or take the Bonney family from Missouri who also had to fight to guarantee their disabled son's right to an appropriate education. Even though they asked to go to mediation instead of court, the school refused. As a result, they have had to mortgage three properties—two of which had already been paid off—in order to cover $100,000 in legal fees.

The IDEA give parents a fighting chance to get the education their children need without bankrupting the family.

Schools claim that, because IDEA helps families in this way, they are being overrun by IDEA lawsuits and costs. But the reality is different from the rhetoric.

The vast majority of IDEA parents do not file cases, and the vast majority of schools are not being sued. National data showing that IDEA litigation is extremely rare. A 2003 GAO study shows that nationally there were only 5 due process hearings per 10,000 special education students. A 2003 Department of Education national study shows that 94 percent of districts had no dispute cases go to due process hearings. But some will argue that a single lawsuit is one too many because IDEA cases are extraordinarily expensive. Again—this is not true.

The national data on the cost of solving IDEA problems paints a very different picture. According to a Department of Education study, only a fraction of IDEA funds are spent on solving problems. In 2000, $50 billion of State, Federal, and local funds were spent on special education. Only .3 percent of that total went to school expenses for mediation, due process hearings, and court cases. With over 6 million students served by IDEA, the cost of dispute resolution was only $24 per student nationally.

Mr. President, I have listened to the debate today. I have listened while supporters of this amendment describe rapid attorneys waiting to pounce on schools. You would think that high-priced attorneys are lined up around the block to take schools to court. This simply is not true.

Most parents don't have access to any attorney, or must rely on low-cost legal aid. And data from surveys shows that even this help is in short supply.

Mr. President, 55 percent of the States lack sufficient low-cost or free attorney services in their State. Only 686 low-cost or free attorneys regularly take IDEA cases. This is about 1 attorney for every 10,000 special education students. Eight States have 5 or fewer attorneys in the entire State. One State had no free or low-cost attorneys in the entire State who take IDEA cases with so few attorneys available to help parents, families face two grave and unpleasant choices: represent their child in due process alone or allow the school to continue violating their child's rights.

Those parents who have the courage to go it alone face schools that are well represented. State data shows that in 2003 schools were much more likely to bring an attorney to a hearing than parents were. In California, parents had attorneys only 21 percent of the time while schools had attorneys 42 percent of the time. In Missouri, parents had attorneys only 60 percent of the time while schools had attorneys 87 percent of the time. In Connecticut, parents had attorneys only 65 percent of the time while schools had attorneys 95 percent of the time. In Illinois, parents had attorneys only 35 percent of the time while schools had attorneys 91 percent of the time. In New York, parents had attorneys only 31 percent of the time while schools had attorneys 100 percent of the time.

How can anyone look at this data and say that schools are at a disadvantage in the legal system? How can anyone look at this data and say that parents and their attorneys are the problem? It is parents who continue to be at a disadvantage when it comes to the IDEA.

For example, Sheila, the mother of a disabled child from Oklahoma, wrote me about her fight for her son's right to an appropriate education. Her case took 3½ years because the school district hired not one but four attorneys to fight her. The district subpoenaed dozens of witnesses in order to question her integrity, instead of focusing on the real issue: how to help this severely autistic child as he grew older and his needs became more serious.

I want nothing more than to reduce IDEA due process and spare families and schools the toll it takes on them. I agree that the ideal number of IDEA cases would be zero, and the ideal cost of IDEA litigation would be zero dollars because every dollar that goes to a parent's or school's attorney is a dollar that does not go to a classroom. So I can support this amendment to deter bad cases that waste time and money.

But I cannot agree with anyone who says that litigation is the result of demanding parents or greedy lawyers. It is not a result of IDEA attorney's fee provisions. Litigation is a direct result of a school's failure to comply with the law. So long as schools continue to fail disabled students, parents will continue to be the enforcers of the law. This amendment cannot change that.

The real solution to the so-called IDEA litigation problem is to hold schools accountable for providing every disabled child with an appropriate education. This bill delivers meaningful enforcement for the first time in the history of the IDEA and this will go further to reduce litigation than any change to attorney's fees. Anyone who supports this amendment—anyone who supports reducing IDEA litigation—should also support stronger enforcement.

Instead of focusing the debate on parents and their attorneys, I urge my colleagues to focus on fulfilling the promise of an appropriate education made by the Congress nearly 30 years ago.

I thank the Senator for working with us on this issue. It is enormously important. I think we have worked out a very satisfactory solution. I thank the Senator and hope the Senate will accept the amendment.

Mrs. HUTCHISON. Mr. President, I commend the Senator from New Hampshire for his work on the Individuals with Disabilities Education Act, IDEA, reauthorization bill. In particular, I appreciate his amendment to address the issue of attorneys' fees. I agree wholeheartedly that every child should be adequately represented, but we must ensure people do not take advantage of the system. As a member, and former chairman, of the DC Appropriations Subcommittee, I became aware of how the District of Columbia Public Schools has experienced large numbers of lawsuits filed against it under IDEA and had to pay millions in attorneys' fees.

In an effort to keep these expenditures under control, the District of Columbia Appropriations Acts for fiscal years 1999, 2000 and 2001 limited the amount of appropriated funds that could be paid to prevailing parties for attorneys' fees. However, in fiscal year 2002 these caps were lifted. It quickly became clear this was a mistake.

After lifting the cap, the number of special education related administrative hearings increased in one year by 20 percent. In 2002, the city received 2,750 hearing requests, up from 1,500 3 years earlier. The backlog of assessments increased significantly and the backlog of hearings tripled. Attorneys' fees as a percentage of total special education spending tripled to almost 6 percent, increasing by $10 million in 1 year.

The problem in DC was uniquely egregious. There are numerous instances in which DC had to pay outrageous sums. In one case a lawyer charged $43,500 for a case that was settled and never actually went to a hearing. On other occasions when the case was settled prior to a hearing ever being held, lawyers charged as much as $22,000. Some firms apparently have split one case into multiple hearings, rather than addressing them in a single complaint, in order to generate excess fees. In addition, the DC Auditor issued a report in May 2003, on legal fees paid

in relation to special education and concluded that certain law firms had relationships with advocacy groups that appear to have been unethical or illegal.

Clearly, some people have been using a system intended to help children in need of special education assistance for their personal gain. The rule that allows parents to receive payment to cover attorneys' fees when they win is intended to ensure parents who may not have the means can get representation. It is not intended to be a cash cow for attorneys, soaking up money that would otherwise be spent on educating children.

Mr. GREGG. Will the Senator yield?

Mrs. HUTCHISON. I am happy to yield.

Mr. GREGG. It is clear something was wrong, because DC has accounted for 40 percent of all IDEA administrative due process hearing requests in the country but has less than one-quarter of a percent of the U.S. population. During 2000–2002, DC public schools received 7,883 due process hearing requests, more than the entire State of California, and the vast majority of hearings have been for procedural and implementation issues, which often could be handled outside of the hearing process.

Mrs. HUTCHISON. I thank the Senator. The Federal Government has a particular interest in this issue for DC because of its constitutional responsibility to oversee the Nation's Capital and because it provides approximately twice as much in education funding, in percentage terms, for DC as for the country overall.

In FY2003, we reinstated attorney fee caps, and they have been successful in curbing the problem. In FY03, DCPS saved $4.4 million, or 30 percent, due to the attorneys' fees cap. Based on those savings, DCPS was able to create 550 new classroom seats at 50 schools during the 2003–2004 school year to serve children with special needs, including children with autism, students who are hearing or vision impaired, mentally retarded, learning disabled or emotionally disabled, and early childhood special education students. The conflicts of interests between attorneys and companies providing special education services also appear to have ended as a result of this law.

FY04 savings from the cap can again be reinvested into capacity building. In the 2004–2005 school year, DCPS expects to create 450 additional classroom seats with the savings.

While the changes made by Senator GREGG's amendment make good sense for most of the country, I believe in extreme circumstances, such as in DC caps may be necessary. That is why I supported clarifying in the amendment that the measures for which I have fought so hard with the support of the school board president to protect DC are not intended to be replaced by this provision.

Mr. GREGG. I thank the Senator from Texas for her work on this issue. I agree that the District of Columbia is a unique situation and understand it has required unusual actions to ensure the rights under the IDEA law are not abused.

Mr. ENZI. Mr. President, I rise in support of the amendment offered by Senator GREGG on attorney's fees. I am concerned about the effect frivolous lawsuits are having on the ability of our schools to provide services to special education students. Schools with limited resources, particularly small or rural schools, are especially vulnerable to the financial impact a frivolous complaint can have on scarce resources and limited funds.

I believe an important part of the debate on this amendment should focus on the practical impact that frivolous complaints have on the provision of services to students with disabilities.

When Federal funding was originally established for services to students with disabilities it was meant to be used for services, not for legal fees. I believe that is still the case. Unfortunately, some frivolous lawsuits against schools are having the effect of diverting funds from necessary services.

There are documented cases where schools have spent hundreds of thousands of dollars battling frivolous complaints that were filed under IDEA. As my colleague from New Hampshire has pointed out, there is one instance of a school spending $154,000 over a 2-year period to address seven complaints from the same parent. Another school spent $195,000 on complaints from one parent.

In Wyoming, $154,000 is more than some school district's entire special education administrative budget. It is very difficult to imagine successfully providing services to children with disabilities when faced with this kind of legal obligation to defend frivolous lawsuits.

The piece of the puzzle that get overlooked is that school districts do not have unlimited funds. If a school district spends $154,000 on legal fees defending a frivolous lawsuit, that is $154,000 that does not get spent on educational purposes.

I do not want to leave anyone with the impression that I think all complaints filed under IDEA are frivolous. We are talking about a very small minority of complaints, probably less than 1 percent.

Still, even though the number of frivolous complaints may not be significant to the big picture, but the cost to schools can be very significant.

A second major point I would like to make is that frivolous complaints undermine the effort of Congress to ''fully fund'' IDEA.

The issue of ''full funding'' for IDEA has received a lot of attention and we have been discussing it on the floor in this body as it relates to the underlying bill. I have never understood ''full funding'' to mean that the Federal Government should fully fund the legal fees for schools to resolve complaints under IDEA.

The ''full funding'' of IDEA that I am familiar with is the Federal goal of providing 40 percent of the cost of special education services to students. No one that I hear speaking of full funding talks about lawsuits, they talk about services to children.

Unfortunately, schools do not have the luxury of ignoring complaints, however frivolous they may be. They must assume that every complaint filed with be upheld and prepare accordingly. That diverts funds from other educational services.

Once the complaint is filed, the school must find a way to pay for the legal services it will require, and local education funding is the only pool of resources available to school districts.

This means local education will suffer when a frivolous lawsuit is filed, because the school will have to divert funds away from other priorities, even special education services, to pay for the cost of resolving the complaint.

This body should not overlook the fact that frivolous lawsuits are diverting limited resources away from services, eroding the effect of increased Federal appropriations.

This amendment would create a simple protection to defend schools from frivolous lawsuits and help retain Federal funds in proper streams to provide services for disabled students.

Parents filing legitimate complaints would not be liable for attorney's fees. The standard set by this amendment is higher than the standard currently followed by the courts in civil rights cases.

Some will argue that this amendment infringes on the rights of parents to pursue a complaint against a school district. That is not the case at all. This amendment simply provides a means for school districts to avoid the unnecessary costs of defending themselves from a frivolous lawsuit.

Legitimate complaints under IDEA would not be affected. Even complaints that could be considered marginally frivolous would not be affected. Only those complaints that meet a high standard of frivolity would be met with approved sanctions by the courts.

I believe this is a reasonable approach to an important issue and one that the Senate should be able to accept without objection.

Mr. GREGG. I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3147) was agreed to.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Washington.

AMENDMENT NO. 3148

Mrs. MURRAY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for herself, Mr. DEWINE, and Mr. FEINGOLD, proposes an amendment numbered 3148.

Mrs. MURRAY. 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 printed in today's RECORD under ''Text of Amendments.'')

Mrs. MURRAY. Mr. President, I rise this afternoon to offer a bipartisan amendment with Senators DEWINE and FEINGOLD to ensure that our country's most vulnerable disabled students can reach their full potential.

Today the Senate is discussing the IDEA, the Individuals With Disabilities Education Act. It is a bill that is based on the American principle of equal opportunity. IDEA recognizes that students have a civil right to a free, appropriate public education even if they have special needs that require additional resources. We still have a long way to go to meet the Federal Government's promise to fund 40 percent of special education, and we are working on that challenge.

In the meantime, we need to address the unique needs facing three groups of disabled students, and I am honored to join with Senators DEWINE and FEINGOLD in offering this bipartisan amendment.

Our amendment makes small but very important changes to IDEA to ensure that disabled students who are homeless or who live in foster homes or who have their education disrupted because of their family's military service get the help they need. I thank the following organizations for their help and support of this amendment: The National Association for the Education of Homeless Children and Youth, the Military Family Education Coalition, STOMP, the Specialized Training of Military Parents, the National Association of Federally Impacted Schools, Children's Defense Fund, the National Education Association, the National PTA, the National Court Appointed Special Advocates Association, the Council for Exceptional Children, and the Consortium for Citizens with Disabilities Education Task Force.

The consortium represents more than 70 national disability organizations, including the American Occupational Authority Association, the ARC, United Cerebral Palsy Association, Easter Seals, the Higher Education Consortium for Special Education and Teacher Education Division, and the Children and Adults with Attention-Deficit/Hyperactivity Disorder Association.

All of those organizations understand the challenges facing our most vulnerable children, and all of them support this bipartisan amendment.

Congress has a long and proud tradition of supporting and protecting educational opportunities for our most vulnerable young people. It is what we did when we passed the Elementary and Secondary Education Act in 1965. It is what we did when we created Head Start. And it is what we did when we started giving out Pell grants. It is time for us to step up once again and make the changes needed to make IDEA work for homeless and foster children with disabilities and children with disabilities in military families.

I take just a minute to describe the special challenges facing these children and how our amendment will help them. Let me start with foster children. Today in America there are nearly 500,000 children in foster care. Thirty percent of them are in special education. We know foster children often do not function as well in school because of their experiences. Foster children have usually been separated from their biological families because of child abuse or neglect. That can leave both emotional and physical marks for life. Given the shortage of foster parents in our country, children in foster care are often shuttled between many different homes and schools.

One young man shared with me his story of living in more than 100 homes throughout his childhood. Often, every new home means enrolling in a new school. And every new school means starting over again and getting the support and services they need.

In addition to frequent absences and transfers, foster children often do not have parents to advocate for their educational needs. Almost every parent whose child has a disability will tell you that their role as advocate for their child directly impacts the quality of the education their child receives. Without a parent to advocate for them, foster children can languish for years with unrecognized disabilities or insufficient services to help them succeed in school. These experiences can leave children in foster care without the education and support to lead functional, productive lives.

I will share the true story of two foster children in New York City who need the help this amendment provides. Eric and his sister Joanna have been in foster care for 6 years. They have been in four different foster homes and each home was in a different borough. Each time they moved to a new home they were taken out of school in the middle of the school year. Frequently, they were not reenrolled in their new schools for weeks or months, and their records were not transferred from school to school.

Both Eric and Joanna have learning disabilities. Each time they arrived in a new school, the teachers did not know they needed special education services. So over the years, Eric and Joanna missed months of school and have only occasionally received needed services.

Upon their last move to a foster home in Queens, Eric's new high school refused to enroll him because he was 16 and he had no credits. The Advocates for Children assisted Eric and Joanna's case worker in enrolling both students in school after they had been out of school for 3 months. Their advocates also secured records from 2 years ago that show that Eric had obtained 10 credits and passed a regent's exam. Because their records were never transferred, Eric had been placed in the ninth grade for the third time. Eric's current guidance counselor was informed at school and Eric's records are being transferred.

Our amendment helps disabled foster children such as Eric and Joanna by ensuring that their records follow them from school to school quickly and that they have an advocate who is on their side in developing an education plan.

Let me turn to another group of students our amendment will help. Homeless children in our country also face significant hurdles to succeed in school, and these hurdles are higher for homeless children who have disabilities. The Urban Institute estimates that 1.35 million children experience homelessness each year. A high proportion of homeless children with disabilities also need special education services. Yet many have trouble getting the help they need. Children experiencing homelessness are diagnosed with learning disabilities at twice the rate of other children. They suffer from emotional or behavioral problems that interfere with learning at almost three times the rate of other children. These mental and emotional difficulties often begin at birth as infants who are homeless have higher rates of low birthweight and need special care immediately after birth, four times as often as other children.

Like other children and youth surviving in extreme poverty, homeless children and youth face appalling living conditions. Many of these horrific conditions directly contribute to physical, mental, and emotional disabilities.

For example, students experiencing homelessness often suffer from poor nutrition, inadequate health care, higher rates of other health problems, and severe emotional stress related to conditions of extreme poverty and instability.

Unfortunately, even though homeless children suffer from disabilities at a disproportionate rate, children who are homeless are underserved by special education programs. A recent study of children in homeless shelters in Los Angeles found that while 45 percent of the children met the criteria for special education evaluation, only 22 percent had ever received special education testing or placement.

In 2000, 50 percent of States reporting data to the U.S. Department of Education reported that students in homeless situations had difficulties accessing special education programs.

Children who experience homelessness desperately need stability in their lives. But they cannot stay in the same school or even the same district long enough for the individualized education plan to be developed and implemented.

In addition, like foster children, some homeless youth have no legal guardian to watch out for their educational needs and to advocate for their special interests or their best interests. I share the story of a young girl in Virginia our amendment would help. She is a 13-year-old girl. Her mother fled domestic violence. Over the course of 2 years they moved to temporary living situations in several school districts. The girl suffered extreme trauma and was hospitalized on two occasions. The hospital evaluations clearly show that she qualified for special education, and her mother had requested special education services from several school districts. However, because they moved around, no school ever completed the evaluation process. Each successive school started the process from the very beginning. Even when the girl attended a single school for several months, the school did not complete the evaluation process. Instead, it chose to wait it out until the family moved again.

Finally, the girl's mother found a special education attorney to take on her case.

Our amendment would help students like her by ensuring that homeless students have continuous educational services no matter how many times they are forced to move.

Finally, I turn to a third group of disabled students whose special circumstances are often overlooked. Children in military families often experience disruptions in their education because they move frequently. According to the Military Child Education Coalition, 13 percent of children in military families receive special education services or other special support. Further, children in military families move an average of every 2 to 3 years. That translates into attending six to nine schools from kindergarten until high school graduation. Children with disabilities in these highly mobile families need consistent services so they do not fall further behind each time they move.

Especially in times of war, and when parents are serving our country on extended tours of duty, children in military families need support and stability in their lives and in their education.

I would like to share some of the words I received from military families across the country who support my amendment. I received a letter from Natalie Cyphers of McGuire Air Force Base in New Jersey. Natalie writes:

> Thank you for your consideration of military families with special needs children. My husband is active duty Air Force and we have a 14-year-old with mild cognitive deficiency. I find one of the hardest parts of our son's education occurs every time we move.
>
> It is difficult to implement the current IEP and often the educators do not realize the importance of continuity for our children.
>
> Any assistance in these situations would be helpful to all of us.

That is from Natalie Cyphers at McGuire Air Force Base in New Jersey.

I also received a letter from Kristina Rice of Boise, ID. Kristina is a parent of a disabled child and a case manager for children with disabilities. She wrote:

> The members of highly-mobile military families who suffer most educationally are children with disabilities as transitions are more difficult, and levels of service vary greatly from state to state.
>
> Evaluation processes are cumbersome, expensive and time-consuming, and the children being served do not have the time to wait while new teachers and service providers try to re-create a picture of their needs and re-determine eligibility.
>
> Once several months have gone by without adequate services, a child may regress so far that he or she can lose a whole school year. [The] suggestions in this amendment are practical, fair, and necessary.
>
> Military families already sacrifice enough to serve our country. They do not need the added burden of delayed services for their children.

That is from Kristina Rice, of Boise, ID.

These stories reflect just a few of the many disabled students who this amendment will help.

So, again, specifically, our amendment will help students who change schools or school districts by ensuring that all students receive continued special education services when they transfer schools.

Our amendment ensures that records are transferred quickly so students do not waste critical time.

Our amendment increases opportunities for early evaluation and intervention for homeless and foster infants and toddlers with disabilities, and for children with disabilities in military families.

Our amendment also ensures that these vulnerable children are represented on the State policy committees that decide their future.

In addition, our amendment expands the definition of ''parent'' to include relatives or other caregivers who are equipped to make sound decisions in a child's best interest when there is no biological parent available to do so. Finally, our amendment improves the coordination of services and information so educational and social services agencies can work together more efficiently to help these students.

As we reauthorize IDEA, we have an obligation to pay extra attention to these children and to provide the resources and support they need. The real test of how we treat children in America is measured in how we treat the most vulnerable among us. This amendment gives us a chance to do the right thing.

I urge the Senate to join with more than 70 national disability, military family, foster, homeless, and education organizations in supporting the bipartisan Murray-DeWine amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank my friend and colleague from Washington for her attention to this issue that can make a major difference to many families with special needs children, recognizing the increased mobility of our population, and, most particularly, the needs of those in the military who are moving through the school systems in different parts of our Nation in increasing numbers, and also giving special focus and attention to the too many Americans and American families who are homeless and have some special needs.

So I rise in support of this amendment because it will ensure that the disabled children who change schools will continue to get the services they need.

America is increasingly a mobile society. The demands of our economy and shifts in our culture mean Americans will move to new communities during their lives. Today, it is unlikely that a child will stay in the same school district or even the State, for that matter, throughout their school years.

Families and schools do all they can to make the transition easier for children when they move from place to place, but many children still have a difficult adjustment to make in their new home and school. This is especially true for students with disabilities.

Disabled children are extremely likely to have problems when they leave one school for another. Sometimes they have difficulty with change because of their disability, but more often it is because their new school does not provide them with the services they need. Because each State and school district does things differently, disabled students who move often wait months for their new school to provide them with special education.

In the life of a disabled child—in the life of any child—missing a few days, let alone a few months, of instruction is a huge loss. Many disabled children actually lose skills they have already gained when they go without the services they need for any length of time. These children are already struggling in school and fall further and further behind.

Imagine what it is like, then, for a disabled child with a parent serving in the military. Imagine what it is like for a disabled child who is homeless or in foster care. It is one step forward and two steps back every time they change schools.

The amendment offered by the Senator from Washington will help solve this problem by guaranteeing that disabled students who move do not have to wait. It guarantees that disabled students do not go without special education during the time it takes for the

school and the parents to decide how best to meet the child's needs.

Will this be difficult for some schools to do? Certainly. Every school does it differently, and the flexibility in this amendment recognizes this fact. There will be times that a student moves to a district that is not ready to provide all of the services he or she needs. But a disabled child's education—a disabled child's future—should not suffer because the school needs time to get prepared.

As the Senator from Washington has explained, this amendment also makes numerous changes to the IDEA that will improve special education for disabled children who are homeless or in foster care. Although children who are homeless are four times more likely to have delayed development than other children, they have a more difficult time accessing special education. These children are truly more vulnerable. They are the vulnerable of the vulnerable. I applaud the Senator for her tireless efforts on their behalf.

This amendment will make it easier for schools to provide disabled homeless and foster children with the services they need, and will smooth the transition for all disabled children who move to new schools.

Mr. President, this recognizes the reality; that is, we are in a mobile society. Children are moving. Families are moving. In a bill that is dealing with special needs children, not to recognize that issue would be an omission. I think the Senator has made some excellent recommendations.

We still have some work to do in terms of working through this issue, but it does seem to me that she has identified an extremely important area of need, and one to which we should attend. So I thank her for bringing it to the attention of the Senate.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, we have agreed to accept this amendment. I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is agreed to.

The amendment (No. 3148) was agreed to.

Mr. GREGG. I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

PHOTOS OF IRAQI PRISONER ABUSE

Mr. WARNER. Mr. President, at 2 o'clock today, the Department of Defense delivered to S–407 material relating to the issue of mistreatment by Americans in uniform and perhaps others under contract against the prisoners in a prison in Iraq. Several hundred of these photos have been shown to a large group of Senators.

The Department of Defense prepared a document as guidance for Senators as to how hopefully they will handle their knowledge of these photos as they relate their responsibilities to their constituents and others in giving their views.

I ask unanimous consent to print in the RECORD a letter Senator LEVIN and I, in our capacity as chairman and ranking member of the Armed Services Committee, wrote to the Department of Defense with regard to the transmission of these documents.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, May 11, 2004.

Hon. DONALD H. RUMSFELD,
Secretary of Defense,
Pentagon, Washington, DC.

DEAR MR. SECRETARY: We request the Department of Defense provide the Committee on Armed Services an opportunity to review the photos and videos regarding the abuse of prisoners at Abu Ghraib prison in Iraq. Further, it is our intent to extend this opportunity to all Members of the United States Senate.

These materials should be brought to the Senate for review, but will remain under the control of the Defense Department. At no time will the Committee, the Senate, or any Member or employee thereof, take custody of, or assume responsibility for, these materials. A Defense Department official will return these materials to the Pentagon after the materials have been reviewed by Members, subject to our subsequent recall if necessary.

Committee staff will coordinate the details of this request directly with your office.

Sincerely,

CARL LEVIN,
Ranking Member.
JOHN W. WARNER,
Chairman.

Mr. WARNER. Mr. President, I would like to read the material that was provided to Senators. It is entitled ''White Paper For Persons Who Have Viewed The Detainee Abuse Photos.''

The Privacy Act prohibits the disclosure of ''any record which is contained in a system of records'' to ''any person or to another agency,'' except with ''prior written consent of the individual to whom the record pertains.'' 5 U.S.C. Section 552a(b). The statute applies only to records about U.S. citizens or permanent resident aliens (''U.S. nationals'').

The Iraqi detainee abuse photos and videos . . .

—we saw some video—

were collected by and are maintained in the files of the military criminal investigative organization in the [Department of Defense]. The photos are subject to the Privacy Act to the extent they disclose the identities of U.S. nationals.

Any release of the photos to persons outside the [Department of Defense] (with very limited exceptions concerning releases to Congress and certain Executive Branch officials) would risk liability under the Privacy Act.

That liability in this sentence is to the Department of Defense. I ask unanimous consent to print in the RECORD the pertinent sections of the Privacy Act.

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

Mr. WARNER. There are certain exceptions as it relates to the Congress of the United States. Senators should read this and draw their own conclusions from it.

Any description of the photos (or any particular photo) that would reveal the identity of a U.S. national depicted in the photos would also risk liability under the Privacy Act.

To the extent that any description of the photos is offered at all, it should be limited to generic statements about the conduct depicted in the photos without any reference that would tend to reveal the identity of any U.S. national involved in the conduct photographed.

The disclosure of photographs or detainees could constitute a violation of the Geneva Conventions, which provide that such persons shall be protected ''against insults and public curiosity.''

As I stated earlier today, speaking for myself, I believe very strongly these photographs should not be made public. That is not a decision that is up to the Senate or the Congress but to other authorities in the executive branch. I believe it could possibly endanger the men and women of the Armed Forces as they are serving valiantly and at great risk, not only in Iraq and Afghanistan but other areas of the world.

Secondly, this Nation is founded on the rule of law. We are proceeding—I say we, the Department of Defense, and they are to be commended—carefully within the rule of law as it relates to this evidence and the trials which will be forthcoming of those who will be brought to justice by virtue of the Uniform Code of Military Justice. At those trials, they will be public. At those trials, such portions of these photos as a prosecutor deems necessary can be released and put into the public domain. As well, the defense counsel, likewise, through discovery can determine such photos that might in some way enhance the defense in that case. It is not as if there will be no public disclosure. It is the time and the circumstances under which that disclosure is made.

Again, the credibility of the country is being examined in connection with these tragic incidents that have taken place, tragic incidents against a background of 99.99 percent of the men and women of the U.S. military performing

all over the world at this very minute at personal risk but in the cause of freedom, to protect this Nation and our allies. I firmly believe the guidelines are out there certainly for colleagues. I have given you my best counsel on this. Here are the rules prescribed by the Department. I think it is in the best interest that we all, in a very calm, collected manner, continue to address this issue.

The Committee on Armed Services has concluded two hearings. At this moment the Committee on Intelligence, of which I am also a member, is conducting a hearing. Speaking for the Senate, and I believe the House, the proper oversight is being administered. The Appropriations Committee likewise addressed this issue in some context today. The Government of our Nation, the executive and the legislative branch together—I find total cooperation with the Department of Defense—is doing the best we know how to protect the interests of our Nation and protect the men and women of the Armed Forces and protect all others in this set of very tragic circumstances.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I thank the Senator from Virginia for his extraordinary leadership in the Senate, especially with the extremely difficult issues in our country today. We are very fortunate to have him as chairman of the Armed Services Committee.

Mr. WARNER. Mr. President, I thank my good friend and colleague. I am privileged also to serve on his committee.

Mr. GREGG. We are fortunate to have him on our committee also. That is an extra plus. But his leadership on issues protecting our Nation is second to none.

AMENDMENT NO. 3149

Mr. GREGG. Mr. President, I send to the desk an amendment on behalf of Senator SANTORUM.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for Mr. SANTORUM, proposes an amendment numbered 3149.

Mr. GREGG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for a paperwork reduction demonstration)

Amend section 609 of the Individuals with Disabilities Education Act, as amended by section 101 of the bill, to read as follows:

"SEC. 609. PAPERWORK REDUCTION.

''(a) REPORT TO CONGRESS.—The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

''(b) PAPERWORK REDUCTION DEMONSTRATION.—

''(1) PILOT PROGRAM.—

''(A) PURPOSE.—The purpose of this subsection is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this Act, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

''(B) AUTHORIZATION.—

''(i) IN GENERAL.—In order to carry out the purpose of this subsection, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, this part for a period of time not to exceed 4 years with respect to not more than 20 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

''(ii) EXCEPTION.—The Secretary shall not waive any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

''(I) affect the right of a child with a disability to receive a free appropriate public education under this part; and

''(II) permit a State or local educational agency to waive procedural safeguards under section 615.

''(C) PROPOSAL.—

''(i) IN GENERAL.—A State desiring to participate in the program under this subsection shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

''(ii) CONTENT.—The proposal shall include—

''(I) a list of any statutory requirements of, or regulatory requirements relating to, this part that the State desires the Secretary to waive or change, in whole or in part; and

''(II) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

''(D) TERMINATION OF WAIVER.—The Secretary shall terminate a State's waiver under this subsection if the Secretary determines that the State—

''(i) has failed to make satisfactory progress in meeting the indicators described in section 616; or

''(ii) has failed to appropriately implement its waiver.

''(2) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under paragraph (1), including any specific recommendations for broader implementation of such waivers, in—

''(A) reducing—

''(i) the paperwork burden on teachers, principals, administrators, and related service providers; and

''(ii) noninstructional time spent by teachers in complying with this part;

''(B) enhancing longer-term educational planning;

''(C) improving positive outcomes for children with disabilities;

''(D) promoting collaboration between IEP Team members; and

''(E) ensuring satisfaction of family members.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GREGG. Mr. President, I ask unanimous consent that immediately following morning business on Thursday, May 13, the Senate resume consideration of the pending IDEA bill and there then be 30 minutes equally divided with respect to the pending Santorum amendment No. 3149; provided further that there be one relevant second-degree amendment in order to the amendment and it be offered by Senator BINGAMAN; further, that the amendment be limited to the same time limitation of the first degree. I further ask unanimous consent that the only other amendment in order be a Gregg-Kennedy managers' amendment to be agreed upon by both managers.

I further ask consent that following disposition of the above amendments there be an additional 20 minutes of debate equally divided between the two managers for closing remarks, and following that time the provisions of the previous order remain in effect.

The PRESIDING OFFICER (Mr. CORNYN). Is there objection? Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. While the distinguished Senator from New Hampshire is on the floor, we could finish this bill before noon if things worked out right. I say, through the Chair to my friend, I spoke yesterday to the senior Senator from New Mexico, Mr. DOMENICI. He is interested, as are a number of other Senators, in moving forward on the mental health parity legislation. This may be the window that we can do that, and I say that because what we have been waiting on is a proposed amendment dealing with the scope of that matter from the distinguished chairman of the HELP Committee. I ask my friend if he has an idea when that might be ready because that is all that is holding up going to our legislation, as I understand it.

Mr. GREGG. Mr. President, I have tried to be very cooperative with the Senator from New Mexico and certainly he has tried to be cooperative with me. This has been an issue that has involved not only our body but the House and the White House. I have actually agreed that this language not go through our committee, which I think is a very generous act on our part, not

having it to mark up in committee and allowing it to move directly to the floor. Of course, before we can draft our amendment we actually have to see the language of the Senator from New Mexico. We have not seen it.

As soon as we get his language, we will be able to probably put together our amendment. The understanding is we are going to move promptly at that time because I understand Senator DOMENICI wants this moved, and I respect him. He certainly has made a huge commitment in this area and I want to try to expedite it and be constructive in this initiative.

Mr. REID. As with all things in life, communication is everything, and I think this communication has been most helpful. I will do everything I can to get the distinguished chairman a copy of the proposed amendment as soon as possible. As I said, this would be an opportunity to do that. As I said last night in closing, this will have been a good week for us. We have been able to finish the FSC bill. We are going to be able to finish this IDEA legislation tomorrow, and if we can do the mental health parity, that would be three very important pieces of legislation in 1 week. For us in the Senate, that says a lot.

Mr. GREGG. Mr. President, if we could add the confirmation of some of the judges who have been waiting for months, that would make this a good week.

Mr. REID. Mr. President, I say in response to my friend, we have confirmed 173. I think we are in a position to do more. Although there are some negotiations going on dealing with recess appointments, as soon as that matter is resolved—and I think it can be with a matter of a phone call from the White House—we could move forward and set up votes on maybe not all the judges but a lot of them.

Mr. GREGG. Unless there is further business, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I will speak on the underlying bill for 15 minutes.

I wanted to take this opportunity to come to the floor and speak for a minute about the important subject of education and, in particular, special education, which we refer to around here as IDEA. We authorize this very important piece of legislation every 5 or 6 years. In the midst of all that is going on with Iraq and with our debate over tax policy regarding the economy, some would not consider this the most important issue before us. But for our students, our families, and for our educators, in particular, it is a very important issue.

I say on the eve of our commemorating the 50th anniversary of the Brown v. Board of Education decision, it is appropriate that we would spend a couple of days in the Senate and in Congress speaking about an issue that really does affect millions of our families. I know people in Louisiana are very concerned about special education.

I commend the chairman and the ranking member for bringing us a bill that, in the midst of all of this rancorous debate and gridlock—some of it, from my perspective, deserved because there are some things that our side doesn't want to move forward, so we appropriately stop those actions. Nonetheless, in the midst of all of this, we should take some time to work in a bipartisan way to move the agenda of special education and make some very needed improvements. I also commend the administration and the commission that worked very hard to try to outline for us a focus regarding special education. Some of the findings of the recent study that was concluded are worth repeating. They were mentioned earlier on the floor.

I want to say again how important I think the work of this commission was when they noted that we as a Congress, as the educational leaders, should focus more on student outcomes. We have been, since we created this provision of the law in 1975, in my mind—and I think the Chair shares this opinion—too much focused on the process of making sure that each of our special needs students and their families and schools were following things step by step, paper trail by paper trail, and taking our eyes off the outcomes. What do we want these students, who are called special needs students—but they are just students who need special attention. Every student needs special attention, and some students because of where they start, with challenges or disabilities, need extra attention. I know that is true in Louisiana.

We have been, for these 30 years or so, too wrapped up in the process and not focused on the outcome. Are we, in fact, teaching children to read at grade level? Are we, in fact, intervening in the case of gross neglect or abuse to make sure that the proper outcome is that the abuse and neglect is stopped and children are placed in an environment that is more suitable to their needs, or are we focused on process, such as if the pink slip was turned in on time to match the yellow slip, or if the money was appropriately recorded. I am proud that study is moving up toward outcome and results.

I also want to say that the study has been good about suggesting to us—and this bill outlines some of the new thoughts—that we should be focused on prevention. Yes, we want to identify our students who need special attention, but if we could put in place better teaching techniques, early intervention strategies that would prevent young children from being labeled as special education, not only would that be better for the student, it would be better for the parents, the school districts, and it would also save the taxpayers some money. Today, taxpayers would like to save money where and when they can.

The third finding I thought worth noting was that we should begin to embrace more fully the concept that we only have one educational system for all of our children. We don't have, and should not have, a two-tiered system or separate system—one for ''regular'' children and one for ''special needs'' children. They are all our children. They all need special attention. But special education, or IDEA, is to give added resources—we, in Louisiana, call that ''lagniappe,'' a little extra—to a certain group of students who might need it because of their physical or emotional or mental circumstance.

Those are the three very important findings of the commission. I commend our leadership for helping us to focus on that. Let us not focus so much on the process, let us focus on the outcomes. Are we succeeding with these children? Let us not just continue to label children as the need arises, but let's focus on preventing the labeling at the earliest stage. Let us stop talking about two separate systems and realize that we are talking about one system and embrace that notion.

There are four other short points I want to make regarding the underlying bill and, in general, they are positive comments.

There has been great concern in Louisiana about the issue of discipline in our schools, and I think rightfully so. We want to support our teachers and our administrators. We want to empower them to make good choices about maintaining an atmosphere of discipline in a school so all children can learn.

If 1, 2, or 3 children are disruptive—it only takes 1—but if 1 child is disruptive in a classroom, it wrecks the opportunity for those other 25, 20, 18, 15—whatever the number is—children to learn, and it robs them of an opportunity to have a full and productive day.

Because our laws have been perhaps not as carefully written as possible, maybe our regulations have been too onerous, and perhaps some court decisions have led us to a place where in America today—and I know in Louisiana because my teachers and superintendents tell me: Senator, we are afraid to discipline a child. We are afraid of a lawsuit. Or we don't know where to stand on this issue.

As an example, as hard to believe as this is—and I am going to submit for the RECORD information to document it—we actually had an incident a couple years ago where two students—I know those listening will find this hard to believe—actually burned down a school, and because they were labeled

special education children, the actions taken against them were not what you and I would think would be appropriate in that they were basically allowed to go to a temporary school because they burned down the original school. People of that community did not think they could take appropriate action because they were prevented by some Federal law or regulation.

I am happy to say, in large measure that discipline issue is addressed in this bill. That is why I am happy to support it. We can now, under this new bill, suspend or expel a child with no questions asked and no hearings necessary for bombs, guns, drugs, or bodily injury to another student or a teacher. Then for issues that are not as clear as bombs, guns, drugs, and bodily injury to a student or teacher, there is a more streamlined process that does not get everybody tied up in legal knots and provides discipline in the classroom, in the hallways, in the gym, and in other places in the school environment so that learning can take place. I commend this leadership.

Perhaps we do not go as far as I would have liked on this issue. I know the Senator from Alabama, Mr. SESSIONS, and I have talked about even going further than this bill. But at least this is a step in the right direction to return discipline and empower our teachers to take appropriate actions.

Let me be quick to say, we do not want any child who is suffering from a physical injury or disability, particularly if a child is deaf or visually impaired, to suffer in any inappropriate way by disciplines that might come. But it has gotten out of hand in the sense that our regulations have tied the hands of our principals, superintendents, and teachers. We have addressed that situation.

On the labeling issue, we have made some progress. I am going to put up a chart in a few moments to show that we have a long way to go.

One of the other issues is funding. This bill gives us a new authorization level. It does not give us a funding level. This is where I want to express some disappointment.

We just had a vote to authorize this bill at $13.5 billion for 2002, $16 billion for 2003, $18.5 billion for 2004, and $20.5 billion for 2005. But the numbers appropriated are $20 million for 2002, 11.69 for 2003, 12.34 for 2004, and 13.3 for 2005.

There is a difference between authorized levels and appropriated levels. For No Child Left Behind and IDEA, authorized levels are promised levels. Authorized levels are what we promise to fund; appropriated levels are actually what we do.

For today, this is a serious issue, and there is a serious differential. If we were truly funding IDEA the way we promised when we initially created it and the way we continue to promise each time we authorize it, Louisiana, just our State, would be getting an additional $240 million a year.

With 15 percent of our total population labeled as ''special education,'' and with one out of every four children in poverty and with two out of three African-American children in poverty in our State, this $240 million would go a long way to helping us correct the inequities, to close the achievement gap, and to provide a quality education for all of our children.

When we add the shortfall in IDEA with the shortfall in No Child Left Behind, it comes to an astonishing $440 million shortfall for Louisiana alone. I have not calculated the shortfall for Maine. I am sure the Presiding Officer, because she is a leader in this issue, is familiar with what that number would be. For the large States, such as California, Florida, and Texas, it would have to be millions of dollars short because Louisiana, with only 4 percent of the Nation's population, is short $450 million.

With $440 million, we could do a lot better job helping every child in Louisiana learn to read at an early age and live up to the call of the special education report that says an ounce of prevention is worth a pound of cure. If we could prevent the labeling and teach children to read at age 6, 7, or 8, it would go a long way to preventing the labeling of ''special education.''

Let me go to this chart that will show my point. There are almost 3 million children who are identified around the country as special education children. I am almost getting uncomfortable using that term because the more we use it, the more people get the idea that these children are damaged goods, that there is something wrong with these children. They have special needs. I think it was the Senator from Maryland, Ms. MIKULSKI, who said it so beautifully: That might be true, but what these children really need is special attention.

I give my daughter special attention every night. I read to her for almost 30 minutes, and I try to do it every night. She needs special attention, and I try to provide that because she is at a critical stage of learning to read.

Most of these children who are in special education, as you can see, the vast majority of them, have speech or language disabilities. That is not to say there is something wrong with their God-given, innate intelligence. There is nothing wrong with the way God made their brain or fashioned it. He actually did a magnificent job. But we have not done our job as they grow to be little humans teaching them speech or language. So they come to school underprepared. Not mentally retarded, not visually impaired, not deaf, not autistic, but they just have difficulty speaking and with language.

Madam President, as you know, we are learning so much about the early brain development of children from 0 to 3. We understand how critical it is as parents raising our own children to look directly in the eyes of a child, to speak with clear diction, to actually show them how to speak and to talk to children, and to have a conversation with them, even if they are unable to speak but just hearing the language.

So many of our children from poor and disadvantaged backgrounds and some children from actually wealthier backgrounds who are neglected, but in large measure from poor and disadvantaged backgrounds, come to school not hearing the language properly, not having been spoken to in a direct way. So they start out at a tremendous disadvantage.

In criticism of this administration and our actions here, if we would put our money where our mouth is and start funding early childhood education, which could be done through either funding No Child Left Behind fully so States have choices about where to spend their money—in large measure, they could spend it on early childhood education—or fully funding IDEA, we could eliminate 80 percent of the children because we could catch their speech or language earlier with effective programs.

How do I know this? Because we are doing it in Louisiana. Our superintendent, even being short of Federal dollars, even after the years we promised to give the money and we have not, has taken the bull by the horns with our Governor and our board of elementary and secondary education and with State dollars are creating what we call Louisiana Four, LA Four.

We are trying to identify every 4-year-old in our State who needs help, who wants help. It is voluntary. Children are not forced to go to school at 4 years old, but for the parents who do want to enroll their child in a quality education, with parental involvement, we are providing our own State money. Just think what we could do with $440 million. The results are astonishing.

Children who are taught to read at the earliest ages and given the basics of phonics and language avoid being labeled as special education. So then we could focus our attention on those children who really are challenged by things that, in large measure, are out of our control.

The jury is still out on autism. We are not sure what causes autism. We do not believe, with all the studies I have read, that it is anything that is caused by human activity or inactivity. It seems to be a brain malfunctioning or a nerve malfunctioning. As I said, we are not clear yet on the research. Such a small percentage of the children who are in special education are autistic and that is an appropriate place for them to be, because autistic children have real special needs. It takes skill to educate and deal with them.

Deafness and blindness, obviously, bring their own challenges.

Traumatic brain injury, our children are sometimes in accidents, sometimes it is a birth defect, but we can hardly even see this graph because it is such a small percentage of children.

If we could take care of children coming to school unprepared, which is

in our power to do, if we could take care of speech and language impairment, and if we would properly diagnosis mental retardation—and I am convinced, because I have seen studies that indicate we are not accurately identifying or overidentifying children who are mentally retarded, in other words saying they are mentally retarded but they are not really; we are just testing them in that way or making that judgment when really they have been grossly neglected and abused and their IQ is perfectly fine. Our testing measures are just not what they need to be. If we could take care of speech or language ability, which is in our control, we would dramatically reduce the number of children who would need this special intervention and therefore do a better job of educating them, reducing labeling, reducing the cost to the taxpayer, and making our children and their families much more satisfied. We would not be labeling them and putting that moniker on their back for their life.

When children are labeled and told they are special education, most children receive that as there is something wrong with them. They lower their own expectations for themselves.

I will conclude on a couple of points. I guess having low expectations from your parents is very difficult to deal with. If one has a notion about themselves and their parents did not go to college or they did not finish high school, they set low expectations. Also, having low expectations from one's teachers is difficult, but the most difficult expectation to overcome is if someone has low expectations of themselves. That is almost impossible to overcome.

When we put labels on our children unnecessarily at an early age, thinking we are helping them but we are actually hurting them, those children lower their own expectations for themselves. That is very damaging to them and to our society.

So let us do a better job of intervening early. The best way to do that is to better use the funding we have and to demand of ourselves full funding for special education and No Child Left Behind.

The final point I wish to mention is this bill again focuses on outcomes. Leave No Child Behind also attempts to focus on outcomes. That is where we have to stay the course.

There are some who are suggesting that testing is too high stakes. Well, I say to them that life is a pretty high stakes game and nothing we do is worth doing if it cannot be measured.

All action that we undertake, in almost every aspect of our life, is measurable. So schools, in their outcomes, in their processes, can be measured. We are on the road and let us stay the course. Of course, it would be helpful, and I think imperative, that we fund these efforts.

In conclusion, we have made great progress with this bill. We have taken some good steps in the area of stronger discipline. We are trying to address the discrepancy in funding, although we are still short in this effort. We still are overlabeling our children when early prevention would do so much.

I thank the Members for allowing me to speak on behalf of the thousands of teachers in Louisiana and our families that are greatly concerned. We see some hope in this underlying legislation that we are moving in the right direction.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Madam President, whenever I hear the distinguished Senator from Louisiana speak, I think of the wonderful weekend I had in New Orleans. We were working with her on some projects. She wanted me to look at some projects that were funded in the Energy and Water Subcommittee that I have had the pleasure of chairing and being the ranking member on over the years. I have been in New Orleans on other occasions to be a tourist, but this was the first time I had ever gone there to work.

I had wanted to see New Orleans for years. One of the things I told the Senator I wanted to see was these great pumps. New Orleans is below sea level, and to keep it dry their pumps go 24 hours a day. They are big pumps. I had read an article in the Smithsonian Magazine about these old, old pumps that had not been changed since before the turn of the century that still keep New Orleans dry.

So I had the pleasure of going there and seeing something that I wanted to see. The place where these big old pumps were was as clean as a restaurant.

We then went to a big lake where I was——

Ms. LANDRIEU. Lake Pontchartrain.

Mr. REID. Yes, Lake Pontchartrain, and I was so educated. For decades, they had been taking the shells from crustaceans out of the bottom of that lake and using them to pave roads around the city of New Orleans. They finally stopped as a matter of law, but in my mind I could not imagine there could be that many shells. Anyway, it was a wonderful trip.

It was highlighted by my trip to Senator LANDRIEU's childhood home. We took a vehicle there. They were doing a lot of construction in the area. Her mother and father live in the same home that she and I think 9 of her 10 siblings were raised. She was raised in quite a small home, and the famous Moon Landrieu, who had served as mayor of New Orleans and cabinet secretary, was there making and cooking candy.

My payoff for going to New Orleans was I got candy from the great Moon Landrieu that I took home to my wife. Of course, one could see in the Landrieus the pride for their famous daughter. Last year she gave a speech that is one of the finest speeches I have ever heard. It was not long after that that I sent a copy of her speech on the Senate floor to her mom and dad. The next time I saw them, you could just see the pride they have telling me about the speech Senator LANDRIEU had given. They were so proud of her.

So any time I hear her speak, I cannot take out of my mind from where she came and what a great contribution she makes to the Senate.

Ms. LANDRIEU. If the Senator will yield for a moment, I thank the Senator for those kind remarks. The Senator is invited to come back any time for that famous Moon Landrieu peanut brittle. I am motivated to speak on the floor about this particular subject because in our household our parents helped to educate nine of us on a shoestring budget. It became such a passion of mine, as I could see how that has helped each of us to go forward in our lives and to see what it had done for my father and mother. They both came from families where only one grandparent had gone to college. In my father's case, neither of his parents even went to high school. So when I come to the floor—I know you graduated from that large school of yours, with eight in the graduating class—you can appreciate the importance of the work regarding education, fighting hard to make sure every family is like the Landrieu family or Reid family—at least having a chance for a good education.

If we write good laws and policies, it happens. If we don't, it doesn't.

I thank the Senator for those comments and I am happy to share my few thoughts about the underlying bill.

Mr. CORZINE. Mr. President, I will take a few minutes to talk about an epidemic that affects not only children in my home state of New Jersey, but 1 in 250 children across the Nation—autism spectrum disorder (ASD). I have been working closely with groups such as Parents of Autistic Children and the New Jersey Center for Outreach and Community Services for the Autism Community (NJCOSAC) to address the staggering number of children who have been diagnosed with ASD. In fact, I introduced legislation, the TEACH Act, S. 1422, which highlights the needs of autistic children by bringing more qualified teachers into the classroom, helping families receive the support and services they need for their children, and helping ensure vocational programs to assist people with autism transition from school to work are functioning as intended.

With autism diagnoses skyrocketing, we must continue to make every effort to expand the quality and accessibility of treatments for children with ASD. That is why I am happy to report that some provisions of the TEACH Act have been included in the Senate reauthorization of IDEA, S. 1248. S. 1248 contains provisions making funds available to develop and improve programs using cutting-edge research in order to provide in-service training to

schools and personnel who teach children with ASD. These funds will ensure quality professional development for special education teachers through the use of scientifically based research on the treatment of autism.

With the demand for services grossly outpacing the supply of specially trained teachers and therapists, these provisions are critical to increasing the number of special education teachers qualified to teach children diagnosed with ASD. Expanding access to treatment, especially at an early age, is essential to improving the outcomes for children affected by ASD.

I thank Connie Garner and the entire HELP Committee for their assistance in getting this important language in the bill. I look forward to continuing to work with my colleagues and the autism community to ensure that all children with ASD have access to early intervention by quality teachers trained in providing the most effective treatments.

Mr. President, I also wish to mention a small but important part of this IDEA reauthorization that is crucial to parents of children with disabilities. I have had the privilege of working closely with Maura Collinsgru and the Parent Information Center of New Jersey to ensure the rights of parents to represent their children in due process hearings without an attorney. I am happy to report that S. 1248 includes language clarifying this right so that parents can be effective advocates for their children.

I would like to mention one New Jersey case in particular that highlights the issue of parental rights in due process hearings. In Collinsgru V. Palmra Board of Education, Robert and Maura Collinsgru were denied the right to represent their son, Francis Robert and Maura Collinsgru were denied the right to represent their son, Francis Collinsgru, during due process hearings. Far from an isolated case, the decision could have broad implications that could be detrimental to families of children with disabilities.

As we know, parents' access to attorneys is already very limited. Not only are there very few attorneys willing to take IDEA cases, but there are even fewer who actually specialize in IDEA. Moreover, of those attorneys who do specialize in IDEA, most are already overloaded with cases. Finally, the cost of many of these attorneys is prohibitively expensive, especially for parents who are caring for a disabled child. Attorney's fees are an extra cost that they often cannot afford. With so few available attorneys, therefore, it is essential that parents have the right to stand up for their children in court when faced with an injustice in the system.

I would like to take this time to thank Connie Garner for the HELP Committee for her help in getting this language included in the bill. Her efforts have made it possible for parents to retain their right to due process and help their children receive the services they deserve.

LEGISLATIVE COMPROMISE

Mr. REID. One of my favorite stories is a story about David Selznik, the great movie producer. He is the man who produced the movie ''Gone With The Wind.'' As he had made the movie, at that time they had in Hollywood something called the Hays Commission. It was in effect a committee of censorship. They looked at the movie and made a determination that he would have to strike from the movie the words, ''Frankly, my dear, I don't give a damn.'' But Selznik thought that was an important part of his movie and he would not back down. So they were at loggerheads. Would the movie be able to go forward? Because without the Hays Commission stamp of approval, the movie could not go forward. So they made a compromise. They said: We will compromise this. You can go ahead, you can keep those words, ''Frankly, my dear, I don't give a damn,'' but if you keep that in the movie you are going to be assessed a fine of $15,000, and $15,000 was a lot of money then, even as it is now. But Selznik agreed to pay that. And that, of course, is one of the most memorable lines in the history of Hollywood.

The reason I mention that is Selznik and the Hays Commission realized that in life there is a time to fight and a time to compromise. The compromise worked out well in this instance.

Compromise, in our business, being legislators, should not be a dirty word. Legislation is the art of compromise, the art of building consensus.

Gerald Ford, whom I met when I was a young Lieutenant Governor and he was Vice President of the United States, was such a nice man. When I did meet him, the first big shot I met, shaking his hand, he sent me an autographed picture. My two little children at the time, when the picture came in, drew all over this picture as if it were a coloring book. But we got the colors off of it as much as we could. It was always smudged. I still have that picture.

Anyway, that is off the subject. But Gerald Ford was so nice—what a nice man. The reason I mention Gerald Ford today is because he said something I believe so strongly. He said, ''Compromise is the oil that makes governments go.'' I believe that. I see the Presiding Officer here—she, on a number of occasions, has been the key person in allowing us to get things done because she has been willing to compromise, in effect, break from the pack and say this is what I need to do.

None of us should compromise our principles, but we should be willing to work together, to seek solutions we can live with for the good of the country. I have been in Congress now more than two decades and I have learned the way you get legislation done in this Congress and in the Senate specifically is when people work together and are willing to compromise.

I have had the good fortune in the years I have been a legislator to have, on the State level and on the Federal level, legislation I have produced that is now law. But there is not a single piece of legislation I have ever written that is as I wrote it. It has all been changed. That is what you have to do to get things done. If people are—and I use this term, not in the true sense of the word—so principled they are not willing to get anything changed, they are not going to get anything done very often.

I know that to be a legislator you have to be willing to compromise. There are some who say this is not right. Some say you have a majority, you should always be able to get your way. Our Founding Fathers didn't believe that. The majority, you see, doesn't need a Constitution to protect them. The majority can get what they want wherever they are. The Constitution of the United States was written to protect minorities. Our Founding Fathers created a government of checks and balances. They wanted the majority to have power, but not all of it.

That is why, for example, we have an electoral college system. The electoral college system creates some unfairness in the minds of people. The result of the last Presidential election is the person who got fewer votes is now President of the United States. But that is our system and the system is so embedded in our minds and our consciences that following that very bitter election, where there was a dispute in Florida that was decided by the U.S. Supreme Court—following that election, which was decided by the Supreme Court, there wasn't any civil unrest. There were no riots, no tires burned, no windows broken in buildings. It was decided by virtue of the fact that we have a Constitution.

In the electoral college system, the person who gets the most votes doesn't always win. Why? Because we have to take care of small States, States such as Maine and Nevada.

The Senate was also designed to protect the rights of the minority. I was talking to my friend Senator ENZI, the Senator from the State of Wyoming. I said: MIKE, how is Wyoming doing populationwise? Is it growing? He said: No, we still can't break 500,000.

But, you see, MIKE ENZI, from a State that has fewer than 500,000 people, has the same power as a Senator from the State of Nevada which has 2.3 or 2.4 million people. MIKE ENZI has the same power as someone from the State of California which I think has 34 million people, or some large number such as that. MIKE ENZI has the same power as DIANNE FEINSTEIN and BARBARA BOXER by virtue of the fact that we have a constitutional system that gives a Senator that power.

One Senator has tremendous power. We have heard of the famous holds.

You can have something come to the Senate and a Senator can individually call and say, you know, I am not going to let this move. You are not going to get unanimous consent on this. I stop it.

That is why it takes 60 votes, not 51, not 50, not 59—60 votes to cut off debate, a so-called filibuster.

I realize the party I represent has 49 Senators in the Senate. The majority has 51. There was a time, just a short time ago, when it was 50–50, and had it not been for the untimely death of Paul Wellstone it would be 50–50 now.

So we have a Senate that is so closely divided now, by the smallest of margins, but we all represent this country. Democrats, 49 of us, 51 Republicans, we all represent approaching 300 million people in addition to what we are obligated to do to represent our individual States.

While we recognize the right of the majority to set the agenda, we on the minority side also believe the rights of the minority shouldn't be trampled. That means not excluding us from conference committees.

David Broder, a long-time syndicated columnist who is nonpartisan and fair, recently wrote about the exclusion of Democrats from conference committees in Congress this year. He wrote:

> These conferences are no longer the representative bodies they once were. Under the current Republican control of the House and Senate, Democrats are routinely excluded from the discussions after the ceremonial opening day. The real negotiations involve only top Republicans in Congress and representatives of the White House.

These conference committees have not only disregarded the views of Democratic Senators, but they have disregarded the views of the Senate itself.

On a number of issues, conferees appointed by the Senate leadership have gone against the will of this body.

Am I making things up? No. Let us talk about a few of them.

Media ownership: What is this all about? The decision was made in legislative session that you couldn't have more than a certain percentage of ownership of a media market by votes on both sides—House and Senate. In fact, when it went to the full committee when we were included in these meetings at that time, the full conference voted to maintain the position we had in the Senate. The conference committee was ended, and sure enough we get on the Senate floor and they have taken that out because the White House told them to. That has never been done before.

Another example, overtime pay. This was an issue where the administration wanted to change the way overtime is paid in this country. It affects 8 million people. On this side, we said it shouldn't be done. We voted accordingly and were joined by friends on the other side of the aisle. The House voted by a large majority to have their conferees do what the Senate did on this vote. On the floor, it was stripped from the conference.

Pensions: Senator DASCHLE agreed to allow the conference to go forward. Of course, that didn't turn out as well as it was represented it would. That doesn't mean that everything should have gone exactly the way it came out of here. Of course not. But that is an example of what is happening in conferences.

Another example is an amendment we agreed to that said when you are buying meat you should know from where it comes. People are entitled to know that. Where is the beef that you are eating coming from? Both bodies said, yes, that is a great idea. In conference, it was taken from the bill.

The Senate voted for these things and the conferees disregarded the votes of the Senate—not individual Senators, they disregarded the voice of the American people. That is whom we represent.

We have to be able to work together for the good of the American people. That is what the people want us to do.

We have done very well this week. We were able to pass the FSC bill. It was a struggle. We got votes on overtime, on unemployment compensation, and we passed this most important bill. Tomorrow, we are going to pass the IDEA legislation which is very important. I hope tomorrow we can also get to the mental health parity legislation. It is my understanding that Senator DOMENICI has given his legislation to the chairman of the HELP Committee. Senator GREGG has that now, and hopefully we are in a position to have an agreement to work on this legislation in the near future.

We have to work together for the good of the people. I understand that being in the majority confers power, but with that power comes the responsibility to make sure the views of Senators are respected and the rights of the minority are not trampled.

We all have a responsibility to work together. But I believe those who control the agenda have the greatest duty to seek compromise and consensus. That is part of leadership. You have to know when to reach out and meet people at least halfway.

I think what we have heard around here far too often is obstructionism. I hope no one is deliberately trying to obstruct the business of our country. I don't think that is the case, but without compromise the Senate simply doesn't function.

President Gerald Ford—this nice man—was right. Compromise is the oil that keeps government running. But I believe that today our government needs an oil change and maybe even a lube job. We have to look under the hood and make the proper adjustments to get the engine running smoothly again in the Senate.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 7, 2001, in Palm Spring, CA, Eric Bridge told police he was robbed and beaten unconscious by four men who chased him from a downtown bar after accusing him of being gay and hurling anti-gay slurs at him. Bridge was treated for cuts and bruises at a local medical center and released. The victim said he was not gay but believes he was targeted based on perception.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

THE JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

Mrs. FEINSTEIN. Mr. President, I rise in favor of the Jumpstart Our Business Strength (JOBS) Act.

This is far from a perfect bill.

But without this legislation, U.S. companies will face increasing tariffs as a result of a World Trade Organization ruling that determined that significant portions of our Federal tax code ran counter to international trade laws.

Additionally, I voted for it because on balance it provides important tax relief for California businesses and labor protections for California workers.

This bill will: effectively provide a 3 percent tax cut for manufacturers; give manufacturers a 50 percent tax credit for the cost of adding jobs; extend the research tax credit through 2005; protect hundreds of thousands of workers from cuts in Federal overtime protections; prevent the Federal Government from spending taxpayer dollars on contracts with companies that use foreign labor when there are domestic alternatives; provide a tax credit for companies which produce energy by using underbrush and other potentially hazardous fuels found in our forests; provide a tax credit for consumers who buy hybrid vehicles; and protect the California film industry and the jobs it creates.

Since January 2001, California has lost 350,000 manufacturing sector jobs.

A 3 percent tax cut for manufacturers, coupled with a 50 percent tax credit for the cost of adding new jobs, will help us create more jobs in California.

The research tax credit will also help California, potentially more than any

other State. Productivity growth in recent years has been driven by the combination of new technology and investments in capital goods, research and development, workers, and public infrastructure.

To continue this pattern of growth, the focus must now be on providing incentives to companies that invest, innovate, and create the new capital and knowledge that drive the U.S. economy.

Since its enactment in 1981, the research tax credit has provided a powerful and effective incentive for firms to increase research spending.

The tax credit lowers the cost of conducting research in the United States.

This credit makes a real difference in the amount of research undertaken and jobs created in the U.S.

I also support the Harkin amendment which was adopted as part of this legislation. This amendment will prevent the White House from implementing changes in existing overtime laws that reduce the number of workers protected by labor laws.

Last year the White House proposed redefining the job descriptions of millions of workers, thereby eliminating their right to Federal overtime protection.

After many in this chamber raised serious concerns over such a change, the administration released final rules that made a significant, yet insufficient, change to those draft rules.

Unless we act, these rules will take effect later this year.

If the Department of Labor's own numbers are correct, then more the 117,000 individuals could lose overtime protection. If they are wrong, it could be millions.

These rule changes would wipe out overtime pay protections and increase work hours. In California alone, several hundred thousand workers could lose their Federal overtime protection. However, State law will continue to protect most workers from the most harmful effects of this rule change.

But, some public employees and many in the film industry won't be so lucky.

Although most workers in California will maintain their right to overtime through protections granted by State law, the rule change represents a movement in the wrong direction when it comes to protecting working families.

I also support provisions in the bill that will prevent the Federal Government from spending taxpayer money on contracts that use labor located outside of the United States.

Although our Nation has entered a period of economic recovery with significant productivity gains in the last several quarters—it is clear that a great deal of this productivity comes from two things: 1. downsizing of employees, and 2. outsourcing—turning to foreign labor in foreign countries.

In the past decade, General Electric sent 10,000 information services jobs to India; Electronic Data Systems exported 13,800 jobs to several nations; Microsoft spent $100 million on a new call center in the Philippines; and Citigroup and Bank of America both sent software development jobs to India.

And while corporate earnings are up and the stock market remains high, we are continuing to lose service sector and manufacturing jobs.

I realize that many firms benefit greatly from outsourcing, but it damages the long term health of our communities unless we vigorously support new job growth.

We must give companies incentives to keep jobs here, and we must ensure that taxpayer money is not used to subsidize outsourcing.

This legislation will also help protect our environment by providing tax credits that encourage companies to produce energy by using underbrush and other hazardous fuels from our forests.

By providing an incentive to companies to remove these hazardous fuels from our forests, we will reduce the chance of forest fires in the western United States and provide much needed energy to this region of the Nation.

Additionally, this bill contains tax credits directly to consumers who purchase hybrid vehicles. These vehicles reduce air pollution and cut ozone in California.

Having said this, however, I recognize that there are significant problems with this bill.

For instance, it is clear that multinational corporations are not paying their fair share of taxes.

This bill allows companies to bring foreign-earned profits back into the United States at a greatly reduced tax rate—reduced from the current 35 percent to 5.25 percent. This is half as much as the lowest personal tax rate paid by individuals—10 percent.

Under an amendment which I sponsored with Senator BREAUX, companies would have been allowed to bring foreign-earned profits back to this country at the reduced 5.25 percent rate provided that they use those repatriated profits for activities that promote job growth or benefit employees.

Sadly, a lobbying effort by large multinational companies helped to defeat that amendment.

What is disturbing about this provision is that an unconscionable number of American companies are taking advantage of loopholes in U.S. tax law and paying no taxes.

According to a recent Government Accounting Office report, entitled ''Comparison of the Reported Tax Liabilities of Foreign and U.S. Controlled Corporations, 1996–2000'', 61 percent of U.S.-controlled corporations and 71 percent of foreign-owned corporations operating in the U.S. reported no tax liability during the period studied.

This means that approximately two-thirds of all companies operating in the U.S. paid absolutely no corporate income taxes between 1996 and 2000.

This is stunning.

Corporate tax receipts used to account for a much greater percentage of Federal revenues than they currently do.

According to the Brookings Institution, in 1945, income taxes from corporations accounted for 35.4 percent of Federal receipts. In 1970, income taxes from corporations accounted for only 17 percent of Federal revenues.

Today, however, corporate income taxes account for only 7.8 percent of Federal revenues.

This means that corporations are paying a smaller percentage of taxes than they have in the past five decades.

We have got to change the way we tax corporations in America. We have got to provide incentives to encourage corporate responsibility.

Corporations have got to worry about more than just the bottom line. They have got to become good corporate citizens. Unfortunately, this bill does not do enough to encourage that kind of corporate responsibility.

Going forward, I will seek to return balance to our tax system.

The middle class is being squeezed, while multi-nationals continue to outsource jobs and receive tax breaks for doing it.

Nevertheless, I will vote to protect California workers by helping to foster an environment where manufacturers can hire again. I will support research and development in our labs and factories. And, I will support protecting overtime protections for California citizens.

This is by no means a perfect bill.

But taken as a whole, I believe it is worthy of passage.

SUPPORT OF THE MCCAIN AMENDMENT TO S. 1637

Mr. FEINGOLD. Mr. President, I would like to express my support for the amendment offered by the senior Senator from Arizona, Mr. MCCAIN, to strike the energy tax title from the Foreign Sales Corporation bill. I recognize the need for a comprehensive energy policy and incentives for alternative energy development. I also believe that the tax package offered by the Senator from Iowa and the Senator from Montana was more balanced than the energy tax title from the H.R. 6. energy conference report. However, I am disappointed that the energy tax title in the FSC/ETI bill did not extend these tax credits in a more fiscally responsible way.

I support many of the tax credits in this legislation, such as extension of the wind energy producer credit. The wind energy tax credit is an important step in the continued effort to increase our energy security and to decrease our reliance on carbon-based energy sources. Wisconsin has a lot to offer in this area. I support tradeable tax credits for rural cooperatives, and the other provisions that would specifically benefit rural cooperatives and

small renewable fuel producers. I also support many of the other provisions that increase energy efficiency and promote renewable fuels and alternative energy sources.

The energy tax title as written, however, will cost from $15–20 billion dollars. The oil and gas incentive section would cost taxpayers $6.5 billion and allows companies to deduct the costs of mineral exploration and marginal oil wells. The nuclear power incentives total $1 billion, and the so-called ''clean coal'' incentive is $2.2 billion. In addition to these credits to mature industries, the ''non-conventional fuel credit'' that supports the synfuels industry and coalbed methane industry would cost the taxpayers an additional $2.5 billion. According to a Time magazine article entitled ''The Great Energy Scam,'' some plants merely spray newly mined coal with diesel fuel or pine-tar resin to qualify for the synfuel tax credit. We also need to consider the detrimental environmental impacts of these tax breaks. A proposed coalbed methane project in Wyoming, for example, could draw on 1 billion gallons of groundwater a day and would benefit from this provision.

I remain committed to supporting legislation to encourage alternative energy research and production. In terms of overall energy policy, I believe we must develop cleaner, more efficient energy sources and promote conservation. We need a comprehensive energy policy, but it must be balanced and fiscally responsible. I believe that we can meet these goals, but unfortunately, this energy tax title falls short of that goal. Therefore, I support the McCain amendment to strike it from the bill.

PROPOSED 90-DAY DELAY IN FEC RULEMAKING

Mr. MCCAIN. Mr. President, I am joined on the floor today by my good friend from Wisconsin, Senator FEINGOLD, to speak briefly about a recent recommendation by the general counsel of the Federal Election Commission, FEC, to delay the 527 rulemaking another 90 days. Additionally, we would like to express support for an excellent bipartisan proposal by two members of the FEC to resolve the issue of 527 groups spending illegal soft money to influence Federal elections. As my colleagues know, the problem of 527 groups raising and spending soft money has somehow become a very contentious and partisan issue. That is unfortunate, because it need not be, and the Toner/Thomas proposal proves the point.

As my colleagues know, the general counsel of the FEC made a recommendation yesterday to delay the 527 rulemaking which the commission is to rule on tomorrow. This is a terrible idea. There is simply no reason for the commission to continue fiddling while Rome burns. The commissioners need to decide the 527 issue tomorrow, on schedule, without more pointless delays. Everyday, 527 groups whose purpose is to influence the presidential election are breaking the law. They are spending millions of dollars in soft money to influence Federal elections in plain violation of the Federal Election Campaign Act of 1974, which the commission has failed to enforce for a generation. And these groups are now using the FEC inaction to blow a hole in the soft money ban upheld by the Supreme Court.

In the middle of an election cycle, the FEC is considering taking a pass on the most critical issue on its plate. If they do, it will be just one more example of the agency's utter inability to enforce election law. My colleague, TRENT LOTT, recently said he was considering hearings on FEC reform, and if this absurd delay happens, I think we may be talking about hearings sooner rather than later. The FEC is responsible for the start of soft money in the first place. They must not get away with it again.

This is particularly galling because the main reason the general counsel office gives for its delay—the size and complexity of the rulemaking, and the possible impact on 501(c) organizations—is a canard. There is an excellent, bipartisan proposal on the table from Commissioners Toner and Thomas that would deal with the 527s in a simple, straightforward way. With their proposal, the commission has the perfect opportunity to prove they can uphold the election laws that were passed by Congress more than 25 years ago, signed by the President, and upheld by the Supreme Court. It may sound a little odd to be excited at the prospect of a Federal agency properly upholding existing law, but in the case of the FEC, it would be something of a new phenomenon.

There is absolutely nothing in the general counsel's rationale for delaying action here that justifies refusing to act now to fix the FEC's absurd allocation regulations that are being used to spend 98 percent soft money to influence the presidential election. The general counsel's recommendation provides no excuse for failing to act tomorrow on the portion of the Toner/Thomas proposal that would fix the allocation rules and correct the FEC's mistake in adopting them, a mistake made clear by the Supreme Court decision McConnell v. FEC. The only conclusion that can be reached if action to correct the allocation rules is rejected by the FEC is that the commission wants to protect and license the illegal use by 527 groups of soft money to finance partisan voter mobilization efforts to influence the 2004 presidential election.

The bipartisan proposal by Commissioner Michael Toner, a Republican, and Commissioner Scott Thomas, a Democrat provides a clear, effective and immediate solution to the soft money problems that have arisen with these 527 groups. The FEC is supposed to meet tomorrow to consider this proposal, and I strongly urge them to adopt the proposal and seize this opportunity to enforce the law.

First, I note that their proposal would explicitly apply only to 527 political committees, and not to 501(c) nonprofit groups, which should take care of the concerns of those in the nonprofit community that the FEC would overreach, and affect their own important work. That is simply no longer an issue, and the commission can act tomorrow, rather than waiting around until a more convenient moment to enforce the law.

The Toner/Thomas proposal deals with what we believe to be the two main problems with the 527 groups. First, their plan would fix the commission's absurd allocation rules, which control the mix of soft and hard money these groups can spend. Under the current rules, 527s can simply claim that they're involved in both Federal and State elections, even though they're obviously and admittedly clearly working for the sole purpose of defeating or electing a presidential candidate. That claim, and the absurd FEC rules that currently exist, has led one such 527 group to use 98 percent soft money for their partisan vote mobilization activities to influence the presidential election and only 2 percent hard money. That is an obvious circumvention of the longstanding Federal Election Campaign Act, FECA, as well as the new ban on soft money in Federal elections, and a hole in the dike that absolutely must be plugged.

The Toner/Thomas plan would deal with this by simply requiring groups involved in partisan voter mobilization activities in Federal elections to use a minimum of 50 percent hard money to pay for those activities. that straightforward, easy to understand rule will have the effect of substantially limiting the amount of soft money a 527 group can use on these activities, and I believe it is an effective way to deal with the problem at this time.

The second issue the two commissioners' plan would address is the use of soft money by these 527 groups to run attack ads attacking and promoting presidential candidates. These groups are claiming that they are exempt from the normal Federal rules prohibiting the use of soft money to fund such ads because they are not political committees under FEC rules. In essence, these political organizations are claiming that as long as their ads do not use words like ''vote for'' or ''vote against,'' they can spend as much soft money as they please attacking and promoting Federal candidates.

That argument is simply absurd, even though the FEC's failure to properly enforce the law has allowed it to gain currency over the years. In order to qualify for their 527 tax status, these organizations have to meet the IRS test of being groups that are ''organized and operated primarily'' to influence elections. And under the Federal

Election Campaign Act, which has been around since 1974, groups that have a primary purpose of influencing Federal elections and raise or spend $1,000 to do so have to register as political committees and comply with Federal campaign finance laws. 527 political groups have sprung up in this election with the clear and sole purpose of influencing the presidential election. Under existing laws and Supreme Court rulings these groups can run whatever ads they want—but they have to register as Federal political committees and they do have to abide by the same Federal campaign finance rules as all other political committees and candidates have to play by, and pay for those ads with hard money.

The Toner/Thomas proposal clears up this issue by correctly deeming any organization operating as a political group under section 527 of the tax code to have a ''major purpose'' of influencing Federal elections, unless the group falls within certain specified exemptions. This common-sense approach simply corrects the FEC failure to properly interpret the law in the past as it applies to 527 groups. It makes it clear that 527 political groups that have a major purpose to influence Federal elections and spend more than $1,000 to influence a Federal election have to comply with Federal campaign finance rules, regardless of whether their communications contain express advocacy.

Again, we have a golden opportunity here to fix an emerging problem before it gets out of hand. The Commission should take this rare opportunity to show they can do their job in a bipartisan way. They should approve the Toner/Thomas proposal on Thursday.

Mr. FEINGOLD. Mr. President, like Senator MCCAIN, I see this rulemaking on 527s quite simply as a test of the FEC's willingness to enforce the law. As we have noted many times, the Supreme Court in the McConnell v. FEC decision concluded that the FEC improperly interpreted federal election law and allowed the growth of the soft money loophole that made necessary our 7-year reform effort.

We have been watching the agency closely since the Bipartisan Campaign Reform Act was signed into law in March 2002, looking for signs that it will not repeat its past mistakes. For the most part, we have been sorely disappointed. The announcement yesterday that the FEC general counsel's office wants the commission to delay action on the rulemaking for 90 days is the latest example of this agency's failure to carry out its responsibilities.

It is important to remember that the issues the FEC has been considering recently arise not under the Bipartisan Campaign Reform Act that we passed a few short years ago, but rather under the Federal Election Campaign Act of 1974. The question of whether an organization is a political committee subject to the Federal election laws is sometimes a complicated question, but it is not a new one.

The McConnell decision made it clear that the FEC's previous approach, which was to allow 527s to avoid registering as political committees if they didn't use ''express advocacy,'' was wrong. The FEC needs to enforce the law so that groups whose major purpose is to influence Federal elections are subject to the Federal election laws.

I believe that when an organization tells the IRS that its primary purpose is to influence candidate elections in order to qualify for 527 status, it should not in most cases be able to turn around and tell the FEC that its major purpose is not to influence elections. To me, that just doesn't make sense.

It is unfortunate that the FEC initially approached this issue in a way that frightened legislative advocacy groups into thinking that they might become political committees and have to completely change their fundraising and operations. It is also unfortunate that the nonprofit community in opposing the erroneous FEC proposals took the position that nothing should be done about 527s that are very much involved in election activities but are seeking to operate outside of the election laws.

Senator MCCAIN and I, working with Representatives SHAYS and MEEHAN, our reform partners in the House, filed comments with the FEC arguing that there are narrow and targeted things that the FEC should do to protect the integrity of the election laws, without affecting legitimate 501(c)s. A bipartisan proposal announced recently by Commissioners Michael Toner and Scott Thomas takes this approach.

The Toner-Thomas proposal addresses only 527 organizations. It does not change the regulations that apply to 501(c)s. In addition, the proposal would change the allocation rules that apply to 527s that have both a Federal and a nonfederal account. It simply cannot be a correct interpretation of the law that an organization that has publicly declared that it will carry out partisan voter mobilization activities in battleground states this fall can use 98 percent soft money to pay for those activities. The Toner-Thomas proposal would require that at least half of the expenditures on these activities come from a hard money account. That certainly makes sense given that the groups themselves proclaim that their purpose is to influence the presidential election.

But now, the FEC's general counsel has proposed that the FEC delay its vote on the rulemaking for 90 days. This will only assure that the FEC will do nothing about 527s until after the 2004 elections. That is not an acceptable result. It is crucial that the FEC act now. It should adopt the Toner-Thomas proposal, but at the very least, it should modify the allocation rules applicable to 527s doing voter mobilization. There is absolutely no reason to postpone action on that issue.

I hope that some day it will not be a cause for celebration when the agency charged with enforcing the election laws look like it might actually do its job. Unfortunately, the FEC has not been an effective agency, and this latest proposed delay only confirms that it may not be up to the task that Congress has given it. Senator MCCAIN and I have introduced legislation to replace the FEC with a very different regulatory agency. I was pleased to read this week that the chairman of the Rules Committee agrees that the Senate should take a very hard look at the FEC and consider legislation to fundamentally change it.

For now, however, we will be watching closely to see how the FEC deals with the challenge of the 527s. I once again commend the Senator from Arizona for his dedication to this cause.

HEALTH CARE AND THE UNINSURED

Mr.VOINOVICH. Mr. President, I rise to speak today about the dilemma this Nation is facing regarding access to quality, affordable health care. Next to the economy, it is the greatest domestic challenge facing our Nation. In fact, the rising cost of health care is a major part of what is hurting our competitiveness in the global marketplace.

Throughout my career in public service, health care has been one of my top legislative priorities. Unfortunately, despite increased spending on public and private health care programs, millions of Americans are without health care coverage. Although, my State of Ohio has one of the lowest percentages of uninsured.

The statistics are overwhelming. For the fourth year in a row, health care spending grew faster than the rest of the U.S. economy in 2003. The average cost of family coverage was $9,018, with employees covering 27 percent, or $2,412, of the cost. During that same period of time, the average family's contribution to their health insurance increased 16 percent.

Total spending on health care is now approximately $1.6 trillion or $5,440 for every man, woman and child in the United States, which translates into almost 15 percent of our GDP—the largest share ever.

If we look at this in an international context, the statistics become even more glaring. Per capita health care spending in the United States continues to exceed other nations. In its May 2004 issue, ''Health Affairs'' reports that the Swiss spent only 68 percent as much as the United States per capita on health care in 2001. Even more troubling, Canada spent as little as 57 percent as much as the U.S. Both nations have a lower number of uninsured citizens than the United States.

Despite all the spending some 44 million Americans—15 percent of the population—had no health insurance at some point last year. This number has increased steadily. In 2000, that number

was 39.8 million. In 2002 it was 43.6 million. In 2 years, the country added almost four million uninsured individuals.

Just this week, the Cincinnati Enquirer told the story of Yolanda Webb, who left her Hamilton County, OH, job to begin her own cosmetic business. However, after opening her own shop, she realized that due to a chronic condition she was diagnosed with 20 years ago, a health insurance policy would cost her $800 a month. Unfortunately, this is an expense she can not afford and as a result, Ms. Webb is one of the 200,000 people in just the greater Cincinnati area that lives without health insurance coverage.

In addition, with increased costs, employers are facing difficult options. A poll of over 3,200 employers conducted by the Kaiser Family Foundation indicates that 56 percent of large firms increased employees' share of health costs in 2001. I have consistently heard from employers throughout Ohio that they want to continue to offer health insurance for their employees, but it hurts their ability to be competitive in the global market.

In light of these startling statistics, I was eager to join my colleagues on the Senate Republican Health Care Task Force to provide some solutions for dealing with these trends.

I have been in this situation before. As Governor of Ohio, I had to work creatively to expand coverage and deal with increasing health care costs for a growing number of uninsured Ohioans. I am happy to report that we were able to make some progress toward reducing the number of uninsured during my time as the head of the State by negotiating with the state unions to move to managed care; by controlling Medicaid costs to the point where from 1995 to 1998, due to good stewardship and management, Ohio ended up underspending on Medicaid without harming families; and implementing the S–CHIP program to provide coverage for uninsured children. In fact, I recently learned from the Cuyahoga Commissioners that in our county, 98 percent of eligible children are currently enrolled in this program.

Learning from this experience, I was especially encouraged by Senator FRIST and Senator GREGG's commitment to solving the national health care crisis and applaud their decision to form the Senate task force to explore the issue. I am convinced that my colleagues and I have been able to identify some very viable and immediate solutions for reversing the trend of the growing uninsured and for dealing with the rapid increase in the cost of quality health care coverage.

We can make this a reality by addressing the underlying factors that are contributing to dramatic increase in health care costs and the subsequent reduction in access to quality care. I have worked hard in the past on this issue, and am pleased that the package the task force released this week addresses the biggest factors driving health care costs.

The first is medical lawsuit reform. I have been concerned about this issue for quite some time—in fact, since my days as Governor of Ohio. I wish we had the outpouring of support for medical liability reform six years ago that I see now. In 1996, I essentially had to pull teeth in the Ohio Legislature to pass my tort reform bill.

I signed it into law in October 1996. Three years later, the Ohio Supreme Court ruled it unconstitutional, and if that law had withstood the Supreme Court's scrutiny, Ohioans wouldn't be facing the medical access problems they are facing today: doctors leaving their practice, patients unable to receive the care they need and costs of health insurance going through the roof.

Continuing down this path, during my time in the Senate, I worked with the American Tort Reform Association to produce a study that captured the impact of this crisis on Ohio's economy. In Ohio, the litigation crisis costs every Ohioan $636 per year, and every Ohio family of four $2,544 per year. These are alarming numbers! In these economic times, families can not afford to pay $2,500 for the lawsuit abuse of a few individuals.

The Medical Liability Monitor ranked Ohio among the top five States for premium increases in 2002. OHIC Insurance Co., among the largest medical liability insurers in the State, reports that average premiums for Ohio doctors have doubled over the last 3 years.

In a very real sense, I have heard from young physicians in Ohio who tell me they are considering relocating to a place where the ability to practice medicine is better and the liability situation is more stable. A friend of mine shared with me a letter from an OB–GYN in Dublin, OH, who had decided to retire from his practice. He wrote the following to his patients:

> On June 17, 2003, I received my professional liability insurance rate quote for the upcoming year, and it is 64% higher than last year's rate. I have seen my premiums almost triple during the past two years, despite never having had a single penny paid out on my behalf in twenty seven years as a physician. Even worse, during this time the insurance company has reduced the amount of coverage that I can purchase from $5 million to only $1 million, while jury verdicts have skyrocketed, often exceeding $3–4 million. If I were to purchase this policy, I would be putting all of my family's personal assets at risk every time that I delivered a baby or performed surgery. I refuse to do that.
>
> I have therefore decided to retire from private practice on July 31, 2003, the final day of my current liability insurance policy. This is not a decision that I take lightly, but unfortunately it has become necessary. For many of you, I have been part of your life for years. I have delivered your babies, and helped you through some of life's most difficult challenges. It has truly been an honor.''

And for those of my colleagues who think medical liability reform is a State issue, I would ask them to read a letter, which I submitted for the record on February 24, 2004, and see how the medical liability crisis transcends State lines—particularly my friends from the neighboring state of West Virginia. Our Ohio physicians, who practice along the border, are feeling the effects of their proximity to West Virginia and its favorable plaintiff's verdicts. They are feeling these effects in their increasing insurance premiums. And unfortunately, Ohio's physicians are not alone.

And it is not only doctors crossing State borders to find better insurance rates—it is patients as well. Citizens living along the thousands of miles of State borders very often obtain their medical care across that line. Federal action is appropriate and critically necessary. Even more so because this crisis affects Federal health care programs, including Medicare and Medicaid.

Overall, the cost of this crisis to the economy is quite staggering. There is evidence that physicians are now practicing medicine ''defensively'' in order to protect themselves from lawsuits. In fact, a March 3, 2003 report by the Department of Health and Human Services calculated the practice of defensive medicine costs the United States a total of between $70–126 billion a year and estimates that the cost for the Federal Government alone is between $35 and $56 billion.

As a cosponsor of the HEALTH Act, the Patients First Act, The Healthy Mothers and Babies Access to Care Act, and the Pregnancy and Trauma Care Access Protection Act, I will continue to work with my colleagues to find a way strike a delicate balance between the rights of aggrieved parties to bring lawsuits and receive rapid and fair compensation and the rights of society to be protected against frivolous lawsuits and outrageous rewards for non-economic damages that are disproportionate to compensating the injured and made at the expense of society as a whole.

We can no longer allow unchecked, excessive litigation to continue to drive up the cost of health care and limit access for so many Americans.

Beyond medical lawsuit reform, the task force has identified another way to limit the rapid increase in health care costs, that is to reduce regulations and paperwork requirements that burden out nation's health care providers.

Whether due to Federal privacy regulations or insurance requirements, this is an important issue to providers in Ohio. Last November, I visited a small hospital in the southern part of my State, Marietta Memorial Hospital, to discuss health care reform. At this meeting, I spent some time discussing the administrative process the hospital was required to follow in order to treat the patients that come through their doors each day.

The hospital provided me with a binder full of paperwork that was completed, in this case, for a total hip replacement procedure on an elderly patient. As you can see, Mr. President, this 72 page binder is full of more than 50 forms that either the hospital or the patient and their family were required to complete, some time multiple times, in order to for the patient to receive treatment.

This is a big enough challenge for large hospital groups, but for small providers like Marietta Memorial with just 204 beds and 90 physicians, this paperwork and regulatory demand can be crippling.

For this reason, I worked with the task force to include in our reform package ways to limit bureaucratic demands. We believe that this could save our Nation approximately $47 billion without risking patient safety, privacy or the quality of health care.

In addition, the task force found that there were ways to increase hospital's and provider's use of technology to lower their costs and eliminate duplicative test and procedures. Fortunately, President Bush has taken a huge step forward in this area and has created a new position at the Department of Health and Human Services to coordinate the Nation's health information technology efforts. I am pleased that Secretary Thompson recognized the importance of and the immediate need to develop standards that help to create electronic medical records and other technology efforts.

I have no doubt these standards when implemented will help improve quality and cost efficiency of care and will eventually help hospitals, especially smaller hospitals like Marietta Memorial, reduce duplicative costs and services to their patients and improve the quality of the care they can provide.

These are only some of the ways we can act immediately to put an end to the increase in health care costs and reduce the number of Americans that find themselves without quality health care coverage.

However, these are steps that will only provide interim relief.

Like I said, health care reform has always been one of my top priorities and I have been studying this issue for some time. In the past 2 years, I have met with experts and other interested parties to get the full picture of the state of health care in the United States and learn about possible efforts for reform. I have discussed reform proposals with individuals as diverse as former Ohio Congressman Bill Gradison to John Sweeney, President of the AFLCIO to Dr. Donald Palmisano, President of the American Medical Association, to Stuart Butler with the Heritage Foundation.

And over the past year and a half, I have been traveling throughout my State of Ohio and have held 14 roundtables to specifically discuss health care reform with employers and employees, business and labor leaders, the uninsured and the underinsured.

In fact, in Ohio I have even formed my own health care task force made up of representatives from physician and other provider groups, small and large employers, labor, policy experts, and others who have an interest in reforming our current health care environment. Together we have analyzed a variety of popular health care reform proposals to increase access to health insurance coverage. And what I have heard even from my most conservative friends—is that this health care system is broken.

People are telling me we need to think about plowing new ground. I agree and believe we have to reevaluate the way we are spending the $1.6 trillion that is dedicated to health care in this county. We need to look at the big picture and determine how we can realign our system to more efficiently provide quality health care that maintains choices and responsibility for consumers.

This, of course, will not happen overnight and, as a result, I am encouraged by and supportive of some of the interim and immediate solutions proposed by the Senate Task Force. My colleagues and I have taken a step in the right direction toward identifying immediate changes that will bring down the prices people are paying for their health care today, help those who have insurance retain it at reasonable rates, and expand access to affordable insurance for those who are currently uninsured and underinsured.

Should I have the opportunity to serve my fellow Ohioans for an additional 6 years, reforming our Nation's health care system will be my highest priority.

ASSISTANCE TO FIREFIGHTERS ACT

Mr. ROCKEFELLER. Mr. President, I am proud today to cosponsor S. 2411, the Assistance to Firefighters Act of 2004. This legislation, introduced by my colleagues Senators DODD and DEWINE, would reauthorize the FIRE Act grant program through 2010, as well as make a number of improvements to the existing program. This legislation will improve the ability of firefighters across to the country to do their jobs more safely and effectively.

Four years ago, I was proud to be an original cosponsor of the Firefighter Investment and Response Enhancement (FIRE) Act, which has generated nearly $2 billion in grants since the program was enacted. It has provided critical dollars enabling fire departments to pay for the purchase of new equipment, to better train their personnel, and to establish fire prevention campaigns. Although this is a notable step forward, in West Virginia, and throughout the country, fire departments remain seriously underfunded. I hope my colleagues will agree that much more needs to be done before we can feel comfortable about the level of preparedness of our firefighters.

In West Virginia, almost every single one of our approximately 460 fire departments is undermanned and without the necessary equipment they need to do their jobs. I worry, as I'm sure many of my colleagues do, that communities could find themselves in the unacceptable position of being ill-prepared to respond to an emergency. Very few towns and cities in West Virginia can afford to hire and train more firefighters, or to purchase new firefighting equipment without additional Federal assistance.

I will bet most of my colleagues would be surprised at the number of volunteers who currently make up the majority of our Nation's fire service. Volunteers compose nearly 75 percent of all firefighters nationwide. That percentage is much higher in rural States like West Virginia, where 95 percent of our firefighting personnel are volunteers. We rely on firefighters in most communities to assist us not only to put out fires, but also in cases of natural disasters, car accidents, hazardous material spills, and this mostly volunteer fire service would be called upon to respond to any acts of terrorism that might occur. Additional firefighters are needed, as well as an immediate infusion of new and better equipment so that they can do their jobs more effectively. Currently there are not enough portable radios or breathing apparatus equipment, and many departments lack the resources needed for proper vehicle maintenance. Reauthorizing the FIRE Act grant program will allow fire departments to hire more full-time personnel and further alleviate the costs of maintaining up-to-date equipment and training.

After 4 years, there are many facets of the program that need updating to reflect the learning process both Congress and the Fire Service we have undergone. This bill would make several improvements to the existing law that reflect the changing nature of the world we live in today and acknowledge that there are better and more efficient ways to administer the program. The measure would align the FIRE Act with new standards in Federal emergency management put in place since the creation of the Department of Homeland Security. It also lowers the matching funds requirement by a third for fire departments serving communities of 50,000 residents, and cut requirements in half for communities of 20,000 people or fewer, in order to lessen current budget strains. It would also open up funding to nonprofit Emergency Medical Service units not affiliated with fire departments. Right now, only EMS units attached to fire departments are eligible for funding. This provision in particular will improve the safety and security of West Virginians, where many of our EJMS units are independent of the local fire department.

I agree with the statements that have been made by virtually every Member of Congress that the world we

live in today sits in stark contrast to that of the one we knew prior to the tragedies of September 11, 2001. Probably no group knows this better than the dedicated firefighters who place themselves in harm's way every time they respond to a call. Fortunately, we have an opportunity here to demonstrate that we recognize the importance of the work these firefighters do, and help them to protect us by quickly enacting this bill.

The Assistance to Firefighters Act of 2004 would translate directly into saved lives and will increase the safety of West Virginians and Americans in communities across this country. I encourage my colleagues to join me in supporting this important legislation.

MUTUAL FUND REFORM ACT OF 2004

Mr. MCCAIN. Mr. President, I am pleased to join my colleague from Illinois, Senator FITZGERALD, and several other members of the Senate in sponsoring S. 2059, the Mutual Fund Reform Act of 2004.

Mutual funds traditionally have been seen as safe havens for long-term investments. This perception of mutual funds as secure investment vehicles has certainly contributed to the industry's grow. Two decades ago, the mutual fund industry was relatively small; only a small percentage of Americans invested in mutual funds, and the assets of the industry were $115 billion. Today, the mutual fund industry has $7.5 trillion in assets, over 90 million investors, and more than 10,000 funds.

Unfortunately, as the industry has grown, some mutual fund managers and boards of directors have ignored their most basic role as fiduciaries. Recent State and Federal investigations have revealed trading irregularities at several of funds, including many that are well known. These scandals have shed light on the disregard shown by many mutual fund managers and directors for the individuals who invest their hard-earned money in mutual funds. They have also drawn attention to inflated mutual fund fees that often are not in the best interests of mutual fund shareholders and too frequently are not properly disclosed to such shareholders.

The Mutual Fund Reform Act would improve the integrity of the mutual fund industry by restoring investors' trust in the mutual fund managers and boards that are responsible for investing much of our citizens' household, college, and retirement savings. Most importantly, the act would strengthen the governance of mutual funds by, among other things, ensuring that mutual fund company boards would be truly independent and empowered. In addition, the act would establish disclosure requirements designed to provide mutual fund investors with a clearer picture of fund management and fund fees.

I thank Senator FITZGERALD for introducing this important bill, and I urge my colleagues to support this legislation in order to further encourage investor confidence in the mutual fund industry and in our capital markets.

ADDITIONAL STATEMENTS

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

WHY WE'RE IN IRAQ

Mr. HOLLINGS. Mr. President, I recently wrote a guest column on ''Why We're in Iraq'' for The State in Columbia, SC. I want to share it with my colleagues, and ask that the May 7 article be printed in the RECORD.

The article follows.

''WHY WE'RE IN IRAQ''

(By Ernest F. Hollings)

With 760 dead in Iraq and more than 3,000 maimed for life, folks continue to argue over why we are in Iraq—and how to get out.

Now everyone knows what was not the cause of this war. Even President Bush acknowledges that Saddam Hussein had nothing to do with 9/11. Listing the 45 countries where al Qaeda was operating on Sept. 11 (70 cells in the United States), the State Department did not list Iraq.

Richard Clarke, in ''Against All Enemies,'' tells how the United States had not received any threat of terrorism for 10 years from Saddam at the time of our invasion. On page 231, John McLaughlin of the CIA verifies this to Paul Wolfowitz. In 1993 President Clinton responded to Saddam's attempt on the life of President George Herbert Walker Bush by putting a missile down Saddam's intelligence headquarters in Baghdad. Not a big kill, but Saddam got the message: Monkey around with the United States and a missile lands on his head.

Of course there were no weapons of mass destruction. Israel's intelligence, Mossad, knows what's going on in Iraq. It is the best. It has to know; Israel's survival depends on knowing. Israel long since would have taken us to the weapons of mass destruction if there were any, or if they had been removed. With Iraq no threat, why invade a sovereign country? The answer: President Bush's policy to secure Israel.

Led by Richard Perle, Paul Wolfowitz and Charles Krauthammer, for years there has been a domino school of thought that the way to guarantee Israel's security is to spread democracy in the area. Wolfowitz wrote: ''The United States may not be able to lead countries through the door of democracy, but where that door is locked shut by a totalitarian deadbolt, American power may be the only way to open it up.'' And on another occasion: Iraq as ''the first Arab democracy . . . would cast a very large shadow, starting with Syria and Iran but across the whole Arab world.''

Three weeks before invasion President Bush stated: ''A new regime in Iraq would serve as a dramatic and inspiring example for freedom for other nations in the region.''

Every president since 1947 has made a futile attempt to help Israel negotiate peace. But no leadership has surfaced among the Palestinians that can make a binding agreement. President Bush realized his chances at negotiation were no better. He came to office imbued with one thought—re-election. Bush felt tax cuts would hold his crowd together and spreading democracy in the Mideast to secure Israel would take the Jewish vote from the Democrats.

You don't come to town and announce your Israel policy is to invade Iraq. But George W. Bush, as stated by former Secretary Paul O'Neill and others, started laying the groundwork to invade Iraq days after inauguration. And, without any Iraq connection to 9/11, within weeks he had the Pentagon outlining a plan to invade Iraq. He was determined.

President Bush thought taking Iraq would be easy. Wolfowitz said it would take only seven days. Cheney believed we would be greeted as liberators. But Cheney's man, Ahmed Chalabi, made a mess of the de-Baathification of Iraq by dismissing Republican Guard leadership and Sunni leaders, who soon joined with the insurgents.

Worst of all, we tried to secure Iraq with too few troops. In 1966 in South Vietnam with a population of 16.5 million, Gen. William C. Westmoreland with 535,000 U.S. troops was still asking for more. In Iraq with a population of 24.6 million, Gen. John Abizaid with only 135,000 troops can barely secure the troops, much less the country. If the troops are there to fight, they are too few. If there to die, they are too many.

To secure Iraq we need more troops at least 100,000 more. The only way to get the United Nations back in Iraq is to make the country secure. Once back, the French, Germans and others will join with the United Nations to take over.

With President Bush's domino policy in the Mideast gone awry, he keeps shouting ''War on Terror.'' Terrorism is a method, not a war. We don't call the Crimean War, with the Charge of the Light Brigade, the Cavalry War. Or World War II the Blitzkrieg War. There is terrorism in Ireland against the Brits. There is terrorism in India and in Pakistan. In the Mideast, terrorism is a separate problem to be defeated by diplomacy and negotiation, not militarily.

Here, might does not make right—right makes might. Acting militarily, we have created more terrorism than we have eliminated.

BOYD STEWART: IN MEMORIUM

● Mrs. BOXER. Mr. President, I honor and share with my colleagues the memory of a very special man, Boyd Stewart of Marin County, who died April 17, 2004. He was 101 years old.

Boyd Stewart was born at the Old Cottage Hospital in San Rafael in 1903. He grew up in a time when students rode horses to school. His family ran a cattle ranch in Nicasio and then moved it to Olema while Boyd was growing up. After 3 years at Stanford University, he came back to the ranch when his father passed away and managed it for the rest of his adult life.

Boyd Stewart deeply felt the need to preserve open space for future generations, and he knew it could be done in a way that was compatible with agriculture. He was instrumental in the creation of Point Reyes National Seashore and the Golden Gate National Recreation Area. Concerned about the loss of farmland to urban development, in the 1960s he advocated the controversial idea that the Federal Government buy West Marin ranches for inclusion in the park and lease them back to the ranchers. His family's ranch transferred ownership to the National Park Service in 1970.. For decades he remained committed to his

convictions, often in the face of opposition from powerful forces.

Mr. Stewart served as a leading member of the Marin County Farm Bureau for more than 80 years. He also sat on the boards of the West Marin Chamber of Commerce and the Marin Humane Society. A cattle rancher by profession, he was given the Marin Humane Society's Humane Man of the Century award. Two years ago, Boyd Stewart was honored with the California Excellence in Range Management Award, along with his daughter, Jo Ann Stewart, and his granddaughter, Amanda Wisby, who continue to run the Stewart family ranch today.

Boyd was a dynamic figure in West Marin. My staff and I always knew we could call on him for invaluable information and sound advice. He was the leading expert on West Marin agriculture, to whom agriculture commissioners turned for advice and information. His presence and his accomplishments in preserving Marin open space were greater than any other single person in Marin County in the last century. He was also a deeply-loved member of the Marin community and a wonderful, unique man with a clear mind and steady presence who will be deeply missed. We take comfort in knowing that countless future generations will benefit from his courage, his vision and his leadership. ●

CONGRATULATIONS TO KEVIN CONWAY

● Mr. BUNNING. Mr. President, I pay tribute and congratulate Kevin Conway of Lexington, KY, on his reception of the Star of Life Award given to him by the American Ambulance Association.

Mr. Conway has dedicated himself to the emergency response community of Lexington. As an employee of Rural/Metro Ambulance, Mr. Conway has made a difference in people's lives. However, what has set him apart has been his initiative as operations manager to turn Rural/Metro Ambulance into a State-recognized paramedic and CPR education facility. Mr. Conway also represents or works with many different local and State government EMS organizations. Prior to his work at Rural/Metro Ambulance, Mr. Conway was an Army Ranger. After his completion of active duty, he joined the Army Reserve as a senior drill sergeant.

The citizens of Kentucky are fortunate to have the leadership of Kevin Conway. His example of dedication, hard work, and compassion should be an inspiration to all throughout the Commonwealth. He has my most sincere appreciation for this work, and I look forward to his continued service to Kentucky.●

CHEMISTS WORKING COOPERATIVELY

● Mr. DURBIN. Mr. President, I rise today to share with my colleagues news of a truly historic conference of Middle Eastern chemists held December 6 through 11, 2003, in Malta. Chemists from Egypt, Iran, Israel, Jordan, Kuwait, Lebanon, the Palestinian Authority, Saudi Arabia, Turkey, and United Arab Emirates gathered in Malta to attend the conference, which was entitled: ''Frontiers of Chemical Sciences: Research and Education in the Middle East.'' The conference was chaired by Dr. Zafra Lerman of Columbia College Chicago. The purpose of the conference was to bring scientists from Middle Eastern countries together under the same roof to work on different issues of common concern.

The Malta Conference was a phenomenal success. The multinational exchange of ideas and information led to the creation of new partnerships in the areas of science and education. The conference was so effective that all the participants involved agreed upon the need for a second conference, tentatively scheduled for 2005.

The Malta Conference permitted participating scientists to address important scientific issues pertinent to the future of the Middle East, but it did more than that. All areas within the Middle East were represented, demonstrating there are some issues that can bring everyone together around a common goal of improving our world and society. This meeting reinforced the fact that the advancement of scientific research and education are vital forces for all nations of the world, and it demonstrated that science and education can help nations that are distrustful of each other to reach across borders and work cooperatively to address common concerns.

The conference chairperson, Dr. Lerman, is the distinguished Professor of Science and Public Policy and head of the Institute for Science Education and Science Communication at Columbia College Chicago. Dr. Lerman received her Ph.D. in chemistry from the Weizmann Institute of Science in Israel. She founded and chaired the Department of Science and Mathematics at Columbia College, where she developed an innovative approach to teaching science to non-science majors which received international recognition. Dr. Lerman is active professionally with national and international associations in the fields of science, science education, and scientific freedom and human rights. For 15 years, she has chaired the national American Chemical Society Subcommittee on Scientific Freedom and Human Rights. She also serves as Vice-Chair for Chemistry for the Board of the Committee of Concerned Scientists and chairs the International Activities Committee of the American Chemical Society, in addition to numerous other positions.

Dr. Lerman has received the Presidential Award for Excellence in Science, Mathematics, and Engineering Mentoring and is a 1998 Kilby Award Laureate for extraordinary contributions to society through science, technology, invention, innovation, and education. In February 2001, she was elected a Fellow of the American Association for the Advancement of Science.

I hope my colleagues will join me in congratulating Dr. Lerman and the organizers and delegates of the conference for their superb work. This event serves as a shining example of the progress available to nations that make the effort to promote understanding and cooperation.

I ask that Dr. Lerman's summary of the conference be printed in the RECORD.

The summary follows.

SUMMARY OF MALTA CONFERENCE

From 6 to 11 December, 2003, chemists from Egypt, Iran, Israel, Jordan, Kuwait, Lebanon, Palestinian Authorities, Saudi Arabia, Turkey, and United Arab Emirates gathered in Malta to attend the conference ''Frontiers of Chemical Sciences: Research and Education in the Middle East.''

The success of this conference tells us that science and scientific research are not just methods of improving the human condition but can also be ways of crossing illusive national and political barriers that bar effective collaboration among neighbors. The invited participants included presidents of universities, members of the respective countries' national academies of science, and a former minister of science. By engaging a stunning array of world-class scientists from the Middle East, as well as selected scientists from England, France, Germany, South Africa, Taiwan, and the U.S., the resulting discussion broadly enriched our understanding of specific scientific issues important to the area's future. The fact that all segments of the Middle East were represented suggests that there are fundamental scientific issues that connect us all.

Six Nobel Laureates served as working group leaders on subjects of common interest to Middle Eastern countries. The subjects of these working groups included: ''Environment, Water and Renewable Energy,'' ''Research and New Methodologies in Science Education,'' ''Cultural Heritage and Preservation of Antiquities,'' ''The Use of the Synchrotron to Facilitate Research in the Middle East (SESAME Project),'' among others. Participants committed themselves to continue working together after the conference via e-mail and through smaller regional meetings. Among suggestions offered for future topics were: nanotechnology, computational chemistry, and solar energy.

All participants wrote that the conference organization was excellent, that the conference exceeded their expectations, and that the opportunity to work with the Nobel laureates was especially appreciated and it led to stimulating and informed discussion. 100% of the participants felt that a second conference, probably in 2005, would be needed. All indicated that they would want to attend and that they would recommend it to their colleagues. Most expressed willingness to participate in the organization of such an event.

A joint proposal between Israeli and Palestinian participants in the Malta conference was written on water purification and submitted to USAID–MERC.

One of the conference working groups, which concentrated on the synchrotron being built in Jordan (supported by UNESCO) for all the Middle East scientists, raised the urgent need for scientists trained in the use of a synchrotron. Dr. Yuan T. Lee, the Nobel Laureate who is science advisor to

the President of Taiwan, offered during the conference three full scholarships for scientists from the Middle East to spend a year learning to use the synchrotron in Taiwan. An agreement is already signed, and the selection of the three Middle Eastern scientists is in progress.

The President of the Technion (Israel Institute of Technology) offered to provide three full Technion scholarships for any interested student from an Arabic country.

A group of Palestinian participants met in February with their Israeli colleagues in the Weizmann Institute of Science. As a result, an agreement was signed for Palestinian students to study for MSc and PhD at the Weizmann Institute of Science; a committee is now working on financial arrangements needed to run the program.

One of the Israeli participants has been invited to present a lecture in Egypt. All the Egyptian participants expressed their interest in attending his lecture; some extended additional invitations for him to visit and present seminars at their institutions.

Dr. Roald Hoffmann, one of the American Nobel laureates, offered to run an intensive workshop in a Middle East location for graduate students from all the participating countries. This idea was accepted quite favorably by the participants; the location is now being discussed.

Ultimately, all the participants agreed that science is, indeed, a shared language between them all, and that the things they have in common are more numerous than the differences that separate them. The desire among the participants to continue the collaborations and to meet again is proof that the conference succeeded in overcoming barriers heretofore perceived as insurmountable.●

TRIBUTE TO SISTER JEANNE O'LAUGHLIN

● Mr. NELSON of Florida. Mr. President, I honor a wonderful leader and inspirational person, Sister Jeanne O'Laughlin. Sister Jeanne is retiring as President of Barry University in Miami Shores, FL, after more than 20 years as its president and more than 50 years as an educator. Under her tenure the student population at Barry more than quadrupled and became co-ed and diverse, the budget grew tenfold, the campus added 38 new buildings and Barry became the fourth largest private university in Florida.

But, Sister Jeanne is more than just a president or professor, she is a fixture of the Miami community, a tireless advocate for the indigent and less fortunate and a prolific fundraiser. She has been honored by the Pope and selected for Presidential Commissions. She was the first female member of the Orange Bowl Committee and the Non-Group, chaired the Victory Foundation for the Homeless, the Miami Coalition for a Safe and Drug-Free Community, the Religious Task Force for We Will Rebuild and the Miami Blue-Ribbon Aviation Panel. And in the name of Barry University she would take on any challenge or bet even if it meant singing and dancing.

When important decisions or events were happening in Miami she was there. Many will remember that she rescued three Chinese women from political prosecution and pushed for 14 months for their political asylum request to be accepted.

Her tireless devotion to Barry, her infectious spirit and devotion to making the world a better place one good deed at a time, make Sister Jeanne a truly remarkable person. I am honored to know her.●

DUPONT DELISLE

● Mr. LOTT. Mr. President, this month DuPont Chemical and the people of the Mississippi Gulf Coast region together celebrate the 25th anniversary of the DuPont Chemical Plant in DeLisle, MS. DuPont began manufacturing in DeLisle in 1979 and in 1991 underwent an expansion. The plant now employs over 1,000 people who are residents of both Mississippi and Louisiana. These employees are the No. 1 reason the plant has achieved some very impressive production rates. In fact, its high productivity levels have made the DuPont DeLisle plant the second largest titanium dioxide producing plant in the world. This is truly cause for the plant's employees, management and all local residents to be proud.

The plant's success over the past 25 years is directly attributable to the partnership between DuPont DeLisle and the city of DeLisle, the Mississippi gulf coast region, and the State of Mississippi. The local community and State maintain a strong interest in supporting the plant and ensuring its continued success, while the plant and its employees work to give back to and improve the local community. For example, over the years DuPont DeLisle and its employees have worked in cooperation with the Mississippi Gulf Coast Community College to offer extensive on-site operator training in electrical, machine shop, and computer skills. In addition, employees have conducted American Red Cross blood drives and United Way campaigns, donated equipment to local schools and fire departments, and participated in State and local organizations that are focused on improving Mississippi's workforce.

In addition to their work in the community, the plant's employees have strived to make it the best. As a result, the plant today is the top performer in its business group organization. DuPont DeLisle also work 4 times more safely than comparable industrial plants in the chemical industry using OSHA measurements. In fact, in October 2003, DuPont DeLisle employees exceeded their previous all-time safety record and early this year completed a full year without a single injury requiring medical treatment. These are truly significant accomplishments by employees who are obviously dedicated and committed to their employees' safety.

As one can see, DuPont in DeLisle has been good for the Mississippi economy by creating and sustaining high paying technical jobs. For the past 25 years, Mississippi has been proud to call itself home to this plant and we look forward to our continued partnership for the next 25 years. Congratulations to DuPont DeLisle and its local and State partners on this most noteworthy anniversary.●

MESSAGE FROM THE HOUSE

At 11:48 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4299. An act to designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building''.

H.R. 3939. An act to redesignate the facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, as the ''Mary Ann Collura Post Office Building''.

H.R. 2523. An act to designate the United States courthouse located at 125 Bull Street in Savannah, Georgia, as the ''Tomochichi United States Courthouse''.

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. 389. Concurrent resolution authorizing the use of the Capitol Grounds for the D.C. Special Olympics Law Enforcement Torch Run.

MEASURES REFERRED

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

H.R. 2523. An act to designate the United States courthouse located at 125 Bull Street in Savannah, Georgia, as the ''Tomochichi United States Courthouse''; to the Committee on Environment and Public Works.

H.R. 3939. An act to redesignate the facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, as the ''Mary Ann Collura Post Office Building''; to the Committee on Governmental Affairs.

H.R. 4299. An act to designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building''; to the Committee on Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–7498. A communication from the Secretary of the Senate, transmitting, pursuant to law, the report of the receipts and expenditures of the Senate for the period October 1, 2003 through March 31, 2004; ordered to lie on the table.

EC–7499. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Decrease of the Commercial Trip Limit for Atlantic Group Spanish Mackerel

off the Florida East Coast'' received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7500. A communication from the Deputy Assistant Administrator, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Revise Regulations Requiring Seabird Avoidance Measures in the Hook-and-Line Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) and in the Pacific Halibut Fishery in the U.S. Convention Waters Off Alaska'' received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7501. A communication from the Assistant Administrator for Fisheries, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement 2004 Harvest Specifications for Gulf of Alaska Groundfish'' (ID111703E) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7502. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fishery Closure; Prohibiting Directed Fishing for Pollock in Statistical Area 620 of the Gulf of Alaska (GOA)'' (ID031504A) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7503. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area: [CGD09–03–287], Regulated Navigation Area; USCG Station Port Huron, Port Huron, Michigan, Lake Huron'' (RIN1625–AA11) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7504. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations (Including 2 Regulations): [CGD11–03–006], [CGD07–03–166]'' (RIN1625–AA09) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7505. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: [CGD01–03–025], Coast Guard Fire Island, Fire Island, NY'' (RIN1625–AA00) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7506. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations (Including 5 Regulations): [CGD01–04–040], [COTP Memphis 04–002], [CGD09–04–012], [CGD01–04–035], [CGD05–04–081]'' (RIN1625–AA00) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7507. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations (Including 6 Regulations): [CGD08–04–017], [CGD01–04–039], [CGD07–04–021], [CGD08–04–016], [CGD13–04–004], [CGD07–04–019]'' (RIN1625–AA09) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7508. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys, [USCG–2001–10714]'' (RIN1625–AA34) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7509. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model Otter DHC–3 Airplanes Doc. No. 2000–CE–73'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7510. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Burkhardt Grob Luft-Und Raumfhart GmbH & Co. KG Models G103, Twin Astir, G103 Twin II, G103 Twin III Acro, and G103 Twin III Sailplanes; Doc. No. 2003–CE–61'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7511. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes; Doc. No. 2001–NM–288'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7512. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Schempp-Hirth Flugzeugbau GmbH Models Ventus–2a, Ventus–2b, Discus–2a, and Discus–2b Sailplanes; Doc. No. 2003–CE–59'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7513. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Glasflugel Models Mosquito and Club Libelle 20 Sailplanes; Doc. No. 2003–CE–62'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7514. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Goodrich Avionics Systems, Inc. TAWS8000 Terrain Awareness Warning System Doc. No. 2003–CE–47'' (RIN2120–AA64) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7515. A communication from the Chairman, Office of Proceedings, Surface Transportation Board, transmitting, pursuant to law, the report of a rule entitled ''Electronic Filing Option for Certain Documents'' (STB Ex. Parte No. 651) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7516. A communication from the Acting Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, transmitting, pursuant to law, a report relative to the Administration's actions relating to third generation wireless devices; to the Committee on Commerce, Science, and Transportation.

EC–7517. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, transmitting, pursuant to law, the report of a rule entitled ''Removal of 'National Security' Controls From, and Imposition of 'Regional Stability' Controls on, Certain Items on the Commerce Control List'' (RIN0694–AC54) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7518. A communication from the Acting Director, National Institute of Standards and Technology, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Small Grants Programs; Availability of Funds'' (RIN0693–ZA54) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7519. A communication from the Acting Under Secretary and Acting Director, Patent and Trademark Office, transmitting, pursuant to law, the report of a rule entitled ''Revision of Patent Term Extension and Patent Term Adjustment Provisions'' (RIN0651–AB71) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7520. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Addition of Aruba, Democratic Republic of the Congo, East Timor, and Netherlands Antilles to the Export Administration Regulations'' (RIN0694–AC83) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7521. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Performance Period Limitations'' (RIN2700–AC94) received on May 10, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7522. A communication from the Secretary of Homeland Security, transmitting, pursuant to law, a report relative to the immunity of a private responder from liability for criminal and civil penalties for the incidental take of a protected species while carrying out oil spill response actions; to the Committee on Commerce, Science, and Transportation.

EC–7523. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Agency's negative disbursements for the Clean Water Act during fiscal years 1998, 1999, and 2000; to the Committee on Environment and Public Works.

EC–7524. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report relative to emergency response plans for small and medium community water systems; to the Committee on Environment and Public Works.

EC–7525. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report relative to the award of grants for drinking water security; to the Committee on Environment and Public Works.

EC–7526. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report entitled ''Local Limits Development Guidance''; to the Committee on Environment and Public Works.

EC–7527. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report entitled ''Operating Rules and Guidelines for State/Regional CWA Recognition Awards Managers''; to the Committee on Environment and Public Works.

EC–7528. A communication from the Assistant Secretary for Civil Works, Department of the Army, transmitting, pursuant to law,

a report relative to the construction of ecosystem restoration and recreation improvements along the Wolf River, Memphis, Tennessee; to the Committee on Environment and Public Works.

EC–7529. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Appeals Settlement Guidelines: Losses Reported from Inflated Basis Assets from Leasing Stripping Transaction'' (UIL9226.01–00) received on May 10, 2004; to the Committee on Finance.

EC–7530. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Application of Section 265(a) to Corporate Groups with Broker Members'' (Rev. Rul. 2004–47) received on May 10, 2004; to the Committee on Finance.

EC–7531. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Capital Gain Dividends of RICs and REITs'' (Notice 2004–39) received on May 10, 2004; to the Committee on Finance.

EC–7532. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Revision to Qualified Amended Return Regulations'' (Notice 2004–38) received on May 10, 2004; to the Committee on Finance.

EC–7533. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Deduction for Interest on Qualified Education Loans'' (TD9125) received on May 10, 2004; to the Committee on Finance.

EC–7534. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Son of Boss Settlement Initiative'' (Ann. 2004–46) received on May 10, 2004; to the Committee on Finance.

EC–7535. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Section 704(b) and Capital Account Revaluations'' (RIN1545–BB10) received on May 10, 2004; to the Committee on Finance.

EC–7536. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Use of Statistical Sampling Under 274(n)'' (Rev. Proc. 2004–29) received on May 10, 2004; to the Committee on Finance.

EC–7537. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 to Israel; to the Committee on Foreign Relations.

EC–7538. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount of $100,000,000 to Japan; to the Committee on Foreign Relations.

EC–7539. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount of $50,000,000 to the Republic of Korea; to the Committee on Foreign Relations.

EC–7540. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount of $100,000,000 to Australia; to the Committee on Foreign Relations.

EC–7541. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements other than treaties; to the Committee on Foreign Relations.

EC–7542. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to an agreement with the Republic of the Marshall Islands on subsidiary Fiscal Procedures and Federal Programs and Services Agreements; to the Committee on Foreign Relations.

EC–7543. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the President's determination and exercising of a waiver authority with regard to the prohibition on military assistance provided for in section 2007(a) of the American Servicemembers' Protection Act of 2002; to the Committee on Foreign Relations.

EC–7544. A communication from the Director, Office of the Federal Register, transmitting, pursuant to law, the report of a rule entitled ''Price Changes to Federal Register Publications'' (RIN3095–AB35) received on May 5, 2004; to the Committee on Governmental Affairs.

EC–7545. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Commission's Annual Program Performance Report covering Fiscal Year 2003; to the Committee on Governmental Affairs.

EC–7546. A communication from the Senior Vice President, Potomac Electric Power Company, transmitting, pursuant to law, the Balance Sheet of Potomac Electric Power Company; to the Committee on Governmental Affairs.

EC–7547. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department of Transportation's Report on Management Decisions and Final Actions on Office of Inspector General Audit Recommendations for the period ending September 30, 2003; to the Committee on Governmental Affairs.

EC–7548. A communication from the Chief Financial Officer, Office of the Secretary of Transportation, transmitting, pursuant to law, a report relative to the Department of Transportation's Performance and Accountability Report for Fiscal Year 2003.

EC–7549. A communication from the Administrator, Environmental Protection Agency, transmitting the report of the Office of Inspector General for the period from April 1, 2003 through September 30, 2003; to the Committee on Governmental Affairs.

EC–7550. A communication from the Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees'' (RIN3206–AJ77) received on May 10, 2004; to the Committee on Governmental Affairs.

EC–7551. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, the report of the Office of Inspector General inventory of commercial and inherently governmental activities for fiscal year 2003; to the Committee on Governmental Affairs.

EC–7552. A communication from the Chairman, Federal Mine Safety and Health Review Commission, transmitting, pursuant to law, the Commission's Program Performance Report for Fiscal Year 2003; to the Committee on Governmental Affairs.

EC–7553. A communication from the Director, National Science Foundation, transmitting, the Foundation's Fiscal Year 2003 Management and Performance Highlights; to the Committee on Governmental Affairs.

EC–7554. A communication from the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, transmitting, pursuant to law, a report entitled ''Managing Information Collection—Information Collection Budget of the United States Government''; to the Committee on Governmental Affairs.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

*William A. Chatfield, of Texas, to be Director of Selective Service.

*Jerald S. Paul, of Florida, to be Principal Deputy Administrator, National Nuclear Security Administration.

*Mark Falcoff, of Califronia, to be a Member of the National Security Education Board for a term of four years.

*Dionel M. Aviles, of Maryland, to be Under Secretary of the Navy.

*Tina Westby Jonas, of Virginia, to be Under Secretary of Defense (Comptroller).

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. BOND (for himself and Mr. TALENT):

S. 2412. To expand Parents as Teachers programs and other programs of early childhood home visitation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mrs. LINCOLN, Mr. DASCHLE, Mr. LAUTENBERG, Ms. STABENOW, Mr. KENNEDY, and Mrs. CLINTON):

S. 2413. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes; to the Committee on Finance.

By Mr. GRAHAM of South Carolina (for himself and Mr. DORGAN):

S. 2414. A bill to establish a commission to review Federal inmate work opportunities; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CAMPBELL (for himself, Mr. DURBIN, Mr. BOND, Mr. HOLLINGS, Mr. KERRY, Mr. BUNNING, Mr. BIDEN, Mrs. MURRAY, Mrs. LINCOLN, Ms. LANDRIEU, Mr. GRASSLEY, Mr. DOMENICI, Ms. COLLINS, Mr. BURNS, Mr. INHOFE, Mr. TALENT, Mr. BENNETT, Mr. JOHNSON, Mr. LUGAR, Ms. CANTWELL, Mr. CRAPO, Mr. DASCHLE, Mr. DAYTON, Mr. CORZINE, Mr. KENNEDY, Mrs. FEINSTEIN, Mr. COCHRAN, Mr. SMITH, Mr. FEINGOLD, Mr. ALLEN, Mr. INOUYE, Mr. ENZI, Mr. LIEBERMAN, Mr. WYDEN, and Mr. DODD):

S. Res. 357. A resolution designating the week of August 8 through August 14, 2004, as ''National Health Center Week''; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. GRAHAM of Florida, Mr. KENNEDY, Ms. STABENOW, Mr. KERRY, Mr. DURBIN, Mr. CORZINE, Mr. LAUTENBERG, Mrs. MURRAY, Mr. INOUYE, Mr. DAYTON, Mr. JOHNSON, Mr. LEVIN, Mr. WYDEN, Mr. EDWARDS, Mrs. BOXER, Mr. FEINGOLD, Mr. JEFFORDS, Mr. BINGAMAN, and Mr. LEAHY):

S. Res. 358. A resolution expressing the sense of the Senate that no later than December 31, 2006, legislation should be enacted to provide every individual in the United States with the opportunity to purchase health insurance coverage that is the same as, or is better than, the health insurance coverage available to members of Congress, at the same or lower rates; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. Res. 359. A resolution designating the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week''; considered and agreed to.

By Mr. LIEBERMAN:

S. Con. Res. 107. A concurrent resolution; considered and agreed to.

By Mr. LIEBERMAN (for himself, Mrs. LINCOLN, and Mr. WYDEN):

S. Con. Res. 108. A concurrent resolution supporting the goals and ideals of Tinnitus Awareness Week; considered and agreed to.

ADDITIONAL COSPONSORS

S. 983

At the request of Mr. CHAFEE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 983, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 985

At the request of Mr. DODD, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1036

At the request of Mr. ALLARD, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1036, a bill to provide for a multi-agency cooperative effort to encourage further research regarding the causes of chronic wasting disease and methods to control the further spread of the disease in deer and elk herds, to monitor the incidence of the disease, to support State efforts to control the disease, and for other purposes.

S. 1420

At the request of Mr. CRAIG, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1420, a bill to establish terms and conditions for use of certain Federal land by outfitters and to facilitate public opportunities for the recreational use and enjoyment of such land.

S. 1645

At the request of Mr. CRAIG, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1726

At the request of Mr. ALEXANDER, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 1726, a bill to reduce the preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1734

At the request of Mrs. LINCOLN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1734, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to expand or add coverage of pregnant women under the medicaid and State children's health insurance programs, and for other purposes.

S. 1755

At the request of Mr. LEAHY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1755, a bill to amend the Richard B. Russell National School Lunch Act to provide grants to support farm-to-cafeteria projects.

S. 1792

At the request of Mr. DOMENICI, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1867

At the request of Mr. JEFFORDS, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1867, a bill to amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives.

S. 1909

At the request of Mr. COCHRAN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1909, a bill to amend the Public Health Service Act to improve stroke prevention, diagnosis, treatment, and rehabilitation.

S. 1934

At the request of Mr. NICKLES, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1934, a bill to establish an Office of Intercountry Adoptions within the Department of State, and to reform United States laws governing intercountry adoptions.

S. 2062

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2062, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 2212

At the request of Ms. COLLINS, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2212, a bill to amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries.

S. 2237

At the request of Mr. LEAHY, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 2237, a bill to amend chapter 5 of title 17, United States Code, to authorize civil copyright enforcement by the Attorney General, and for other purposes.

S. 2275

At the request of Ms. MIKULSKI, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2275, a bill to amend the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) to provide for homeland security assistance for high-risk nonprofit organizations, and for other purposes.

S. 2318

At the request of Ms. COLLINS, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2318, a bill to expand upon the Department of Defense Energy Efficiency Program required by section 317 of the National Defense Authorization Act of 2002 by authorizing the Secretary of Defense to enter into energy savings performance contracts, and for other purposes.

S. 2351

At the request of Ms. COLLINS, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2351, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Emergency Medical Services Advisory Council, and for other purposes.

S. 2363

At the request of Mr. HATCH, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

S. 2376

At the request of Mr. BUNNING, the names of the Senator from Illinois (Mr. FITZGERALD), the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 2376, a bill to amend the Internal Revenue Code of 1986 to repeal the scheduled restrictions in the child tax credit, marriage penalty relief, and 10 percent rate bracket, and for other purposes.

S. RES. 349

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. Res. 349, a resolution recognizing and honoring May 17, 2004, as the 50th anniversary of the Supreme Court decision in Brown v. Board of Education of Topeka.

AMENDMENT NO. 3114

At the request of Ms. CANTWELL, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maryland (Mr. SARBANES), the Senator from New Jersey (Mr. CORZINE) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of amendment No. 3114 proposed to S. 1637 , a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 3123

At the request of Ms. LANDRIEU, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of amendment No. 3123 proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself, Mrs. LINCOLN, Mr. DASCHLE, Mr. LAUTENBERG, Ms. STABENOW, Mr. KENNEDY, and Mrs. CLINTON):

S. 2413. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today I am introducing legislation entitled the ''Medicare Assurance of Rx Transitional Assistance Act of 2004'' with Senators LINCOLN, DASCHLE, LAUTENBERG, STABENOW, KENNEDY, and CLINTON. The bill would assure that all 700,000 low-income seniors and people with disabilities who are currently enrolled in a Medicare Savings Program (MSP) receive the $600 in transitional assistance in 2005 and 2006 available to them through passage of last year's Medicare prescription drug bill.

On April 2, 2004, I wrote a letter with 10 other senators to Health and Human Services Department Secretary Tommy Thompson urging his department to automatically enroll all MSP beneficiaries, which are those low-income people currently enrolled in State Medicaid programs to assist them with Medicare out-of-pocket expenses, into a Medicare drug discount card in order to receive the $600 subsidy available under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

In light of the fact that there is growing evidence that the savings offered via the drug discount card may be either minimal or illusory, the only clear benefit is the $600 in transitional assistance that is offered to individuals whose income is less than $12,569 this year or to married couples whose income is less than $16,862. For those MSP beneficiaries who do not have prescription drug coverage, they clearly meet the income criteria under the act and their automatic enrollment is the only way to assure that they will receive the $600 subsidy that was intended for them.

When the prescription drug bill was passed, the administration claimed that they would enroll 65 percent of those eligible for the $600 in transitional assistance into the drug discount card. According to the Centers for Medicare and Medicaid Services, or CMS, the agency expects a total of 5 million of the 7 million eligible to enroll, including 29,000 of the estimated 45,000 in New Mexico who would be eligible. Under CMS's assumptions, these beneficiaries would save a total of $5 billion nationally and $35 million in New Mexico over the 2-year period.

Unfortunately, due to a poor advertising campaign which has been criticized by the General Accounting Office where ads have run in Capitol Hill newspapers such as Roll Call and The Hill, which are not normally subscribed to by low-income senior citizens or people with disabilities, very few people even know the $600 subsidy exists. According to a recent national survey by the Kaiser Family Foundation, only 18 percent of senior citizens are aware that the low-income transitional assistance program was included in the Medicare prescription drug bill. It is hard to believe that 65 percent of those eligible will enroll when less than one-fifth of them even know it exists.

Fortunately, CMS has already laid the groundwork for auto-enrollment, as just two weeks ago the agency issued guidance for how state pharmacy assistance programs, or SPAPs, can automatically enroll their members who have income below 135 percent of poverty in the low-income assistance. Second, CMS created a standardized enrollment form for low-income assistance to be accepted by all companies offering Medicare drug discount cards. Now, CMS can take a third step to automatically enroll MSP members who do not have prescription drug coverage.

Although I believe CMS has the authority to take this third step on its own, the legislation I am introducing today would clarify and ensure low-income seniors and people with disabilities receive the transitional assistance promised them by the Administration and Congress. As the Medicare Rights Center asks, ''Given their definite eligibility and clear need for help to pay for their prescription drugs, why not save these people and the government the hassle of application and automatically enroll them?''

Some in CMS have argued that this might somehow limit the ''choice'' of a low-income Medicare beneficiary. this stated concern is inaccurate, however. As the Medicare Rights Center adds, ''Nothing would prevent members of MSPs from voluntarily enrolling in the low-income assistance and picking a drug discount card before automatic enrollment began. Even once enrolled in the transitional assistance, individuals would enjoy access to the same broad range of prescription drugs, since the $600 in annual assistance is not limited to the medicines on any specific card's formulary.''

As for the value of having the ''choice'' of choosing among the 73 competing drug cards, that is far less valuable than insuring that people get the $600 subsidy. According to a story in this morning's New York Times entitled ''73 Options for Medicare Plan Fuel Chaos, Not Prescriptions,'' that highlights that for many retirees the plethora of discount cards is complicated, overwhelming, and not too helpful. Florence Daniels, an 85 year-old retired engineer, says she cannot use the government website to compare drug costs because she cannot afford a computer. She said, ''I'm trying to absorb all the information, but it's ridiculous. Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down—wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and can't get.''

The interim final rule made available on December 10, 2003, describes a process where low-income Medicare beneficiaries will have to apply for assistance with one of the newly established drug discount cards. There are a number of low-income seniors and people with disabilities that are very sick, have cognitive and mental illnesses, and do not have access to or comfort with the Internet. Many will wrongly slip through the cracks and fail to get the $600 subsidy that they could benefit from unless we act.

In such cases, if an individual has not enrolled for whatever reason, it begs the question as to what ''choice'' automatic enrollment would take away at that point? Many low-income seniors or the disabled will not even be aware of the drug cards or the $600 subsidy for which they qualify.

As a result, by mid-August, either CMS or the states should take the affirmative step of automatically enrolling them into the program. If we fail to assist them in this manner, what is really lost is not ''choice'' but the $1,200 in real prescription drug assistance that they qualify for and could receive. As a Kaiser Family Foundation study last year indicated, Medicare beneficiaries with no drug coverage were nearly three times more likely than people with drug coverage to forego needed prescription drugs.

While CMS has estimated that 65 percent of the eligible low-income beneficiaries will sign up, that goal will not be met unless some proactive steps are taken. Our goal should be to leave none of our Nation's low-income seniors and people with disabilities behind. Anything less should be considered unacceptable.

While some of the proponents of the drug discount card have been critical of those that have questioned whether the drug discount card offers real discounts, they needlessly have tried to make this a partisan issue when it is not. There are legitimate and important public policy questions as to how effective the prescription drug discount card will be.

However, no matter whether you think the card offers real savings or not, everybody should be able to agree on the point that the $600 subsidy should be provided to as many low-income Medicare beneficiaries as possible.

As a result, I once again call upon the Administration to take this important step itself. If it fails to do so, I hope that congressional leadership will see fit to move this legislation as quickly as possible. There is over $1 billion in prescription drug assistance for many of our Nation's most vulnerable citizens at stake.

I ask unanimous consent that the text of the April 2, 2004, letter to Secretary Thompson, today's New York Times article I cited in my statement, and the text of the bill be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 2, 2004.

Hon. TOMMY THOMPSON,
Secretary, Department of Health and Human Services, Washington, DC.

DEAR MR. SECRETARY: As the Administration prepared to implement the new prescription drug card, we urge CMS to use a combination of provisions in the new Medicare prescription drug law to make an immediate, major and dramatic improvement in the level of help for low-income Medicare beneficiaries.

Specifically, we urge you to use the authority in the new law to automatically enroll all current Medicare Savings Program (MSP) beneficiaries (QMB, SLMB, and QI–1 individuals) in the transitional assistance and special transitional assistance programs, thus making these individuals automatically eligible for the $600 per year in low-income discount card assistance without requiring a separate time-consuming and inefficient enrollment process. Under this proposal, the current MSP beneficiaries would be told about the new discount cards serving their area and asked to make a selection by mailing a postcard back. If the MSP beneficiary does not make a selection, they can be assigned at random to a plan serving their area.

Despite years of work and millions of dollars spent on outreach, the level of participation in the MSP programs is very low. The millions of eligible low-income Medicare beneficiaries who are not enrolled in the MSP program miss out on the Part A and Part B deductible, co-pay, and premium assistance provided by these MSP programs. In 2004, this assistance is worth a minimum of $799 and for Qualified Medicare Beneficiaries who live on incomes under 100 percent of the poverty level, it can easily be worth much more than that.

The interim final rule made available on December 10, 2003, describes a system where low-income Medicare beneficiaries will have to apply for assistance with one of the new endorsed discount card companies. This is a population of seniors and people with disabilities that is often very sick, that often has cognitive and mental illnesses, and that often does not have access to or comfort with the Internet. In short, it is a very difficult population to reach out to and enroll in a new program.

By automatically enrolling the MSP population, about 700,000 individuals will be immediately enrolled. The millions of dollars in outreach, education, and paperwork expenses thus saved can be used to target and outreach to: (1) those eligible beneficiaries not currently in the MSP programs; and (2) to the 2.5 million low-income who live on incomes below 135 percent of poverty but who do not qualify for MSP. Hopefully, when those eligible for the MSP who are not currently enrolled are signing up for the prescription drug discount card program, they can also be enrolled in the MSP.

Mr. Secretary, you have estimated that 65 percent of the eligible beneficiaries will sign up for the low-income assistance. You goal should be to leave none of our nation's low-income seniors and people with disabilities behind. Anything less should be considered unacceptable.

Thank you for your consideration of this important request.

Sincerely,

Jeff Bingaman, John F. Kerry, Joseph I. Lieberman, Debbie Stabenow, Charles E. Schumer, Tom Harkin, Blanche L. Lincoln, Ron Wyden, Christopher J. Dodd, Hillary Rodham Clinton, Barbara A. Mikulski.

[From the New York Times, May 12, 2004]

73 OPTIONS FOR MEDICARE PLAN FUEL CHAOS, NOT PRESCRIPTIONS

(By John Leland)

When Mildred Fruhling and her husband lost their prescription drug coverage in 2001, they suddenly faced drug bills of $7,000 a year. Mrs. Fruhling, now 76, began scrambling to find discounts on the Internet, by mail order, from Canada and through free samples from her doctors.

''It's the only way I can continue to have some ease in my retirement,'' she said.

Last week, when the federal government rolled out a new discount drug program, Mrs. Fruhling studied her options with the same thoroughness. What she found, she said, was confusion: 73 competing drug discounts cards, each providing different savings on different medications, and all subject to change.

''I personally feel I can do better on my own,'' she said. But she added, ''At this point, I don't think anyone can make an evaluation.''

Even before they go into effect on June 1, the cards—which are approved by Medicare but offered by various companies and organizations—have been the subject of heated political debate, and AARP advertising campaign about how confusing they are and anxious speculation from those they are supposed to help. Among retirees of different income groups interviewed last week, the initial reaction was incomprehension.

''Even the person who came to explain it to us didn't understand it,'' said Mary Shen, 77, at the Whittaker Senior Center on Manhattan's Lower East Side. ''It's not fair to expect seniors, who have enough difficulties already, to have to figure this out.''

Shirley Brauner, 75, pushed a metal walker through the center's lunchroom. ''All I've got to say is they confuse the elderly, including me,'' she said. ''I'm furious. They're taking advantage of the seniors. How can the seniors understand it?''

The prescription drug discount cards are a prelude to the Medicare Prescription Drug, Improvement and Modernization Act, which will provide broad drug coverage starting in 2006. The federal government projects that 7.3 million of Medicare's 41 million participants will sign up for the cards.

Those who wish to do so, however, face the daunting task of choosing the right card.

''What it's like is a bunch of confusion,'' said Katharine Roberts, 77, who said she had not been to a movie in six years, in part because of her drug expenses. ''You might find you really need three cards, and you can only choose one.''

The cards are a 19-month stopgap measure to provide discounts of 10 percent to 25 percent for Medicare participants who have no other prescription drug coverage. In addition, low-income participants are eligible for subsidies of $600 a year.

The Department of Health and Human Services approved 28 companies or organizations to issue cards; among them are AARP, insurance companies and health maintenance organizations. Cards cost up to $30 a year. Each card provides different discounts on different drugs, and is accepted by different pharmacies. Participants can choose only one.

To help people sort through the options, Medicare and a company called DestinationRx set up a database on its Web site, medicare.gov, that lists the prices charged under various plans for whatever medications a user types in. People can get similar help by telephone at 1–800–

MEDICAR. But some providers complained that the prices on the site were inaccurate, and some cards are not listed at all.

For many retirees, it is too much.

''I'm 85, do I have to go through this nonsense?'' asked Florence Daniels, a retired engineer who said she received less than $1,000 a month from Social Security, of which she paid $179 a month for supplemental medical insurance. She gets drugs through a New York State program, which provides any prescription for $20 or less. To make ends meet and afford her drugs, she said she bought used clothing and put off buying new glasses. Some of her friends travel by bus to Canada to buy drugs; others do without, she said.

Ms. Daniels did not use the government Web site to compare drug cards, in part because she cannot afford a computer. ''I'm trying to absorb all the information, but it's ridiculous,'' she said. ''Not just ridiculous, it's scary. If there was a single card and it was administered by Medicare, and it got the cost of drugs down—wonderful, marvelous. But with these cards, the only thing we know is that we'll have to pay money to other people to administer what we can get and can't get.''

The discount program, which is financed largely by the cards' sponsors, reflects the Bush administration's desire to open Medicare to market principles without allowing participants to import drugs from other countries, which many Democrats favored.

Mark B. McClellan, an administrator at the Center for Medicare and Medicaid Services, said the complexity of the plan encouraged competition. ''We're seeing more plans offering better benefits,'' he said, estimating that people will be able to save 15 percent or more using the cards.

But the complexity of choices will keep many people away from the program, said Marilyn Moon, director of health at the American Institutes for Research, a nonprofit research organization in Washington.

Often, the discount provided by the cards is not as good as what people can get from existing state programs, union plans or consumer groups, said Robert M. Hayes, president of the Medicare Rights Center, a nonprofit organization that helps individuals with Medicare problems.

Sydney Bild, 81, a retired doctor in Chicago, compared the discount cards with the prices he paid ordering his drugs by mail from Canada. Dr. Bild pays $4,000 to $5,000 a year for five medications. When he checked the government Web site, he said the best plans were about 50 percent to 60 percent higher than what he was paying.

But Dr. Bild said his main objection to the new plans was that companies could change prices on drugs, or change the drugs covered. Medicare requires plans to cover only one drug in each of 209 common categories. Consumers can change cards only once a year. Committing to a card is ''like love—it's a something thing,'' Dr. Bild said. ''What if I chose one? They could drop my drugs two weeks later.''

Companies began soliciting customers for their discount drug cards last week. When the first pamphlets arrived at Beverly Lowy's home in New York City, Ms. Lowy said, she looked at them carefully. She does not have drug coverage and last year spent about $3,000 on prescription drugs. But the more brochures she reads, Ms. Lowy said, the less clear things became.

''You really have to be a rocket scientists,'' Ms. Lowy, 71, said. ''It takes time, energy, and you don't even save money. I thought, 'This one is offering this, this one is offering that.' Finally I decided this isn't for me.''

At the Leonard Covello Senior Center in East Harlem, the new cards seemed opaque. Ramon Velez, 72, a retired taxi driver, said he had watched AARP advertisements in which people read the dense language on the federal Medicare bill.

''I was laughing at the people in the ads, but it's true,'' Mr. Velez said. ''Everyone's confused.''

Mr. Velez received $763 a month from Social Security, and often skips his psoriasis medication because he cannot afford the $45 co-payment under this Blue Cross/Blue Shield plan. He wondered if the new drug cards could save him money.

''But it's very confusing,'' he said. ''I'd go to the Social Security office to ask about the cards, but I don't think they'd know.''

Alejandro Sierra, 67, a retired barber, paced around the center's pool table. Mr. Sierra takes six medications for diabetes and complications from cataracts and colon cancer, and sometimes skips a medication because he cannot afford it.

''I'm interested in the cards,'' he said. ''But I can't figure it out on the computer, because I can't see.''

Carlos Lopez, the director of the center, said the cards had so far produced little but anxiety. Mr. Lopez asked participants to bring any applications to him before signing them, and warned them about people selling phony cards.

''They're not nervous, but concerned,'' he said. ''They feel, why now? Why do I suddenly need a card for medications?''

S. 2413

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 ''Medicare Assurance of Rx Transitional Assistance Act of 2004''.

SEC. 2. AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES ELIGIBLE FOR MEDICARE PRESCRIPTION DRUG BENEFITS.

(a) AUTOMATIC ENROLLMENT OF BENEFICIARIES RECEIVING MEDICAL ASSISTANCE FOR MEDICARE COST-SHARING UNDER MEDICAID.—Section 1860D–14(a)(3)(B)(v) (42 U.S.C. 1395w–114(a)(3)(B)(v)) is amended to read as follows:

''(v) TREATMENT OF MEDICAID BENEFICIARIES.—Subject to subparagraph (F), the Secretary shall provide that part D eligible individuals who are—

''(I) full-benefit dual eligible individuals (as defined in section 1935(c)(6)) or who are recipients of supplemental security income benefits under title XVI shall be treated as subsidy eligible individuals described in paragraph (1); and

''(II) not described in subclause (I), but who are determined for purposes of the State plan under title XIX to be eligible for medical assistance under clause (i), (iii), or (iv) of section 1902(a)(10)(E), shall be treated as being determined to be subsidy eligible individuals described in paragraph (1).''.

(b) ASSURANCE OF TRANSITIONAL ASSISTANCE UNDER DRUG DISCOUNT CARD PROGRAM.—

(1) IN GENERAL.—Section 1860D–31(b)(2)(A) of the Social Security Act (42 U.S.C. 1395w–141(b)(2)(A)) is amended by adding at the end the following new sentence: ''Subject to subparagraph (B), each discount card eligible individual who is described in section 1860D–14(a)(3)(B)(v) shall be considered to be a transitional assistance eligible individual.''.

(2) AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES.—Section 1860D–31(c)(1) of the Social Security Act (42 U.S.C. 1395w–141(c)(1)) is amended by adding at the end the following new subparagraph:

''(F) AUTOMATIC ENROLLMENT OF CERTAIN BENEFICIARIES.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary shall—

''(I) enroll each discount card eligible individual who is described in section 1860D–14(a)(3)(B)(v), but who has not enrolled in an endorsed discount card program as of August 15, 2004, in an endorsed discount card program selected by the Secretary that serves residents of the State in which the individual resides; and

''(II) notwithstanding paragraphs (2) and (3) of subsection (f), automatically determine that such individual is a transitional assistance eligible individual (including whether such individual is a special transitional assistance eligible individual) without requiring any self-certification or subjecting such individual to any verification under such paragraphs.

''(ii) OPT-OUT.—The Secretary shall not enroll an individual under clause (i) if the individual notifies the Secretary that such individual does not wish to be enrolled and be determined to be a transitional assistance eligible individual under such clause before the individual is so enrolled.''.

(3) NOTICE OF ELIGIBILITY FOR TRANSITIONAL ASSISTANCE.—Section 1860D–31(d) of the Social Security Act (42 U.S.C. 1395w–141(d)) is amended by adding at the end the following new paragraph:

''(4) NOTICE OF ELIGIBILITY TO MEDICAID BENEFICIARIES.—Not later than July 15, 2004, each State or the Secretary (at the option of each State) shall mail to each discount card eligible individual who is described in section 1860D–14(a)(3)(B)(v), but who has not enrolled in an endorsed discount card program as of July 1, 2004, a notice stating that—

''(A) such individual is eligible to enroll in an endorsed discount card program and to receive transitional assistance under subsection (g);

''(B) if such individual does not enroll before August 15, 2004, such individual will automatically enrolled in an endorsed discount card program selected by the Secretary unless the individual notifies the Secretary that such individual does not wish to be so enrolled;

''(C) if the individual is enrolled in an endorsed discount card program during 2004, the individual will be permitted to change enrollment under subsection (c)(1)(C)(ii) for 2005; and

''(D) there is no obligation to use the endorsed discount card program or transitional assistance when purchasing prescription drugs.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 357—DESIGNATING THE WEEK OF AUGUST 8 THROUGH AUGUST 14, 2004, AS ''NATIONAL HEALTH CENTER WEEK''

Mr. CAMPBELL (for himself, Mr. DURBIN, Mr. BOND, Mr. HOLLINGS, Mr. KERRY, Mr. BUNNING, Mr. BIDEN, Mrs. MURRAY, Mrs. LINCOLN, Ms. LANDRIEU, Mr. GRASSLEY, Mr. DOMENICI, Ms. COLLINS, Mr. BURNS, Mr. INHOFE, Mr. TALENT, Mr. BENNETT, Mr. JOHNSON, Mr. LUGAR, Ms. CANTWELL, Mr. CRAPO, Mr. DASCHLE, Mr. DAYTON, Mr. CORZINE, Mr. KENNEDY, Mrs. FEINSTEIN, Mr.

COCHRAN, Mr. SMITH, Mr. FEINGOLD, Mr. ALLEN, Mr. INOUYE, Mr. ENZI, Mr. LIEBERMAN, Mr. WYDEN, and Mr. DODD) submitted the following resolution; which was referred to the Committee on the Judiciary:

Whereas community, migrant, public housing, and homeless health centers are nonprofit, community owned and operated health providers and are vital to the Nation's communities;

Whereas there are more than 1,000 such health centers serving 15,000,000 people in over 3,500 communities in every State and territory, spanning urban and rural communities in all 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands;

Whereas these health centers have provided cost-effective, high-quality health care to the Nation's poor and medically underserved (including the working poor, the uninsured, and many high-risk and vulnerable populations), acting as a vital safety net in the Nation's health delivery system, meeting escalating health needs, and reducing health disparities;

Whereas these health centers provide care to individuals in the United States who would otherwise lack access to health care, including 1 of every 8 uninsured individuals, 1 of every 9 Medicaid beneficiaries, 1 of every 7 people of color, and 1 of every 9 rural Americans;

Whereas these health centers and other innovative programs in primary and preventive care reach out to over 621,000 homeless individuals and more than 709,000 migrant and seasonal farm workers;

Whereas these health centers make health care responsive and cost effective by integrating the delivery of primary care with aggressive outreach, patient education, translation, and enabling support services;

Whereas these health centers increase the use of preventive health services such as immunizations, Pap smears, mammograms, and glaucoma screenings;

Whereas in communities served by these health centers, infant mortality rates have been reduced between 10 and 40 percent;

Whereas these health centers are built by community initiative;

Whereas Federal grants provide seed money that empowers communities to find partners and resources and to recruit doctors and needed health professionals;

Whereas Federal grants on average form 25 percent of such a health center's budget, with the remainder provided by State and local governments, Medicare, Medicaid, private contributions, private insurance, and patient fees;

Whereas these health centers are community oriented and patient focused;

Whereas these health centers tailor their services to fit the special needs and priorities of communities, working together with schools, businesses, churches, community organizations, foundations, and State and local governments;

Whereas these health centers contribute to the health and well-being of their communities by keeping children healthy and in school and helping adults remain productive and on the job;

Whereas these health centers engage citizen participation and provide jobs for over 70,000 community residents; and

Whereas designating the week of August 8 through August 14, 2004, as ''National Health Center Week'' would raise awareness of the health services provided by health centers: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of August 8 through August 14, 2004, as ''National Health Center Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

Mr. CAMPBELL. Mr. President, today I am submitting a resolution declaring the week of August 8, 2004, as a National Health Center Week dedicated to raising awareness of health services provided by community, migrant, public housing, and homeless health centers. I am pleased to be joined in this effort by Senator DURBIN and 31 of our colleagues.

The resolution expresses the sense of Congress that these health centers contribute to the health and well-being of their communities by keeping children healthy and in school and helping adults remain productive and on the job.

The resolution also recognizes health centers for providing cost-effective, high-quality health care to the Nation's poor and medically underserved, and by acting as a vital safety net in the Nation's health delivery system. These nonprofit, community-based centers are performing a vital service to our country's more vulnerable populations and they are to be commended for their efforts.

Health centers throughout the country have a 30-year history of success. Studies continue to show that the centers effectively and efficiently improve our Nation's health.

Last year, the community health centers in my State of Colorado provided care to 372,000 patients, and 41 percent of those patients were children under the age of 19. Of the patients seen in Colorado in 2003, 45 percent had no health insurance, 30 percent were Medicaid recipients and 87 percent had family incomes less than $36,200 a year for a family of four. Community health centers are truly America's healthcare safety net.

I believe it is important that we support and honor this nationwide network of community based providers. That is why I urge my colleagues to act quickly on this legislation. Let's show our community health center network that we value its significant contribution to the health of our citizens by declaring the week of August 8, 2004, a National Health Center Week.

SENATE RESOLUTION 358—EXPRESSING THE SENSE OF THE SENATE THAT NO LATER THAN DECEMBER 31, 2006, LEGISLATION SHOULD BE ENACTED TO PROVIDE EVERY INDIVIDUAL IN THE UNITED STATES WITH THE OPPORTUNITY TO PURCHASE HEALTH INSURANCE COVERAGE THAT IS THE SAME AS, OR IS BETTER THAN, THE HEALTH INSURANCE COVERAGE AVAILABLE TO MEMBERS OF CONGRESS, AT THE SAME OR LOWER RATES

Mr. DASCHLE (for himself, Mr. GRAHAM of Florida, Mr. KENNEDY, Ms. STABENOW, Mr. KERRY, Mr. DURBIN, Mr. CORZINE, Mr. LAUTENBERG, Mrs. MURRAY, Mr. INOUYE, Mr. DAYTON, Mr. JOHNSON, Mr. LEVIN, Mr. WYDEN, Mr. EDWARDS, Mrs. BOXER, Mr. FEINGOLD, Mr. JEFFORDS, Mr. BINGAMAN, and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 358

Whereas the number of uninsured people in the United States has grown to 43,600,000, an increase of 3,800,000 since 2000;

Whereas nearly 20 percent of uninsured Americans are children;

Whereas 8 out of 10 uninsured people in the United States come from working families;

Whereas members of racial and ethnic minority groups at all income levels are more likely to be uninsured than their white counterparts;

Whereas the United States is the only major industrialized country that does not guarantee health care to all of its citizens;

Whereas the United States has the highest health care spending per capita, but consistently scores near the bottom in infant mortality and life expectancy when compared with other developed, high-income countries;

Whereas those without insurance are more likely to go without necessary medical care and preventive services;

Whereas millions of Americans who have insurance coverage are underinsured;

Whereas the Institute of Medicine has estimated that the lost economic value of uninsurance is between $65,000,000,000 and $130,000,000,000 each year, and the Kaiser Family Foundation has concluded that uninsured Americans could incur nearly $41,000,000,000 in health care treatment in 2004;

Whereas the financial consequences of uninsurance are disastrous for families, as demonstrated by a recent study that found medical problems were a factor in 45 percent of all non-business bankruptcy filings;

Whereas employer-based insurance premiums grew 13.9 percent between 2002 and 2003, the third consecutive year of double-digit increases;

Whereas a recent study by the Commonwealth Fund concluded that small employers that provide health insurance to their employees pay more but receive less for their money while suffering faster increases in premiums and steeper jumps in deductibles than large firms;

Whereas public programs such as medicare, medicaid, the State Children's Health Insurance Program, the Indian Health Service, the Veterans Health Administration, and TRICARE, play a critical role in providing coverage for millions of Americans, but are often underfunded;

Whereas the market for individual insurance policies is extremely expensive and allows for discrimination based on health status, age, and gender; and

Whereas members of Congress and their families have the opportunity to select among many benefit choices and to purchase high quality, group health insurance coverage at reasonable rates: Now, therefore, be it

Resolved, That it is the sense of the Senate that no later than December 31, 2006, legislation should be enacted to provide every individual in the United States with the opportunity to purchase health insurance coverage that is the same as, or is better than, the health insurance coverage available to members of Congress, at the same or lower rates.

SENATE RESOLUTION 359—DESIGNATING THE WEEK OF APRIL 11 THROUGH APRIL 17, 2004, AS ''FREE ENTERPRISE EDUCATION WEEK''

Mr. COLEMAN submitted the following resolution; which was considered and agreed to:

S. RES. 359

Whereas the United States values the free enterprise system as its basic economic system;

Whereas the elementary schools and secondary schools of the United States should strive to educate their students about the importance of the free enterprise system;

Whereas an understanding of the free market system by the youth of the United States is necessary to the United States' long-term economic growth;

Whereas companies, student organizations, and teachers in the United States are willing and able to participate in educating young people about free markets and opportunities; and

Whereas many organizations, such as Students in Free Enterprise, have developed programs to teach and encourage entrepreneurship among students: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week'';

(2) encourages schools and businesses in the United States to educate students about the free enterprise system; and

(3) requests that the President issue a proclamation calling on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs.

SENATE CONCURRENT RESOLUTION 107

Mr. LIEBERMAN submitted the following concurrent resolution; which was considered and agreed to:

Whereas Congress hosted the first American Association for the Advancement of Science (AAAS) Congressional Science and Engineering Fellows in 1973;

Whereas the AAAS Congressional Science and Engineering Fellowship Program was the first to provide an opportunity for Ph.D.-level scientists and engineers to learn about the policymaking process while bolstering the technical expertise available to members of Congress and their staff;

Whereas members of Congress hold the AAAS Congressional Science and Engineering Fellowship Program in high regard for the substantial contributions that AAAS Congressional Science and Engineering Fellows have made, serving both in personal offices and on committee staff;

Whereas Congress is increasingly involved in public policy issues of a scientific and technical nature, and recognizes the need to develop additional in-house expertise in the areas of science and engineering;

Whereas more than 800 individuals have held AAAS Congressional Science and Engineering Fellowships since 1973;

Whereas the AAAS Congressional Science and Engineering Fellows represent the full range of physical, biological, and social sciences and all fields of engineering;

Whereas the AAAS Congressional Science and Engineering Fellows bring to Congress new insights and ideas, extensive knowledge, and perspectives from a variety of disciplines;

Whereas the AAAS Congressional Science and Engineering Fellows learn about legislative, oversight, and investigative activities through assignments that offer a wide array of responsibilities;

Whereas AAAS Congressional Science and Engineering Fellowships provide an opportunity for scientists and engineers to transition into careers in government service; and

Whereas many former AAAS Congressional Science and Engineering Fellows return to their disciplines and share knowledge with students and peers to encourage more scientists and engineers to participate in informing government processes: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the significance of the 30th anniversary of the American Association for the Advancement of Science Congressional Science and Engineering Fellowship Program;

(2) acknowledges the value of over 30 years of participation in the legislative process by the AAAS Congressional Science and Engineering Fellows; and

(3) reaffirms its commitment to support the use of science in governmental decisionmaking through the AAAS Congressional Science and Engineering Fellowship Program.

SENATE CONCURRENT RESOLUTION 108—SUPPORTING THE GOALS AND IDEALS OF TINNITUS AWARENESS WEEK

Mr. LIEBERMAN (for himself, Mrs. LINCOLN, and Mr. WYDEN) submitted the following concurrent resolution; which was considered and agreed to:

Whereas 50,000,000 individuals in the United States have experienced tinnitus, the perception of noises or ringing in the ears and head when no external sound source is present;

Whereas 12,000,000 individuals in the United States experience tinnitus to an incessant and debilitating degree, such that the sounds in their ears and heads never abate, forcing them to seek assistance from a health care professional;

Whereas tinnitus is frequently caused by exposure to loud noises in the workplace, where an estimated 30,000,000 individuals in the United States are exposed to injurious levels of noise each day, and where noise-induced hearing loss is the most common occupational injury;

Whereas tinnitus is also caused by exposure to loud noises in recreational settings, where levels of sound can reach traumatic levels, and where individuals frequently are not aware that temporary ringing in the ears can become permanent after continued exposure to loud levels of sound;

Whereas in many cases, simply wearing proper hearing protection would protect individuals from damaging their hearing;

Whereas many individuals with tinnitus are told that the only solution to their condition is to learn to live with it, even though treatments for tinnitus are available that can help reduce the stress of the incessant ringing and increase the coping skills and quality of life for individuals who experience this condition; and

Whereas the American Tinnitus Association has designated the week beginning May 15, 2004, as the first National Tinnitus Awareness Week, in order to raise public awareness and to further its mission to silence tinnitus through education, advocacy, research, and support: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) supports the goals and ideals of National Tinnitus Awareness Week, as designated by the American Tinnitus Association;

(2) encourages interested groups and affected persons to promote public awareness of tinnitus, the dangers of loud noise, and the importance of hearing protection for all individuals; and

(3) commits to continuing its support of innovative hearing health research through the National Institutes of Health, particularly through the National Institute on Deafness and Other Communication Disorders, so that treatments for tinnitus can be refined and a cure for tinnitus can be discovered.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3144. Mr. HARKIN (for himself, Mr. HAGEL, Mr. KENNEDY, Ms. COLLINS, Mr. JEFFORDS, Mr. COLEMAN, Mrs. CLINTON, Mr. ROBERTS, Ms. MIKULSKI, Mr. DODD, Mr. REED, Ms. STABENOW, Mr. LEVIN, Mr. ROCKEFELLER, Mr. CORZINE, Mr. SCHUMER, Mr. WARNER, Ms. MURKOWSKI, Mr. JOHNSON, Mrs. LINCOLN, and Mr. PRYOR) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes.

SA 3145. Mr. GREGG proposed an amendment to the bill S. 1248, supra.

SA 3146. Mrs. CLINTON proposed an amendment to the bill S. 1248, supra.

SA 3147. Mr. GREGG (for himself, Mr. ENZI, and Mr. GRASSLEY) proposed an amendment to the bill S. 1248, supra.

SA 3148. Mrs. MURRAY (for herself, Mr. DEWINE, and Mr . FEINGOLD) proposed an amendment to the bill S. 1248, supra.

SA 3149. Mr. GREGG (for Mr. SANTORUM) proposed an amendment to the bill S. 1248, supra.

TEXT OF AMENDMENTS

SA 3144. Mr. HARKIN (for himself, Mr. HAGEL, Mr. KENNEDY, Ms. COLLINS, Mr. JEFFORDS, Mr. COLEMAN, Mrs. CLINTON, Mr. ROBERTS, Ms. MIKULSKI, Mr. DODD, Mr. REED, Ms. STABENOW, Mr. LEVIN, Mr. ROCKEFELLER, Mr. CORZINE, Mr. SCHUMER, Mr. WARNER, Ms. MURKOWSKI, Mr. JOHNSON, Mrs. LINCOLN, and Mr. PRYOR) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

In section 611 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill) strike subsection (i) and insert the following:

''(i) FUNDING.—

''(1) IN GENERAL.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated—

''(A) $12,268,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2005, and, there are hereby appropriated $2,200,000,000 for fiscal year 2005, which shall become available for obligation on July 1, 2005 and shall remain available through September 30, 2006, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $12,268,000,0000, then the amount appropriated in this subparagraph shall be reduced by the difference between $12,268,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(B) $14,468,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2006, and, there are hereby appropriated $4,400,000,000 for fiscal year 2006,

which shall become available for obligation on July 1, 2006 and shall remain available through September 30, 2007, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $14,468,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $14,468,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(C) $16,668,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2007, and, there are hereby appropriated $6,600,000,000 for fiscal year 2007, which shall become available for obligation on July 1, 2007 and shall remain available through September 30, 2008, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $16,668,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $16,668,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(D) $18,868,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2008, and, there are hereby appropriated $8,800,000,000 for fiscal year 2008, which shall become available for obligation on July 1, 2008 and shall remain available through September 30, 2009, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $18,868,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $18,868,000,000 and the maximum amount available for awarding grants under subsection (a)(2);

''(E) $21,068,000,000 or the maximum amount available for awarding grants under subsection (a)(2), whichever is lower, for fiscal year 2009, and, there are hereby appropriated $11,000,000,000 for fiscal year 2009, which shall become available for obligation on July 1, 2009 and shall remain available through September 30, 2010, except that if the maximum amount available for awarding grants under subsection (a)(2) is less than $21,068,000,000, then the amount appropriated in this subparagraph shall be reduced by the difference between $21,068,000,000 and the maximum amount available for awarding grants under subsection (a)(2); and

''(F) the maximum amount available for awarding grants under subsection (a)(2) for fiscal year 2010 and each succeeding fiscal year, and, there are hereby appropriated for each such year an amount equal to the maximum amount available for awarding grants under subsection (a)(2) for the fiscal year for which the determination is made minus $10,068,000,000, which shall become available for obligation on July 1 of the fiscal year for which the determination is made and shall remain available through September 30 of the succeeding fiscal year.

''(2) REAUTHORIZATION.—Nothing in this subsection shall be construed to prevent or limit the authority of Congress to reauthorize the provisions of this Act.

SA 3145. Mr. GREGG proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

On page 443, strike lines 3 and 4, and insert the following:

there are authorized to be appropriated—

''(1) $12,358,376,571 for fiscal year 2005;

''(2) $14,648,647,143 for fiscal year 2006;

''(3) $16,938,917,714 for fiscal year 2007;

''(4) $19,229,188,286 for fiscal year 2008;

''(5) $21,519,458,857 for fiscal year 2009;

''(6) $23,809,729,429 for fiscal year 2010;

''(7) $26,100,000,000 for fiscal year 2011; and

''(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

SA 3146. Mrs. CLINTON proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

At the end of the bill, add the following:

TITLE V—MISCELLANEOUS

SEC. 501. AMENDMENT TO CHILDREN'S HEALTH ACT OF 2000.

Section 1004 of the Children's Health Act of 2000 (42 U.S.C. 285g note) is amended—

(1) in subsection (b), by striking ''Agency'' and inserting ''Agency, and the Department of Education''; and

(2) in subsection (c)—

(A) in paragraph (2), by striking ''and'' after the semicolon;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.''.

SA 3147. Mr. GREGG (for himself, Mr. ENZI, and Mr. GRASSLEY) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

On page 558, strike lines 7 through 12, and insert the following:

''(B) AWARD OF ATTORNEYS' FEES.—

''(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

''(I) to a prevailing party who is the parent of a child with a disability;

''(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

''(III) to a State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

''(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 432 of the District of Columbia Appropriations Act, 2004.

SA 3148. Mrs. MURRAY (for herself, Mr. DEWINE, and Mr. FEINGOLD) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

In section 602 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike paragraph (22) and insert the following:

''(22) PARENT.—

''(A) IN GENERAL.—The term 'parent'—

''(i) means—

''(I) a natural or adoptive parent of a child;

''(II) a guardian (but not the State if the child is a ward of the State);

''(III) an individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives or an individual who is legally responsible for the child's welfare; or

''(IV) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent; and

''(ii) in the case of a homeless child who is not in the physical custody of a parent or guardian, includes a related or unrelated adult with whom the child is living or other adult jointly designated by the child and the local educational agency liaison for homeless children and youths (designated pursuant to section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act), in addition to other individuals permitted by law.

''(B) FOSTER PARENT.—Unless State law prohibits a foster parent from acting as a parent, the term 'parent' includes a foster parent if—

''(i) the natural or adoptive parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and

''(ii) the foster parent—

''(I) has an ongoing, long-term parental relationship with the child;

''(II) is willing to make the educational decisions required of parents under this Act; and

''(III) has no interest that would conflict with the interests of the child.

In section 602 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(34) CHILD WITH A DISABILITY IN A MILITARY FAMILY.—The term 'child with a disability in a military family' means a child with a disability who has a parent who is a member of the Armed Forces, including a member of the National Guard or Reserves.

''(35) HOMELESS CHILDREN.—The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act.

''(36) WARD OF THE STATE.—The term 'ward of the State' means a child who, as defined by the State where the child resides, is a foster child, a ward of the State or is in the custody of a public child welfare agency.

In section 612(a)(3)(A) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''disabilities attending'' and insert ''disabilities who are homeless children or are wards of the State and children with disabilities attending''.

In section 612(a)(20)(B)(i) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike the semicolon at the end and insert '', including not less than 1 foster parent of a child with disabilities who is a ward of the State, not less than 1 grandparent or other relative who is acting in the place of a natural or adoptive parent, and not less than 1 representative of children with disabilities in military families;''.

In section 612(a)(20)(B)(v) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike the semicolon at the end and insert '', including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act;''.

In section 612(a)(20)(B) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(xi) representatives from the State child welfare agency; and

''(xii) a representative of wards of the State who are in foster care, such as an attorney for children in foster care, a guardian ad litem, a court appointed special advocate, or a judge.

In section 614(a)(1)(D) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), after clause (iii) insert the following:

''(iv) EXCEPTION FOR WARDS OF THE STATE.—The agency shall not be required to obtain an informed consent from the parents of a child for an initial evaluation to determine whether the child is a child with a disability if such child is a ward of the State and is not residing with the child's parent and consent has been given by an individual who has appropriate knowledge of the child's educational needs, including the judge appointed to the child's case or the child's attorney, guardian ad litem, or court appointed special advocate.

In section 614(b)(3) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(D) assessments of children with disabilities, including homeless children with disabilities who are wards of the State, and children with disabilities in Military families, who transfer from 1 school district to another school district in the same academic year, are—

''(i) coordinated with such children's prior and subsequent schools as necessary to ensure timely completion of full evaluations; and

''(ii) completed within time limits—

''(I) established for all students by Federal law or State plans; and

''(II) that computes the commencement of time from the date on which such children are first referred for assessments in any local educational agency.

In section 614(d)(1)(B) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(viii) if the child is a ward of the State, another individual with appropriate knowledge of the child's educational needs, such as a foster parent, a relative with whom the child lives who acts as a parent to the child, an attorney for the child, a guardian ad litem, a court appointed special advocate, a judge, or an education surrogate.

In section 614(d)(2) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

''(i) IN GENERAL.—In the case of a child with a disability, including a homeless child with a disability or a child with a disability who is a ward of the state, or a child with a disability in a military family, who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in the same or another State, the local educational agency, State educational agency, or other State agency, as the case may be, shall immediately provide such child with a free appropriate public education, including comparable services identified in the previously held IEP and in consultation with the parents until such time as the local educational agency, State educational agency, or other State agency, as the case may be, adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

''(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i), the new school in which the child enrolls shall immediately request the child's records from the previous schools in which the child was enrolled and the previous schools in which the child was enrolled shall immediately transmit to the new school, upon such request, the IEP and supporting documents and any other records relating to the provision of special education or related services to the child.

In section 614(e) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following: ''Decisions regarding the educational placement of a child with a disability who is a homeless child shall comply with the requirements described under section 722(g)(3) of the McKinney-Vento Homeless Assistance Act.''.

In section 615(a) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert '', including children with disabilities who are wards of the State,'' after ''children with disabilities''.

In section 615(b)(2) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''or the child is a ward of the State'' and insert ''the child is a ward of the State, or the child is a homeless child who is not in the physical custody of a parent or guardian''.

In section 615(b)(2) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert ''in accordance with subsection (o)'' after ''surrogate for the parents''.

In section 615(b)(7)(A)(ii)(I) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''residence of the child,'' and insert ''residence of the child (or available contact information in the case of a homeless child),''.

In section 615(b) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(10) procedures to protect the rights of the child whenever the child is a ward of the State, including procedures that preserve the rights of the natural or adoptive parent to make the decisions required of parents under this Act (unless such rights have been extinguished under State law) but that permit a child who is represented in juvenile court by an attorney, guardian ad litem, or another individual, to have such attorney, guardian ad litem, or other individual present in any meetings, mediation proceedings, or hearings provided under this Act.

In section 615(l) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''disabilities,'' and insert ''disabilities, or under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act or parts B and E of title IV of the Social Security Act,''.

In section 615 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(o) SURROGATE PARENT.—

''(1) ASSIGNMENT.—The assignment of a surrogate under subsection (b)(2) shall take place not more than 30 days after either of the following takes place:

''(A) The child is referred to the local educational agency for an initial evaluation to determine if the child is a child with a disability.

''(B) There is a determination made by the agency that the child needs a surrogate parent because the child's parent cannot be identified, the child becomes a ward of the State, or, despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child.

''(2) REQUIREMENTS OF SURROGATE.—An individual may not be assigned to act as a surrogate for the parents under subsection (b)(2) unless the individual—

''(A) signs a written form agreeing to make the educational decisions required of parents under this Act;

''(B)(i) has the knowledge and skills necessary to ensure adequate representation of the child; or

''(ii) agrees to be trained as an educational surrogate; and

''(C) has no interests that would conflict with the interests of the child.

''(3) FOSTER PARENT AS SURROGATE.—A foster parent of a child may be assigned to act as a surrogate for the parents of such child under subsection (b)(2) if the foster parent—

''(A) has an ongoing, long-term parental relationship with the child;

''(B) agrees to make the educational decisions required of parents under this Act;

''(C) agrees to be trained as an educational surrogate; and

''(D) has no interest that would conflict with the interests of the child.

In section 631(a)(5) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert '', and infants and toddlers in foster care'' after ''rural children''.

In section 634(1) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), insert '', infants or toddlers with disabilities who are homeless children, infants or toddlers with disabilities who are wards of the State, and infants or toddlers with disabilities who have a parent who is a member of the Armed Forces, including a member of the National Guard or Reserves'' after ''located in the State''.

In section 635(a)(6) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''hospitals and physicians'' and insert ''hospitals, physicians, homeless family shelters, medicaid and State child health insurance program enrollment offices, health and mental health clinics, public schools in low-income areas serving low-income children, staff in State and local child welfare agencies, judges, and base commanders or their designees''.

In section 635(a) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(17) A procedure to ensure that early intervention services and evaluations are available to infants or toddlers with disabilities who are—

''(A) homeless children; and

''(B) wards of the State or in foster care, or both.

In section 635 of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(c) CONSTRUCTION.—Nothing in subsection (a)(5) shall be construed to alter the responsibility of a State under title XIX of the Social Security Act with respect to early and periodic screening, diagnostic, and treatment services (as defined in section 1905(r) of such Act).

In section 637(a) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(11) a description of policies and procedures to ensure that infants or toddlers with disabilities who are homeless children and their families and infants or toddlers with disabilities who are wards of the State have access to multidisciplinary evaluations and early intervention services.

In section 637(b)(7) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike ''low-income, and rural families'' and insert ''low-income, homeless, and rural families and children

with disabilities who are wards of the State''.

In section 641(b)(1)(A) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), strike the period at the end and insert '', not less than one other member shall be a foster parent of a child with a disability, not less than one other member shall be a grandparent or other relative acting in the place of a natural or adoptive parent of a child with a disability, and not less than 1 other member shall be a representative of children with disabilities in military families.''.

In section 641(b)(1) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

''(L) STATE CHILD WELFARE AGENCY.—Not less than 1 representative from the State child welfare agency responsible for foster care.

''(M) REPRESENTATIVE OF FOSTER CHILDREN.—Not less than 1 individual who represents the interests of children in foster care and understands such children's education needs, such as an attorney for children in foster care, a guardian ad litem, a court appointed special advocate, a judge, or an education surrogate for children in foster care.

In section 661(d)(3) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(K) children with disabilities served by local educational agencies that receive payments under title VIII of the Elementary and Secondary Education Act of 1965;

''(L) children with disabilities who are homeless children or children with disabilities who are wards of the State;

In section 661(d) of the Individuals with Disabilities Education Act (as amended by section 101 of the bill), add at the end the following:

''(8) projects that provide training in educational advocacy to individuals with responsibility for the needs of wards of the State, including foster parents, grandparents and other relatives acting in the place of a natural or adoptive parent, attorneys for children in foster care, guardians ad litem, court appointed special advocates, judges, education surrogates, and children's caseworkers.

SA 3149. Mr. GREGG (for Mr. SANTORUM) proposed an amendment to the bill S. 1248, to reauthorize the Individuals with Disabilities Education Act, and for other purposes; as follows:

Amend section 609 of the Individuals with Disabilities Education Act, as amended by section 101 of the bill, to read as follows:

''SEC. 609. PAPERWORK REDUCTION.

''(a) REPORT TO CONGRESS.—The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

''(b) PAPERWORK REDUCTION DEMONSTRATION.—

''(1) PILOT PROGRAM.—

''(A) PURPOSE.—The purpose of this subsection is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this Act, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

''(B) AUTHORIZATION.—

''(i) IN GENERAL.—In order to carry out the purpose of this subsection, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, this part for a period of time not to exceed 4 years with respect to not more than 20 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

''(ii) EXCEPTION.—The Secretary shall not waive any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

''(I) affect the right of a child with a disability to receive a free appropriate public education under this part; and

''(II) permit a State or local educational agency to waive procedural safeguards under section 615.

''(C) PROPOSAL.—

''(i) IN GENERAL.—A State desiring to participate in the program under this subsection shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

''(ii) CONTENT.—The proposal shall include—

''(I) a list of any statutory requirements of, or regulatory requirements relating to, this part that the State desires the Secretary to waive or change, in whole or in part; and

''(II) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

''(D) TERMINATION OF WAIVER.—The Secretary shall terminate a State's waiver under this subsection if the Secretary determines that the State—

''(i) has failed to make satisfactory progress in meeting the indicators described in section 616; or

''(ii) has failed to appropriately implement its waiver.

''(2) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under paragraph (1), including any specific recommendations for broader implementation of such waivers, in—

''(A) reducing—

''(i) the paperwork burden on teachers, principals, administrators, and related service providers; and

''(ii) noninstructional time spent by teachers in complying with this part;

''(B) enhancing longer-term educational planning;

''(C) improving positive outcomes for children with disabilities;

''(D) promoting collaboration between IEP Team members; and

''(E) ensuring satisfaction of family members.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 12, 2004, at 9:30 a.m. on Telecommunications Policy Review: A View from Industry.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to hold a full committee hearing to examine the environmental regulatory framework affecting oil refining and gasoline policy. The hearing is to be held Wednesday, May 12, 2004 at 9:30 a.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 12, 2004 at 9:30 a.m. to hold a hearing on Afghanistan—Continuing Challenges.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, May 12, 2004, at 10 a.m. for a hearing titled ''Bogus Degrees and Unmet Expectations: Are Taxpayer Dollars Subsidizing Diploma Mills?'' (Day Two).

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

COMMITTEE ON INDIAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, May 12, 2004, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 1715, the Department of Interior Tribal Self-Governance Act of 2003.

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

COMMITTEE ON THE JUDICIARY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, May 12, 2004 at 2:00 p.m. on ''The Satellite Home Viewer Extension Act'' in the Dirksen Senate Office Building Room 226.

Panel I: David O. Carson, General Counsel, U.S. Library of Congress Copyright Office, Washington, DC; Charles W. Ergen, Founder and Chairman, EchoStar Communications Corporation, Littlewood, CO; Bruce T. Reese, President and Chief Executive Officer, Bonneville International Corporation, Salt Lake City, UT; Eddy W. Hartenstein, Vice Chairman and Board

Member, The DIRECTV Group, In., El Segundo, CA; Fritz Attaway, Executive Vice President and Washington General Counsel, Motion Picture Association of America, Inc., Washington, DC; John King, President and Chief Executive Officer, Vermont Public Television, Colchester, VT.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GREGG. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 12, 2004 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

PRIVILEGES OF THE FLOOR

Mr. CORNYN. I ask unanimous consent that Meredith Mino, a member of my staff who does not currently have floor privileges, be admitted to the floor for the duration of my remarks.

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

Mr. GREGG. Mr. President, I ask unanimous consent that Christian Weeks and Elizabeth Jordan, interns on my staff, have access to the floor during consideration of S. 1248.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that Jeremy Buzzell and Sandra Licon, detailees on my staff, be granted floor privileges for the duration of the debate on S. 1248, the Individuals with Disabilities Education Act.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that a fellow in Senator REED's office, Erica Swanson, be granted the privilege of the floor during debate on S. 1248.

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

Mrs. CLINTON. Mr. President, I ask unanimous consent for Tori Brescoll, a fellow in my office, to have access to the floor during the consideration of S. 1248.

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

AUTHORIZING USE OF THE CAPITOL GROUNDS FOR THE NATIONAL PEACE OFFICERS' MEMORIAL SERVICE

Mr. FRIST. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H. Con. Res 388 and the Senate proceed to its immediate consideration.

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

The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 388) authorizing the use of the Capitol grounds for the National Peace Officers' Memorial Service.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The concurrent resolution (H. Con. Res. 388) was agreed to.

AUTHORIZING USE OF THE CAPITOL GROUNDS FOR THE DC SPECIAL OLYMPICS LAW ENFORCEMENT TORCH RUN

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 389, which is at the desk.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

A concurrent resolution (H. Con. Res 389) authorizing the use of the Capitol grounds for the DC Special Olympics Law Enforcement Torch Run.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The concurrent resolution (H. Con. Res. 389) was agreed to.

FREE ENTERPRISE EDUCATION WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 359, which was submitted earlier today by Senator COLEMAN.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 359) designating the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week''.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 359) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 359

Whereas the United States values the free enterprise system as its basic economic system;

Whereas the elementary schools and secondary schools of the United States should strive to educate their students about the importance of the free enterprise system;

Whereas an understanding of the free market system by the youth of the United States is necessary to the United States' long-term economic growth;

Whereas companies, student organizations, and teachers in the United States are willing and able to participate in educating young people about free markets and opportunities; and

Whereas many organizations, such as Students in Free Enterprise, have developed programs to teach and encourage entrepreneurship among students: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 11 through April 17, 2004, as ''Free Enterprise Education Week'';

(2) encourages schools and businesses in the United States to educate students about the free enterprise system; and

(3) requests that the President issue a proclamation calling on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs.

30TH ANNIVERSARY OF THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 107, which was submitted earlier today by Senator LIEBERMAN.

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

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 107) recognizing the significance of the 30th anniversary of the American Association for the Advancement of Science, Congressional Science and Engineering Fellowship Program, and reaffirming the commitment of Congress to support the use of science in governmental decision-making through such program.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 107) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 107

Whereas Congress hosted the first American Association for the Advancement of

Science (AAAS) Congressional Science and Engineering Fellows in 1973;

Whereas the AAAS Congressional Science and Engineering Fellowship Program was the first to provide an opportunity for Ph.D.-level scientists and engineers to learn about the policymaking process while bolstering the technical expertise available to members of Congress and their staff;

Whereas members of Congress hold the AAAS Congressional Science and Engineering Fellowship Program in high regard for the substantial contributions that AAAS Congressional Science and Engineering Fellows have made, serving both in personal offices and on committee staff;

Whereas Congress is increasingly involved in public policy issues of a scientific and technical nature, and recognizes the need to develop additional in-house expertise in the areas of science and engineering;

Whereas more than 800 individuals have held AAAS Congressional Science and Engineering Fellowships since 1973;

Whereas the AAAS Congressional Science and Engineering Fellows represent the full range of physical, biological, and social sciences and all fields of engineering;

Whereas the AAAS Congressional Science and Engineering Fellows bring to Congress new insights and ideas, extensive knowledge, and perspectives from a variety of disciplines;

Whereas the AAAS Congressional Science and Engineering Fellows learn about legislative, oversight, and investigative activities through assignments that offer a wide array of responsibilities;

Whereas AAAS Congressional Science and Engineering Fellowships provide an opportunity for scientists and engineers to transition into careers in government service; and

Whereas many former AAAS Congressional Science and Engineering Fellows return to their disciplines and share knowledge with students and peers to encourage more scientists and engineers to participate in informing government processes: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the significance of the 30th anniversary of the American Association for the Advancement of Science Congressional Science and Engineering Fellowship Program;

(2) acknowledges the value of over 30 years of participation in the legislative process by the AAAS Congressional Science and Engineering Fellows; and

(3) reaffirms its commitment to support the use of science in governmental decisionmaking through the AAAS Congressional Science and Engineering Fellowship Program.

TINNITUS AWARENESS WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 108, which was submitted earlier today by Senator LIEBERMAN.

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

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 108) supporting the goals and ideals of Tinnitus Awareness Week.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 108) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 108

Whereas 50,000,000 individuals in the United States have experienced tinnitus, the perception of noises or ringing in the ears and head when no external sound source is present;

Whereas 12,000,000 individuals in the United States experience tinnitus to an incessant and debilitating degree, such that the sounds in their ears and heads never abate, forcing them to seek assistance from a health care professional;

Whereas tinnitus is frequently caused by exposure to loud noises in the workplace, where an estimated 30,000,000 individuals in the United States are exposed to injurious levels of noise each day, and where noise-induced hearing loss is the most common occupational injury;

Whereas tinnitus is also caused by exposure to loud noises in recreational settings, where levels of sound can reach traumatic levels, and where individuals frequently are not aware that temporary ringing in the ears can become permanent after continued exposure to loud levels of sound;

Whereas in many cases, simply wearing proper hearing protection would protect individuals from damaging their hearing;

Whereas many individuals with tinnitus are told that the only solution to their condition is to learn to live with it, even though treatments for tinnitus are available that can help reduce the stress of the incessant ringing and increase the coping skills and quality of life for individuals who experience this condition; and

Whereas the American Tinnitus Association has designated the week beginning May 15, 2004, as the first National Tinnitus Awareness Week, in order to raise public awareness and to further its mission to silence tinnitus through education, advocacy, research, and support: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) supports the goals and ideals of National Tinnitus Awareness Week, as designated by the American Tinnitus Association;

(2) encourages interested groups and affected persons to promote public awareness of tinnitus, the dangers of loud noise, and the importance of hearing protection for all individuals; and

(3) commits to continuing its support of innovative hearing health research through the National Institutes of Health, particularly through the National Institute on Deafness and Other Communication Disorders, so that treatments for tinnitus can be refined and a cure for tinnitus can be discovered.

ORDERS FOR THURSDAY, MAY 13, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., on Thursday, May 13. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period for morning business for up to 60 minutes, with the first half under the control of the Democratic leader or his designee and the second half hour under the control of the majority leader or his designee; provided that following morning business, the Senate resume consideration of S. 1248, the IDEA reauthorization bill, as provided under the previous order.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow following morning business, the Senate will resume consideration of the Individuals with Disabilities Education Act reauthorization bill. Earlier today, we secured an agreement for finishing the IDEA bill tomorrow.

There is one outstanding issue that may require a vote or two, but it is also possible that the language will be worked out.

We, therefore, expect a vote on passage of the IDEA reauthorization bill by around 12 to 12:30 tomorrow. Additional votes are anticipated tomorrow as the Senate may consider other Legislative or Executive Calendar items that can be cleared for action.

We have a number of Members working on a range of issues, including bioshield and the mental health parity bill. I have repeated our desire to move some of the pending nominations. That is a priority that we must begin to address as well.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:31 p.m., adjourned until Thursday, May 13, 2004, at 9:30 a.m.

EXTENSIONS OF REMARKS

JAMES E. ROGERS IS HONORED BY THE GREATER CINCINNATI REGION OF THE NATIONAL CONFERENCE FOR COMMUNITY AND JUSTICE AT ITS 60TH ANNIVERSARY AWARDS DINNER

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. PORTMAN. Mr. Speaker, I rise today to recognize James E. Rogers, a friend, distinguished constituent and dedicated volunteer who will be honored for his service to our community at the Greater Cincinnati Region of the National Conference for Community and Justice's 60th Anniversary Awards Dinner (NCCJ) on May 27, 2004.

Jim has actively participated in many community organizations, and he has particular interest in education and the arts. He has been a member of the advisory board of the National Underground Railroad Freedom Center; the board of visitors of University of Kentucky College of Law; the Business Partnership Foundation of the University of Kentucky; the Corporate Council for the Hebrew Union College; Ohio State University's Ohio Business Advisory Council; and the Dan Beard Council of the Boy Scouts of America. He has also been a member of the board of the Cincinnati Children's Home.

Jim has served the Cincinnati Art Museum; the Cincinnati Arts Association; the Cincinnati Human Relations Commission; the National Conference of Christians and Jews; and the Cincinnati Music Festival Association. In addition, Jim has chaired the Greater Cincinnati and Northern Kentucky United Way Campaign; the Cincinnati Zoo Capital Campaign; and the Cincinnati Juvenile Diabetes Walk-a-thon.

Jim is Chairman, President and Chief Executive Officer of Cinergy Corporation, a Midwest leader in energy generation. Jim has served more than 30 years on the boards of Fortune 500 companies, including Fifth Third Bancorp and Duke Realty Corporation. He received his B.B.A. and J.D. degrees from the University of Kentucky, and was awarded an honorary Doctor of Laws degree from Indiana State University.

Jim also has a strong interest in public policy issues and served in government as Chief Trial Counsel at the Federal Energy Regulatory Commission (FERC). He is married to Mary Anne Rogers, has three children and four grandchildren.

All of us in Greater Cincinnati thank Jim for his service to our area and congratulate him on receiving this special honor from NCCJ.

CELEBRATING POLAND'S CONSTITUTION DAY

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. EMANUEL. Mr. Speaker, it is with great honor that I rise, on behalf of 111,000 of my constituents who are of Polish descent, to recognize the anniversary of the ratification of Poland's Constitution on May 3rd. We remember the men and women who first penned their historic constitution 219 years ago. We have another reason to celebrate as this year's anniversary will be the first since Poland has joined nine of its neighbors in achieving membership in the European Union.

In many ways, the foundation of Poland's constitution parallels our own, written only four years later. Following our model, the Polish Constitution of 1791 establishes three equal branches of government—a Legislative, an Executive, and a Judiciary Branch. It also promotes the philosophies of liberty, democracy, and religious freedom for all people. The constitution remains a landmark document that inspired generations of Poles through the turbulence of the eighteenth century, both World Wars and communist rule. Its longevity and survival exemplifies the strong democratic tradition and values of the Polish people.

Polish immigrants have imported these same traditions and values into the United States. Throughout our own history, Polish-American citizens have contributed to local communities. In the 5th district, from the lakefront to the western suburbs, the Polish-American community shares a leading role in business, fine arts, charity and many other forms of public service. The Polish-American influence has shaped the city of Chicago and our nation into the strong and vibrant communities they are today.

Mr. Speaker, Poland has stood shoulder-to-shoulder with the United States and its friendship has never wavered through the tumultuous events in our own history. Now is the time when we must return the favor by contributing to Poland's prosperity and security as it enters a new era as a full and respected member of the EU.

Poland's loyalty to the U.S. and its generous commitment of resources and manpower throughout the global war on terror and in the wars in Afghanistan and Iraq will never be forgotten by our grateful nation. Poland has repeatedly proven itself a steadfast ally from the beginning, sending more than 1,700 troops and special forces, second only to Great Britain, to help with Operation Iraqi Freedom and the reconstruction efforts.

Still, our Polish friends visiting their families in the United States are treated differently than other allies. Despite its proven loyalty and contributions to our security, Poles must still apply and pay for visas to enter the United States. That is why I have introduced H. Res. 601 in response to this discrepancy. My resolution calls upon the State Department to include Poland in the Visa Waiver Program. What better way to celebrate Poland's anniversary than to grant this waiver.

Mr. Speaker, the Polish Constitution is a symbol of pride and strength for Polish citizens throughout the world. I look forward to working with my colleagues and in support of Poland's efforts to flourish as an integral partner of the global economy and coalition against terror. Together we can continue to achieve the same principles of freedom and democracy that both our constitutions set forth over two centuries ago.

IN RECOGNITION OF DR. PHILIP C. HOPEWELL

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Ms. PELOSI. Mr. Speaker, I rise to congratulate my constituent, Philip C. Hopewell, MD. The American Lung Association has awarded Dr. Hopewell, a leader in the fight against tuberculosis, the Edward Livingston Trudeau Medal to recognize his lifelong contribution to the prevention diagnosis and treatment of lung disease.

In 1970, Dr. Hopewell took a brief sabbatical from his internal medicine residency program at the University of California San Francisco to work in war-torn Nigeria as a consultant to the Nigerian government on their tuberculosis control program. Dr. Hopewell's experience gave him first hand knowledge of the problems faced by developing countries in implementing effective tuberculosis control programs. More importantly, it gave Dr. Hopewell the belief that effective TB control programs can be established in the developing world.

Since 1971, Dr. Hopewell has shared his expertise in designing and implementing TB control programs. Most recently, Dr. Hopewell has worked as vice-chair of the Strategic and Technical Advisory Group for the World Health Organization (WHO) Stop TB Department. In his capacity at the WHO–STOP TB Partnership, Dr. Hopewell has provided technical expertise to developing nations around the globe on development and implementation of effective TB programs.

I first became aware of Dr. Hopewell's work about five years ago when we met to discuss increasing the U.S. committee to TB control at the U.S. Agency for International Development (USAID). At that time, the USAID contribution to international TB control was essentially zero. Dr. Hopewell made it clear to all who would listen that TB control programs can work in the developing world and it is in our country's best interests to take an active role. Through Dr. Hopewell's work and the hard work of many others, the U.S. support for international TB control has grown. Yet there is more to be done, as Dr. Hopewell always reminds me.

While the world has benefited from Dr. Hopewell's work, he has not ignored the problem of TB at home in San Francisco. Dr. Hopewell became involved in the San Francisco tuberculosis control program through his supervision of a contract by which clinical services were provided to the Department of Public Health. The affiliation of an academic institution and an effective public health tuberculosis control program has provided and continues to provide important opportunities for training and research in many aspects of tuberculosis control. This combination forms the foundation of the Frances J. Curry National Tuberculosis Center, directed by Dr. Hopewell. The Curry Center is one of three CDC-funded model centers in the country.

Mr. Speaker, Dr. Hopewell is a teacher, a healer, a scientist and an international humanitarian. I join many throughout this country in recognizing and honoring Dr. Hopewell and his lifetime of achievement in the research, prevention and treatment of lung disease.

IN RECOGNITION OF WALTER CRONKITE RECEIVING THE HARRY S TRUMAN GOOD NEIGHBOR AWARD

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise in recognition of Walter Cronkite, recipient of the 2004 Harry S Truman Good Neighbor Award. In 1953, longtime friends arranged an annual birthday luncheon for the then retired 33rd President of the United States, Harry S Truman. After his death in 1972, the birthday celebration was continued in his honor through a local foundation established to continue to pay tribute to his virtues of courage and leadership. Each year, the Harry S Truman Good Neighbor Award Foundation recognizes the national and international ideals of President Truman and preserves his memory by honoring such local individuals and encouraging young people to pursue international study.

This year, the foundation has selected Walter Cronkite to receive the prestigious Good Neighbor Award in recognition of his outstanding career in broadcasting. For more than 60 years Americans nightly received unbiased and factual national and international wisdom from the golden voice of Walter Cronkite. This Northwest Missourian brought us reports from the European theater in World War II and reported on the Nuremburg trials. His insights to the turbulent 60's awakened us to civil rights and human rights issues. He comforted us through the grief of three assassinations in that same decade, reporting the dreadful news to a shocked nation with his characteristic insight and somber vision. When President John F. Kennedy was struck down in November of 1963, followed by the murder of Rev. Martin Luther King, Jr. just before Palm Sunday in 1968, and then Sen. Robert Kennedy's killing on the eve of his California primary victory in June of the same year, the loss of these great leaders was all but unbearable, were it not for the constant and reassuring presence of Walter Cronkite, reaching out to us with straightforward and thoughtful news reporting.

Walter Cronkite became a war correspondent again in the late 60's when he reported to a divided country on Vietnam. Following the Tet offensive in January of 1968, often considered a turning point in the war, Cronkite visited the war torn country and called for diplomatic negotiations to end the stalemate. By then, the tide of public opinion had begun to turn against the war and President Lyndon B. Johnson announced that he would not seek reelection in March of that year. The decade ended on a high note, however, when the first manned spacecraft was sent to the moon and Walter Cronkite reported the launch with his infamous, ''Go Baby, Go.'' On July 20, 1969, he shared the moon landing with an awestruck nation in what some called ''Walter to Walter'' coverage on CBS news. He provided continuous coverage for the almost 30 hours it took Apollo XI to complete its mission.

The 70's brought political scandal and Walter Cronkite reported to the nation with accuracy and balance from June 17, 1972, the morning after the Watergate break-in, through August 8, 1974, when Richard M. Nixon became the first President of the United States to resign from office because of scandal. Walter Cronkite's incredible career included interviews with international heads of state, while keeping the nation informed of world-wide events, as well as audiences with every U.S. president since Harry Truman. He officially retired in 1981, but we are grateful that he continues to work on documentaries and programs for broadcast on PBS and the Discovery and Learning Channels.

The news has become the information tool that informs, stimulates interest, evokes debate, and ultimately protects our democracy. Walter Cronkite's dedication to his professional career is exemplary for its objective reporting, credibility and his trademark delivery that has made an American icon.

President Truman's high regard of Walter Cronkite is reflected best in a letter to Mr. Raymond E. Dix, President of the Ohio Newspaper Association on January 1, 1966.

DEAR MR. DIX: I was glad to have your letter informing me of the contemplated presentation of the Distinguished Service to Journalism Award to Walter Cronkite. I know of no one more worthy of being so honored by a jury of his peers. For one who has had some slight exposure to the press—the spoken and the written—with some misadventures and collisions along the way, I continue to have a healthy respect for that all important free institution.

Here and there, over a span of time, some of the practitioners in that estate manage to rise to a special place of their own and become a force in their own right. Walter Cronkite looms large in that category and I always associate him with the quality of never failing credibility.

Please give Walter my warm personal greetings.

Sincerely yours,

HARRY S TRUMAN.

Mr. Speaker, please join me in warm congratulations to our native son, Walter Cronkite, for receiving the Harry S. Truman Good Neighbor Award for his outstanding contribution to journalism and his ''never failing credibility.'' As a role model, he has inspired individuals like me to fight the good fight for a just cause, secure in the knowledge that armed with the facts and the passion for what is right and just, one can make a difference in the lives of others. Thank you, Walter Cronkite. And that's the way it is, Mr. Speaker.

PERSONAL EXPLANATION

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably absent for a vote in this chamber on May 6, 2004. I would like the record to show that, had I been present, I would have voted ''yea'' on rollcall vote No. 152.

PERSONAL EXPLANATION

HON. JOHN E. PETERSON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. PETERSON of Pennsylvania. Mr. Speaker, on Thursday, May 6, 2004, I was unavoidably detained and missed House rollcall vote No. 152 on H. Con. Res. 398, a bill expressing the concern of Congress over Iran's development of the means to produce nuclear weapons.

Had I been present, I would have voted ''yea'' on H. Con. Res. 398, and ask unanimous consent that this be reflected in the appropriate place in the RECORD.

IN SPECIAL RECOGNITION OF HOLGATE HIGH SCHOOL'S DIVISION IV STATE MEN'S BASKETBALL CHAMPIONSHIP

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GILLMOR. Mr. Speaker, I would like to extend my heartfelt congratulations to Head Coach Paul Wayne and his Holgate men's basketball team on the winning of their first State Championship in high school basketball.

The Holgate High School men's basketball team has worked tirelessly in pursuit of excellence on the basketball court; and

The character and team-oriented attitude found on the Holgate men's basketball team enabled the Tigers to hold their championship game opponents to the lowest score in a state championship game since 1963; and

The Holgate men's basketball team held their tournament opponents to an average of 32 points per game and out-rebounded their championship game opponent 34–16; and

Holgate's State Championship in Division IV high school men's basketball was their first State title and their first state appearance in 51 years.

Mr. Speaker, Holgate High School finished the season with an outstanding 21–6 record, capped by the school's first State Championship in high school men's basketball. They embody all that is good about the young people we have in our great nation and I again congratulate them on an outstanding season on and off the basketball court.

HONORING REPRESENTATIVE CHARLES I. HUDSON

HON. CHRISTOPHER JOHN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. JOHN. Mr. Speaker, I rise today to celebrate the life of an extraordinary man who made a tremendous impact on my life and the lives of so many in Louisiana. State Representative Charles ''Doc'' Hudson, educator, statesman, businessman, husband, parent, pioneer, friend and mentor, passed away May 7, 2004, at the age of 72 in Opelousas, Louisiana.

Dr. Hudson began his life in public service as the first African-American elected to the Opelousas Board of Aldermen, where he served for ten years. He went on to become the first African-American to serve a four-year term as deputy secretary of the Louisiana Department of Transportation and the first African-American mayor protemp of Opelousas. In 1991, he became the first African-American from St. Landry Parish to be elected to the Louisiana House of Representatves, a position he held until his death.

However, it is impossible to describe Doc by simply enumerating the positions he held. Anyone who knew him knew of his zealous commitment to education. As an accomplished student himself, he valued knowledge more than anything. In 1999, he gained national prominence when he introduced a bill in the Louisiana Legislature requiring students to show respect to teachers and school personnel.

Doc himself was an incredible teacher. Having spent four years serving with him in the Louisiana Legislature, I can personally attest that he was a tremendous mentor for young politicians. He was never too busy to talk to someone, spend time with them, listen to their problems, and give them advice. I could always count on his honest opinion and he always kept his word.

Doc was also a steadfast supporter of his fellow public servants. When I hosted events in his area, Doc was always there; and while he fervently upheld his Democratic ideals, he never had a bad word to say against anyone of a different opinion.

With the passing of Dr. Hudson, Louisiana loses a civil rights pioneer and one of its strongest education advocates. I mourn the loss of my friend and am sorry for the legislators who will not be able to benefit from his guidance and wisdom. To his family, I express my most sincere condolences; and while so many are saddened by this tragic loss, I am confident that southwest Louisiana is a better place to live because of his influence and efforts. He will be remembered fondly by those who knew him.

TRIBUTE TO MAJOR GENERAL JOHN A. ''ANDY'' LOVE

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor the career of a truly extraordinary gentleman, Major General John A. ''Andy'' Love.

General Love has proudly served the United States and is retiring on May 21, 2004 to civilian life from a stellar 36 year career in the Colorado Air National Guard.

Andy Love earned his Bachelor of Arts degree in 1967 from Colorado College in Colorado Springs, Colorado in Political Science. After that, Andy joined the Colorado Air National Guard. He did undergraduate work in pilot training at Williams Air Force Base, in Arizona, where he earned his pilots wings and became a Squadron Fighter Pilot who has over 2,500 hours in the F100, A–7 and F–16.

Andy served in many capacities for many years at Buckley Air National Guard Base in Colorado and eventually became the Vice Commander of the 140th Fighter Wing, then on to Deputy Commander for Operations. Soon after that he became the Assistant Adjutant General to the Air National Guard unit at Buckley. In September 2000, Andy became the Assistant to the Commander of Air Force Space Command, which required a move from Buckley to Peterson Air Force Base in Colorado. In April 2003, General Love was promoted to the position from which he now retires as the Assistant, for National Guard Matters, to the Commander of NORAD/USNORTHCOM (North American Aerospace Defense Command/US Northern Command).

Major General Love has much to be proud of in his extensive military career, but also for the many awards and decorations he's received, including: Legion of Merit Award, Meritorious Service Medal, Air Force Commendation Medal, Air Force Outstanding Unit Award, Combat Readiness Medal, National Defense Service Medal, Air Force Longevity Service Award, Small Arms Expert Marksmanship Ribbon, Air Force Training Ribbon, Armed Forces Reserve Medal, Colorado Meritorious Service Medal, Active Service Ribbon, Foreign Deployment Service Ribbon, Colorado State Emergency Ribbon, Mobilization Support Ribbon, and Colorado Long Service Ribbon.

Mr. Speaker, I urge all of my fellow colleagues to join me in congratulating Major General John A. ''Andy'' Love on his successful military career, and thanking him for his years of service to a grateful Nation.

As an alumnus of Colorado State University myself, and now representing CSU in the United States Congress, I have had a determined interest in CSU's mission to benefit our great State. I am proud to know that the tradition and excellence synonymous to Colorado State University will be carried on through the dedicated work of Dr. Larry E. Penley.

TRIBUTE TO MS. PEG BOSTWICK

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to recognize the efforts of a constituent in Michigan's Eighth Congressional District, Ms. Peg Bostwick. Ms. Bostwick has served the State of Michigan for the past 15 years as the 404 Federal Program Coordinator for the Michigan Department of Environmental Quality (DEQ). During her time at the Michigan DEQ, Ms. Bostwick has been a tireless advocate for wetlands protection and funding for wetlands research.

On Thursday, May 20, 2004, Ms. Bostwick will be honored for her work by the Environmental Law Institute as a part of the 2004 Wetlands Awards. As the recipient of the award for State, Tribal and Local Development, Ms. Bostwick is being honored in Washington, DC for the outstanding work she has done on behalf of all of us in Michigan.

Peg Bostwick's work on behalf of the State of Michigan has been extensive. She is a knowledgeable leader on wetlands issues, working to ensure that science and government policy work together to promote a healthy environment. Mr. Speaker, Peg Bostwick has committed herself to bettering Michigan's environment. I can think of no greater compliment to her than to say that Michigan's environment is better off because of her efforts.

PERSONAL EXPLANATION

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mrs. MALONEY. Mr. Speaker, on May 11, 2004, I was unavoidably detained and missed rollcall votes numbered 153 and 154. Rollcall vote 153 was on the motion to suspend the rules and pass H.R. 4299, a bill to designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building.'' Rollcall vote 154 was on the motion to suspend the rules and pass H. Res. 622, a resolution supporting the goals and ideals of Peace Officers Memorial Day.

Had I been present I would have voted ''yea'' on rollcall votes numbered 153 and 154.

IN SPECIAL RECOGNITION OF OTTAWA-GLANDORF HIGH SCHOOL'S DIVISION II STATE MEN'S BASKETBALL CHAMPIONSHIP

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GILLMOR. Mr. Speaker, I would like to extend my heartfelt congratulations to Head Coach David Sweet and his Ottawa-Glandorf men's basketball team on the winning of their first State Championship in high school basketball.

The Ottawa-Glandorf High School men's basketball team has worked tirelessly in pursuit of excellence on the basketball court.

The character and team-oriented attitude found on the Ottawa-Glandorf men's basketball team helped the Titans to win the state tournament final over a team with only one season loss.

The Ottawa-Glandorf Titans out-rebounded their opponents 45–25 and defeated them by 33 points in the state title game.

Mr. Speaker, Ottawa-Glandorf's State Championship in Division II high school men's basketball was a school-record twenty-seventh season victory and was their eighteenth consecutive victory.

The Ottawa-Glandorf High School finished the season with an outstanding 27–1 record, capped by the school's first State Championship in high school men's basketball. They embody everything that is good about our young people and I commend them on their outstanding performance on and off the basketball court this year.

HONORING JOHN E. DAILEY

HON. CHRISTOPHER JOHN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. JOHN. Mr. Speaker, I would like to take this opportunity to recognize an outstanding individual who has dedicated 40 years of his life to educating young people in Southwest Louisiana. At the end of this academic year, Mr. John E. Dailey will retire as principal of Notre Dame High School of Acadia Parish, my alma mater.

Mr. Dailey began his career in education at Notre Dame in 1964 and remained there until 1970 when he moved to Iota High School. During his time at Iota, Mr. Dailey was twice named Teacher and Coach of the Year, was a runner up in the Louisiana Principal of the Year process and oversaw vast improvements in the school's academic and athletic programs.

After over 20 years at Iota, Mr. Dailey returned to Notre Dame High School, where he would remain until his retirement this year. During his second tour at Notre Dame, Mr. Dailey oversaw a significant increase in enrollment, the addition of twelve classrooms, the implementation of an Agriscience Program, a rise in ACT scores to well above the national average, and nine State athletic championships and eight second place finishes. Mr. Dailey was also honored as the Administrator of the Year in the Diocese of Lafayette and recently inducted into the Notre Dame High School Shoe of Fame.

I rise today to honor Mr. Dailey because it is men and women like him that willingly take on the overwhelming job of preparing our youth for their entry into the professional world. Since 1964, Mr. Dailey has been making a difference in the lives of young people and Acadiana is grateful to all of the work that he has done. I know I am joined by many others when I tell Mr. Dailey congratulations and thank you.

COLORADO GREEN WINDFARM IN LAMAR

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mrs. MUSGRAVE. Mr. Speaker, wind energy is an inexhaustible, affordable and economically beneficial source of electricity, and is the Nation's fastest-growing new source of power. I am proud to salute the dedication on May 14 of the Colorado Green windfarm in Prowers County, near Lamar, in southeast Colorado. This dedication will take place in conjunction with Lamar's 118th birthday celebration, to be held on Saturday and Sunday, May 14 and 15, with the theme of ''Winds of Progress Powering Our Future.'' The celebration is being sponsored by Lamar Chamber of Commerce, City of Lamar, Prowers County, Prowers County Development, Inc. and local business owners.

At 162 megawatts, Colorado Green is the Nation's fifth-largest windfarm, and provides enough power for approximately 52,000 homes at a price competitive with conventional fuels. The project was developed by GE Wind Energy and is co-owned by PPM Energy and Shell WindEnergy, which sell the wind power to Xcel Energy. It is the largest capital investment ever made in Prowers County, and it has already begun generating tremendous local economic benefits throughout the neighboring communities of Lamar and Springfield.

The economic benefits of the Colorado Green wind project include the creation of 10–15 new well-paying jobs at the site. During the height of construction, nearly 400 workers were employed, and these workers provided a sizable economic boost to local Lamar and Springfield businesses. For example, local motels had much higher occupancy than normal, and local restaurants and business experienced an upsurge of demand. The Texaco Food Mart in Lamar had to ''bring in more help'' in the early morning to deal with the added demand, and the Hay Stack Restaurant reported a 30 percent increase in business due to the windfarm construction.

I am inserting an article from the Lamar Daily News of October 29, 2003 that provides a first-hand illustration of the tremendous benefits that the Colorado Green wind project has brought to Lamar and the Prowers County area. This article, by reporter Virgil Cochran, shows the many economic benefits that wind development can bring to rural parts of our country.

With so much of rural America suffering economic doldrums, wind energy has helped Lamar regain its footing, and I look forward to more such development throughout rural Colorado—which has the nation's 11th-best wind energy resource—in the coming years.

Besides the formal dedication of the Colorado Green wind project on May 14, other activities scheduled in conjunction with Lamar's ''Winds of Progress Powering Our Future'' activities that weekend include a parade featuring a 113–foot GE wind turbine and free guided bus tours to see the new windfarm. There will also be a 5K Walk and Run, Antique Car and Truck Show, Ducky Derby, ''Good Morning Lamar!'' breakfast and a ''Rock the Block'' dance.

I congratulate Lamar as it dedicates the Colorado Green wind project and celebrates its 118th birthday on May 14 and 15.

[From the Lamar Daily News, Oct. 29, 2003]

WIND FARM CONSTRUCTION AN ECONOMIC BOON FOR COUNTY

(By Virgil Cochran)

LAMAR.—The Colorado Green Wind Farm now under construction in south central Prowers County has already had a strong economic impact to the area—helping at least some local businesses offset slow sales blamed on a drought and generally sluggish economy. The giant project, the largest single capital investment in the history of Prowers County, will also continue to benefit the county for decades, boosting the property tax base and adding some 12–15 new jobs.

For one couple, David and Aracelli Fernandez, who live near the former Pleasant Heights Church, just a stone's throw down the road from the project, the boom has already hit. David and Aracelli are producing burritos about as fast as they can make them and running two daily routes to provide the 200 to 300 workers on the job with some tasty nourishment.

''We'd starve to death if it weren't for that lady (Aracelli),'' joked Chad-o Miller, a foreman with QCI erectors, which is installing the nearly 300–foot-tall turbines. Miller also predicted the workmen on the job will be sorely missed by the local grocery stores, motels, and restaurants when the project is complete.

David Fernandez told the Daily News Friday he and his wife have been selling an average of 400 burritos per day at $2 each. When we met up with Fernandez around noon Friday, he had three oversize coolers in the back of his pickup which he uses to keep the burritos warm, but all were empty. David had sold his load of burritos for the day, and was attempting a rendezvous with Aracelli to transfer some from her vehicle. It was essentially, a startup business for the Fernandez's, triggered solely by the wind farm.

''Most of our guys stay with Brad the Limo man,'' Miller said, referring to Brad Semmens of Country Acres Motel and RV Park. ''We've been filling up his motel and RV Park and he's been great to us.'' And Semmens is far from the only motel owner in the area to benefit from the influx of construction workers.

Kenny Buxton of Wallace Gas and Oil said the project has also created a temporary boom in fuel and related sales, offsetting what was otherwise very sluggish business due to the downturn in agriculture. Buxton has been running fuel delivery trucks to the site for weeks, providing fuel and lubricants for dozens of vehicles and pieces of heavy equipment at the site.

It sometimes requires two truckloads per day to meet demand, Buxton said, noting there are all sorts of excavating equipment and specialized machinery from cranes to forklifts to which he supplies fuel. Since it is impractical to move the machinery to a fuel station, the construction companies rely almost completely on bulk fuel delivery to the site.

Sales tax receipts in the city have been on the slide for something over a year, running at times ten percent or more behind receipts for the same month of the previous year. But the most recent month for which sales tax data are available, the same month construction moved into full swing on the wind farm, shows sales tax receipts are up over 13 percent from the same month a year ago. While it is impossible to determine how much of that is attributable to the wind farm, many think the boom in local sales can be linked largely to the project.

Once the project is complete and is producing power, the property tax benefits will roll on for at least three decades. Although figures are only preliminary guesstimates, County Assessor Andy Wyatt projects it will produce around $764,000 per year in new revenue to the county, another $917,000 to the Re-2 School District general fund, $203,900 to the Re-2 bond fund, and some $189,000 to Prowers Medical Center.

Exactly how that will shake out is uncertain for several reasons, said Wyatt. First, the local mill levy to fund Re-2 is governed largely at the state level because of an equalization program in state education funding. It will, at least to some extent, lower the local mill levy taxpayers pay to fund schools, but the amount of reduction hasn't been determined.

Some of the funds the county collects could be limited as well, Wyatt said, because

the county is subject to the Arveschoug-Bird Amendment which limits revenue increases to about 6 percent per year. But because much of the increase in the county's assessed valuation is from new construction, Wyatt said the county may have the option of keeping most of the money.

What the Prowers County Commissioners will decide to do with the approximately three-quarter of a million dollar annual tax windfall is not certain, but Wyatt said he thinks some of it should go to property tax relief by reducing of the mill levy for all taxpayers. He says that would help out businesses like Neoplan, making them more competitive. Since the wind farm is not located within Lamar City limits, however, the city will see little, if any direct benefit from property tax revenues.

What Wyatt calls the ''windfarm windfall'' won't take effect for another year, the beginning of 2005, but over the long haul, the $760,000 per year in property taxes paid to the county alone would inject some $22.9 million into the local economy over a 30-year period if the commissioners chose to collect all the new money and not reduce the property tax levy. Wyatt said property like the wind farm is assessed at the state level, and uses a formula which assures that renewable energy projects are taxed at the same rate of investment that would be spent on conventional power plants. Thus even though the wind farm sold for over $200 million, the state formula means it will be assessed at an approximately $100 million in actual value.

But that isn't the end of it. Construction is now under way on another major electrical power-related project about ten miles northeast of Lamar. Xcel Energy is installing an AC–DC power converter that will link electrical grids—a project estimated to be worth at least $25 million.

Wyatt estimates the county will net another $189,000 from the substation, while Re-2 will see tax revenue increases of $226,000 to its general fund and $50,000 to its bond repayment fund. PMC would net about $47,000. All those figures are, of course based on present mill levies, but could vary.

An engineer at the substation project north of Lamar said yesterday that the project is being built by a consortium of two companies, Beta Engineering of Pineville, Louisiana, and Siemens Transmission and Distribution of Raleigh, North Carolina. He said the project is expected to continue for about a year, and when complete, will link two of the nation's major power grids, converting electrical power from alternating to direct current, then back to alternating again. In the process, the station will also convert power from 230,000 volts to 345,000 volts so the power can be routed into long-distance transmission lines.

The project was mobilized about a week ago, and a subcontractor on the job, Cajun Construction of Baton Rouge, Louisiana, is already on the job beginning preliminary concrete work.

In additional to local job opportunities and increased sales by local businesses the projects have created and will continue to create, the two projects combined will provide an estimated $79 million in property tax receipts over a 30-year period, according to Wyatt's figures.

The project also paved the way for Lamar Light and Power and the Arkansas River Power Authority to own wind farms of its own. G.E. does not ordinarily sell only a handful of its 1.5 megawatt turbines—the largest in the wind power business—because of complications and expense with maintenance and warranties of the equipment. But since the wind farm was only a few miles down the road, ARPA and Lamar were able to capitalize on the event, along with 40-year lows in bond market interest, to install windfarms in Lamar and Springfield.

PERSONAL EXPLANATION

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. ROGERS of Michigan. Mr. Speaker, on the legislative day of Thursday, May 6, 2004, the House had a vote on H. Res. 402, a resolution urging the Lao People's Democratic Republic to provide unrestricted access to Laos for international election monitors and humanitarian aid workers. On House rollcall vote #149, I was unavoidably detained. Had I been present, I would have voted ''yea.''

HONORING ROSE LAMBERT, CHIEF AIDE TO SUPERVISOR HYLAND

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise today to honor Ms. Rose Lambert for over 16 years of dedicated service to the Mount Vernon community.

Ms. Lambert has been a pivotal member of the Mount Vernon community for many years, both as an employee of the Mount Vernon District Supervisor and as an active citizen in her neighborhood. Until recently, Rose lived in the Mount Zephyr community where she was active in the Citizens' Association, acting as president a number of times.

In the Mount Vernon District Supervisor's Office, Ms. Lambert has played an important role in a number of high-profile issues, including the Woodrow Wilson Bridge Improvement Study, Richmond Highway Revitalization efforts, and recently, the campaign to save Mount Vernon Hospital.

Ms. Lambert is most well-known in the northern areas of the Mount Vernon District where she has worked tirelessly on many significant projects. She has been instrumental in the successful completion of many community improvement projects, including the Huntington, Mount Zephyr, Fairhaven, and New Alexandria communities. Ms. Lambert continues to push for projects that will improve the quality of life for Mount Vernon citizens.

As Hyland's Chief Aide, Ms. Lambert has been the lead point of contact for county staff, and has had the responsibility of attending the Board of Supervisors meeting in Fairfax. Furthermore, she has represented Supervisor Hyland at countless meetings and has played an active role in the Mount Vernon Council of Citizens Associations.

Mr. Speaker, in closing, I would like to extend my heartfelt thanks to Ms. Lambert for 16 years of service to Mount Vernon District. Her contributions and efforts are much appreciated and will be greatly missed. Her service is an exemplary example of an ideal citizen and model employee. I wish her the best of luck in all future endeavors.

IN SPECIAL RECOGNITION OF BLAKE KLINKSIEK ON HIS APPOINTMENT TO ATTEND THE UNITED STATES AIR FORCE ACADEMY

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding young man from Ohio's Fifth Congressional District. I am happy to announce that Blake Klinksiek of Perrysburg, Ohio, has been offered an appointment to attend the United States Air Force Academy.

Mr. Speaker, Blake's offer of appointment poises him to attend the United States Air Force Academy with the incoming cadet class of 2008. Attending one of our nation's military academies is an invaluable experience that offers a world-class education and demands the very best that these young men and women have to offer. Truly, it is one of the most challenging and rewarding undertakings of their lives.

Blake brings a special mix of leadership, service, and dedication to the incoming class of Air Force cadets. While attending Perrysburg High School, Blake has attained a grade point average of 3.308, which ranks 121st out of the 334 students in his class. During his time at Perrysburg High School, Blake has received several commendations for his superior scholastic efforts. During his first year, Blake was named to the Honor Roll and received High honors recognition due to his GPA of 3.9. His second year was again marked by his being named to the Honor Roll and receiving yet another Outstanding Academic Achievement Award. Blake was named a ''Who's Who Among American High School Students'' and maintained a high level of achievement throughout his tenure at Perrysburg High School.

Outside the classroom, Blake has distinguished himself as an excellent student-athlete and dedicated citizen of Perrysburg, Ohio. On the fields of friendly strife, Blake has participated in Varsity Track and Football. He was Captain of the football team as a sophomore and has lettered multiple times in track. In addition to his athletic accomplishments, Blake is an active member in his community by participating in Young Life, was a Youth Football Camp and YMCA Youth Camp counselor, and was an English interpreter for a visiting Spanish student.

Mr. Speaker, I would ask my colleagues to stand and join me in paying special tribute to Blake Klinksiek. Our service academies offer the finest education and military training available anywhere in the world. I am sure that Blake will do very well during his career at Air Force and I wish him the very best in all of his future endeavors.

HONORING SHIRLEY COPELAND

HON. CLIFF STEARNS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. STEARNS. Mr. Speaker, I would like to take this opportunity to honor a constituent of

mine who received the 2004 Safety Education Hero Award from the Home Safety Council. Shirley Copeland, a safety educator from Alachua County, Florida, is this year's hero. The Safety Education Hero Award recognizes excellence in home safety education each year, and is presented for fire safety education that saves a life or avoids a disaster. The Home Safety Council in partnership with the Congressional Fire Services Institute (CFSI) and the National Fire Protection Association (NFPA) sponsor this distinction. Copeland conducted a fire safety lesson with the children at Terwilliger Elementary School as part of the Alachua County Fire Department's 2003 Fire Prevention Month outreach program. She used NFPA's Fire Prevention Week (FPW) campaign materials, ''When Fire Strikes: Get Out! Stay Out!'' During her presentation, Copeland explained the importance creating and practicing a family home fire escape plan, with an emphasis on conducting nighttime fire drills. Students received fire escape worksheets, which they took home to complete with their families.

Copeland's lessons made quite an impression on Paul Jones (age 11) and Paige Jones (age 10) who immediately shared Copeland's information with their mother. The family discussed the steps of their fire escape plan, including quickly exiting the home, calling 9–1–1 from a neighbor's home and meeting at a designated area. Remembering Copeland's message about the importance of nighttime fire drills, the siblings asked their mother to awaken them in the middle of the night to put their home fire escape plan into action.

Less than a month later on December 6, 2003, the family's preparation was put to the test. In the middle of the night as the family slept, sparks from the fireplace ignited a piece of furniture. Following the family's rehearsed escape plan, they swiftly fled to a neighbor's home, met at their designated meeting spot and dialed 9–1–1.

Brenda Proctor now attributes her family's safe escape to Shirley Copeland's informative and memorable teachings. Learning of the incident, Copeland visited the family at their temporary home where she made sure they had working smoke alarms and a new fire escape plan. Mr. Speaker, Ms. Copeland received the 2004 Safety Education Hero Award on May 5, 2004 from the Home Safety Council during the annual CFSI National Fire and Emergency Services Banquet here in Washington, DC. I had the honor of meeting Ms. Copeland and am proud that this hero will continue to work and promote fire safety in the 6th District of Florida.

C. DAVID SMITH, 2004 FAMILY PHYSICIAN OF THE YEAR

HON. JEFF MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. JEFF MILLER of Florida. Mr. Speaker, I rise today to congratulate Doctor C. David Smith for receiving the honor as Florida's 2004 Family Physician of the Year.

Dr. Smith has an extraordinary beginning to his career. He graduated second in his class from the University of Florida medical school in 1979. With a promising career in medicine, he began his residency at the University of South Alabama. However, in 1980 with not even a year of residency under his belt, he received word that his hometown hospital in Jay, Florida would close due to the lack of physician manpower and financial resources. Dr. David Smith followed his love of medicine and people and relocated back to his hometown, insuring that the hospital would continue to serve his neighbors in the rural community of less than 600.

During his 23-year tenure, Dr. Smith serves patients from his community and the surrounding area in his private practice, the emergency room, acute care center, hospital and nursing home. He is also the team physician for the local high school football team and even has time to make house calls.

Among his supporters, his patients offer the most passionate tributes. A community citizen whose family was comforted by Dr. Smith noted, ''The community is blessed to have this man among us. If we could have a statue in Jay of a hero, it would be Dr. David Smith, physician extraordinaire, humanitarian by gift of God, and our beloved rural doctor.''

Thanks to his leadership, intellect, and altruistic character, he revived the medical community and put rural hospital care in the medical spotlight. Jay Hospital and Northwest Florida communities are very fortunate to have such a distinguished family physician who has a genuine concern for people.

Mr. Speaker, on behalf of the United States Congress, I would like to congratulate and offer my sincere appreciation to Dr. C. David Smith for his service in the communities of Northwest Florida.

HONORING LIEUTENANT GENERAL PARKS' ''GOLD LINE''

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. WILSON of South Carolina. Mr. Speaker, today I rise to pay tribute to Lieutenant General Garry L. Parks, the Deputy Commandant, Manpower and Reserve Affairs, soon to retire and return to private life after more than 35 years of proud service as a United States Marine. The departure of General Parks marks not merely the end of an illustrious career replete with many honors; it also marks the beginning of several initiatives that, by virtue of his strategic vision, will ensure the continued success of the Marine Corps into the 21st century.

A native of Huntingdon, Pennsylvania, General Parks graduated from the Citadel with a Bachelor of Science degree in 1969.

After completing The Basic School, he was assigned to the 1st Marine Division in the Republic of Vietnam, where he served with distinction in a variety of positions to include platoon commander and company executive officer with the 1st Reconnaissance Battalion. For his heroism under fire, General Parks was awarded the Bronze Star Medal with Combat ''V''. Next, General Parks served as a company commander with 2d Battalion, 3d Marines. General Parks' later assignments include Company Commander, Marine Corps Recruit Depot, Parris Island, South Carolina; the Infantry Officers Advanced Course, Fort Benning, Georgia, where he graduated on the Commandant's List; and company commander, 2d Battalion, 9th Marines, Okinawa, Japan.

General Parks was an honor graduate at Marine Corps Command and Staff College; Commanding Officer, Recruiting Station, Raleigh, North Carolina; and the Joint Program and Budget Coordination Officer in the Requirements and Programs Division, Headquarters, U.S. Marine Corps.

While assigned to the First Marine Division, General Parks served as Executive Officer, 5th Marines; Commanding officer, 2d Battalion, 5th Marines; and Commanding Officer, 9th Marines. While serving as Chief of Staff, Marine Forces Pacific, he was selected to Brigadier General. He next served as Commanding General, Marine Corps Recruit Depot/Western Recruiting Region; Deputy Director for Politico-Military Affairs on the Joint Staff; and Commanding General, Marine Corps Recruiting Command.

General Parks will continue to serve as the Deputy Commandant, Manpower and Reserve Affairs until his retirement in June 2004. While serving in this position he devoted his enormous personal energy into implementing manpower programs and policies to ensure the operating forces had the Marine Corps manpower required to succeed in Operation Enduring Freedom I and II, and Operation Iraqi Freedom I and II and to also ensure that Marine families had the support they required during these most challenging times.

Throughout his career as a United States Marine, General Parks demonstrated uncompromising character, and a sincere, selfless sense of duty to his beloved Marine Corps and to the Nation. His powerful leadership inspired Marines to tremendous success no matter the task, and achieved results that will guarantee the United States' security into the future.

On behalf of my colleagues on both sides of the aisle, I would like to recognize General Parks' extraordinary accomplishments and his devoted service to the Nation. Congratulations to him, his wife Earlene, son Garry, and daughter Tammy on the completion of a long and distinguished career.

IN SPECIAL RECOGNITION OF DR. ROBERT MARTIN AND HIS INAUGURAL LEADERSHIP LECTURE AT THE HAYES PRESIDENTIAL CENTER

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding man, Dr. Robert Martin. This Friday, May 14, Dr. Martin will offer the first lecture at the Hayes Presidential Center's first annual ''Hayes Lecture on Leadership.'' This is a momentous occasion and an exciting time at the Hayes Presidential Center, which was the first Presidential library in the United States.

In June 2001, Dr. Robert Sidney Martin was nominated by the President of the United States to be Director of the Institute of Museum and Library Services (IMLS); the U.S. Senate subsequently confirmed his nomination

by unanimous consent. Dr. Martin is the first librarian to lead IMLS, formed in 1996.

Under Dr. Martin's leadership, IMLS launched a new grant program to recruit and educate the next generation of librarians. The program, announced by Mrs. Bush in January 2002, seeks to off-set a pending national shortage of librarians due to retirements. Dr. Martin acted as co-host to Mrs. Bush for two seminal White House conferences, one on school libraries and the other on libraries, museums, and lifelong learning. In 2004, Dr. Martin will make the inaugural grants for "Museums for America," to sustain heritage, support lifelong learning, and provide centers for community engagement.

A librarian, archivist, educator, and administrator, Dr. Martin was Professor and Interim Director of the School of Library and Information Studies at Texas Women's University prior to his appointment at IMLS. From 1995 to 1999, he was Director and Librarian of the Texas State Library and Archives Commission.

From 1985 until 1995, Dr. Martin was Associate Dean of Libraries for Special Collections at Louisiana State University. Before that, he worked in the archives and special collections at the University of Texas at Arlington and the University of Texas at Austin. He also taught at the University of Wisconsin at Madison.

He has authored and co-authored several scholarly treatises including two best-selling books, Maps of Texas and the Southwest, 1513–1900 (1984, 1999) and Contours of Discovery: Printed Maps Delineating the Texas and Southwestern Chapters of the Cartographic History of North America, 1513–1930 (1982). The books reflect another area of Dr. Martin's research interests and expertise: the history of the American southwest.

Dr. Martin has a Doctor of Philosophy degree in Library Science from the University of North Carolina at Chapel Hill, a Masters of Library Science from the University of North Texas, and a Bachelor of Arts degree in History from Rice University.

Mr. Speaker, I ask my colleagues to join me in paying special tribute to Dr. Robert Martin. Our Nation is served well by having such honorable and giving citizens, like Dr. Martin, who care about their well being and stability. We wish Dr. Martin well as he inaugurates the Hayes Presidential Center's first annual "Hayes Lecture on Leadership."

PERSONAL EXPLANATION

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Ms. McCOLLUM. Mr. Speaker, due to an event in my Congressional District I was unable to vote on the following two bills:

Rollcall vote No. 151—H. Con. Res. 326, expressing the sense of Congress regarding the arbitrary detention of Dr. Wang Bingzhang by the Government of the People's Republic of China and urging his immediate release; and Rollcall vote No. 152—H. Con. Res. 398, expressing the concern of Congress over Iran's development of the means to produce nuclear weapons.

I support each of these resolutions and would have voted "Yea" for both had I been present. I ask unanimous consent that my statement be inserted into the RECORD at the appropriate place.

PERSONAL EXPLANATION

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GREEN of Wisconsin. Mr. Speaker, due to weather related flight delays, I was absent for votes on Tuesday, May 11, 2004. As a result, I was not recorded for rollcall votes Nos. 153, 154 and 155. Had I been present, I would have voted "aye" on rollcall No. 153, "aye" on No. 154 and "aye" on No. 155.

TRIBUTE TO WEST POINT'S SERVICE AMERICA PROGRAM

HON. MICHAEL K. SIMPSON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. SIMPSON. Mr. Speaker, recently I had the honor of visiting with the Corps of Cadets, faculty, and staff at the United States Military Academy. I am very grateful to Lieutenant General William Lennox, Jr., Superintendent; Colonel Russell Howard, Social Sciences Department Head; Colonel Robert Gordon III, Director, American Politics Program; and, of course, to the Cadets for having me.

In addition to being able to visit with cadets and their world-class faculty, I had the opportunity to learn of West Point's Service America Program. Serving one's nation can take many forms. I found it especially inspiring that as the West Point cadets, America's sons and daughters, are preparing to defend our freedoms, they have created still another way to serve our great nation.

Under the leadership of Colonel Gordon and many others, since 1997, cadets have been serving young people during the summer months through the Academy's Service America Program in Bremerton and Spokane, Washington; Chicago, Illinois; and Austin, Texas. The cadets have partnered with state and local AmeriCorps programs, America's Promise, the National Civilian Community Corps, and private foundations.

In the past six years, 161 cadets have participated in West Point's Service America Program. The cadets have spent almost 8,000 hours teaching children in the classroom and have tutored or mentored over 1,000 youngsters. Their total community service exceeds 20,000 volunteer hours. Cadets say Service America helps prepare them to become better officers. Cadets are refining their leadership skills through positions of authority in community projects, are working cooperatively with AmeriCorps volunteers in solving problems, and are mentoring young persons from diverse backgrounds and ages.

Mr. Speaker, I commend West Point and the cadets for their selfless service to our country, both on and off the battlefield. I knew that West Point was a national treasure long before I visited there. Now more than ever, I know why.

IN SPECIAL RECOGNITION OF NATALIE PHILLIPS ON HER APPOINTMENT TO ATTEND THE UNITED STATES AIR FORCE ACADEMY

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding young woman from Ohio's Fifth Congressional District. I am happy to announce that Natalie Phillips of Northwood, Ohio, has been offered an appointment to attend the United States Air Force Academy.

Mr. Speaker, Natalie's offer of appointment poises her to attend the United States Air Force Academy with the incoming cadet class of 2008. Attending one of our nation's military academies is an invaluable experience that offers a world-class education. and demands the very best that these young women and men have to offer. Truly, it is one of the most challenging and rewarding undertakings of their lives.

Natalie brings a special mix of leadership, service, and dedication to the incoming class of Air Force Academy cadets. While attending Northwood High School, Natalie has attained a grade point average of 3.94, which ranks 2nd out of the 80 students in her class. During her time at Northwood High School, Natalie has received several commendations for her superior scholastic efforts. During her first year, Natalie was named to the High Honor Roll and received the Outstanding Academic Achievement Award. Her second year was again marked by her being named to the High Honor Roll along with being named a "Who's Who Among American High School Students." Natalie has maintained this high level of achievement throughout her tenure at Northwood High School.

Outside the classroom, Natalie has distinguished herself as an excellent student-athlete and dedicated citizen of Northwood, Ohio. Natalie has been very active on the Northwood High School Varsity golf team. She has served as team captain and has lettered multiple times. In addition to her athletic accomplishments, Natalie is an active member in her community by participating in the Spanish Club, Key Club and Student Council.

Mr. Speaker, I would ask my colleagues to stand and join me in paying special tribute to Natalie Phillips. Our service academies offer the finest education and military training available anywhere in the world. I am sure that Natalie will do very well during her career at the Air Force Academy and I wish her the very best in all of her future endeavors.

IN TRIBUTE TO JACK BROOME AND JOHN W. BORCHARD, JR.

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GALLEGLY. Mr. Speaker, I rise in tribute to Jack Broome and John W. Borchard, Jr., the first recipients of the Catherine McAuley Lifetime Achievement Award presented by St. John's Regional Medical Center

in Oxnard, California, and St. John's Pleasant Valley Hospital in Camarillo, California.

Catherine McAuley founded Sisters of Mercy in Dublin, Ireland, in the early 1800s, serving those who suffered from poverty, illness and a lack of education. In 1912, a small band of Sisters of Mercy began caring for the sick and suffering in Ventura County, California.

St. John's Regional Medical Center and St. John's Pleasant Valley Hospital are the modern-day manifestations of those early seeds.

The Catherine McAuley Lifetime Achievement Award pays tribute to members of the community for their contributions and volunteerism, commitment to society, and espousal of the charisma and values exemplified by Catherine McAuley.

Jack Broome and John W. Borchard, Jr., epitomize that charisma and those values.

Jack Broome was born in Chicago, but came to California early in his adult life to pursue farming opportunities in Ventura, Kern and Monterery counties. He is one of the key founders of Casa Pacifica and continues as a director. Jack currently serves on the University Board at Pepperdine University and the Board of Trustees of the House Ear Institute. He is chairman of the Ventura County Harbor Commission and the Pleasant Valley County Water District.

Jack's service to St. John's includes chairmanship of St. John's Regional Medical Center Foundation, director of the hospital board and longtime membership in The Humanitarians. He and his wife; Patricia, have three children and eight grandchildren.

John W. Borchard, Jr., was born at St. John's Hospital and raised on an Oxnard farm owned by his family in the 1860s. He left Ventura County long enough to graduate from the University of Notre Dame and serve a short stint at Eastman Kodak in New York before returning to his roots. John has had leadership roles on boards and committees of no less than 25 organizations. He served the Oxnard Elementary and High Schools, the City of Oxnard, the Oxnard Elks, lima bean and citrus cooperatives, and for 20 years served as a director on the Ventura County Farm Bureau. After 16 years, he recently retired his post as chairman of the Saticoy Lemon Association. During that time he also served on the Sunkist Growers, Inc., board, including 9 years on its executive board.

John has also served on the boards of St. John's Seminary and Seminary College in Camarillo.

John's service to St. John's began early, knocking on doors with his parents to raise money for the building. In 1968 he became a Humanitarian and served 7 years as chairman. He served as a trustee of St. John's Regional Medical Center Foundation through two building campaigns.

John and his wife, Nancy, have six children and 11 grandchildren.

Mr. Speaker, I know my colleagues will join me in congratulating Jack Broome and John W. Borchard, Jr., for earning this prestigious distinction and join the Foundations of St. John's Regional Medical Center and St. John's Pleasant Valley Hospital in honoring them for a lifetime of service to their community.

CONGRATULATING TOM KEATING ON BEING NAMED THE MINNESOTA TEACHER OF THE YEAR FOR 2004

HON. MARK. R. KENNEDY

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. KENNEDY of Minnesota. Mr. Speaker, I rise to congratulate Tom Keating on being named the Minnesota Teacher of the Year for 2004. He received this award at a ceremony on Sunday, May 2, 2004, in front of his wife, Mary Sue, also a teacher, their four children and his friends and colleagues. This year, there were a record 150 nominees for the award, and Keating was selected from among 10 finalists.

Born in Minneapolis, he earned his Bachelor of Science degree in health and physical education from St. Cloud State University. He began his teaching career at Foley High School in 1971. In 1982, he joined the Monticello public schools teaching a variety of subjects. He has also developed his own programs, including S.U.P.E.R. (Students Using Peers to Educate Responsibly) and the school's youth service program. In 1990, he went back to school himself and received his M.A. in curriculum and instruction from the University of St. Thomas. He is now a multisubject teacher at the Turning Point Alternative School in Monticello.

Mr. Speaker, it is teachers like Tom Keating that embody the commitment to students that all teachers strive to possess. His hard work and dedication to his students and his support for children that, in his words, are in danger of falling away, are just two of the reasons he deserved this important honor. I join his colleagues, friends, students, and all Minnesotans in congratulating him on his achievements.

HONORING THE LEGACY OF ROBERT PRUITTE

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GORDON. Mr. Speaker, I rise today to recognize the late Robert Pruitte, a good friend who always gave me useful advice. The Wilson County, Tennessee, resident was a pillar of strength in his community and an admired activist in the Democratic Party.

In honor of Robert and all he did for his community, the Wilson County Democratic Party is instituting an annual event in his memory called the ''Robert Pruitte Democratic Celebration.'' The event will be used to raise funds for a scholarship in his name and to promote the Democratic Party. Robert would have been proud to know his name was associated with giving deserving children an opportunity to excel in higher education.

Robert worked four decades for TRW and was an international representative for the United Auto Workers. He worked hard for his company, the union he represented and the family he loved. And he was always willing to give time of himself to promote worthy causes in his community.

Robert was an honorable man with impeccable character and a thirst for life. He is sorely missed by all those who knew him. But his legacy will live on through this newly created event that aims to help children get a quality education and allow others to share in his political philosophy. Robert was truly the epitome of decency and dedication.

IN SPECIAL RECOGNITION OF CRAIG BAER ON HIS APPOINTMENT TO ATTEND UNITED STATES MILITARY ACADEMY AT WEST POINT

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding young man from Ohio's Fifth Congressional District. I am happy to announce that Craig Baer of Middle Point, Ohio, has been offered an appointment to attend the United States Military Academy at West Point.

Mr. Speaker, Craig's offer of appointment poises him to attend the United States Military Academy at West Point with the incoming cadet class of 2008. Attending one of our nation's military academies is an invaluable experience that offers a world-class education and demands the very best that these young men and women have to offer. Truly, it is one of the most challenging and rewarding undertakings of their lives.

Craig brings a special mix of leadership, service, and dedication to the incoming class of West Point cadets. While attending Lincolnview High School, Craig has attained a weighted grade point average of 4.021, which ranks 9th out of the 61 students in his class. During his time at Lincolnview High School, Craig has received several commendations for his superior scholastic efforts. During his first year, Craig was named to the Gold Honor Roll and received the World History GPA Award. His second year was again marked by his being named to the Gold Honor Roll along with being named a Northwest Conference Scholar athlete. Craig has maintained this high level of achievement throughout his tenure at Lincolnview High School.

Outside the classroom, Craig has distinguished himself as an excellent student-athlete and dedicated citizen of Middle Point, Ohio. On the fields of friendly strife, Craig has participated in Cross Country, Track and Basketball. He was Captain of the Basketball team as a freshman and has lettered in Track and Cross Country. In addition to his athletic accomplishments, Craig is an active member in his community by participating in Spanish Club, Student Council, was elected Junior Class President, and was named to the National Honor Society.

Mr. Speaker, I would ask my colleagues to stand and join me in paying special tribute to Craig Baer. Our service academies offer the finest education and military training available anywhere in the world. I am sure that Craig will do very well during his career at West Point and I wish him the very best in all of his future endeavors.

A TRIBUTE TO MAGGIE STEWART FOR 50 YEARS OF COMMUNITY SERVICE

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. LEWIS of California. Mr. Speaker, it gives me great pleasure today to pay tribute to a dear friend, Margaret Stewart of Upland, California, who has spent more than 50 years improving the lives of everyone around her as a selfless volunteer and inspirational community activist in San Bernardino County.

Born and raised in Ontario, CA, Margaret married citrus rancher Walter E. Stewart, and raised three daughters in and near their hometown. She began her civic volunteering in 1949 with the Upland Junior Welfare League, and has been seemingly working harder ever year since that time.

Maggie Stewart got her start in local politics in 1950, when she and Walt chartered the Chaffey District Young Republicans. That same year, they helped organize a sewer bond election, and two years later she helped organize a door-to-door campaign for a school bond election. Since that time, she has served as a campaign worker every 2 years for candidates for mayor, Assembly, Congress, governor and president.

Her stature within our local Republican Party has grown to such an extent that she is often identified as the driving force in keeping the party growing and strong. She has been a member of the California State central committee since 1980 and served twice as the chairman of the county Republican Party. She has been president of the local Republican Women and has served as a Regent for the National Federation of Republican Women. And she was a delegate to three Republican National Conventions.

Maggie has also spent nearly 50 years working with the Girl Scouts, representing U.S. Scouts in New Zealand, serving as Girl Scout Council president serving 26,000 Scouts, and organizing a national conference to help scouts learn public relations. She has been almost as active in the Parent-Teacher Association, serving as local president and in many other roles. The West End United Way presented Maggie with its leadership award for more than two decades of service in a variety of top positions.

Mr. Speaker, as you can imagine, Maggie Stewart's awards and public recognition are numerous and substantial. She has been Scout of the Year, Woman of the Year, Senior Citizen of the Year, and a Woman Achiever. She received many justly deserved awards in 1983 for co-chairing the year-and-a-half-long Centennial Celebration for the City of Ontario. For her latest tribute, she will be honored for 30 years of service to the San Antonio Community Hospital Auxiliary.

There is little doubt, Mr. Speaker, that Maggie Stewart is the epitome of social service and volunteer activism. She has registered thousands of new voters, contributed many thousands of hours of time, and helped create a real spirit of community in one of the fastest-growing areas of our nation. Please join me in saluting Maggie Stewart for her years of service, and wishing her well in all of her future endeavors.

HONORING TIMOTHY M. VETERE OF MORGANTOWN, WEST VIRGINIA

HON. ALAN B. MOLLOHAN

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. MOLLOHAN. Mr. Speaker, I am pleased to congratulate Mr. Timothy M. Vetere of Morgantown, West Virginia for his award-winning entry in the Veterans of Foreign Wars' Voice of Democracy contest. His script is entitled ''My Commitment to America's Future.'' I submit for the RECORD the text of his entry and commend the VFW for making the Voice of Democracy scholarship program available to students across our Nation.

MY COMMITMENT TO AMERICA'S FUTURE

I was walking along the sidewalk downtown one day and I passed by a large storefront window and caught a quick glimpse of myself. I have to admit that the first thing I thought was, ''Hey, I look pretty good.'' I even stopped to take a second look. And as I stared into my gorgeous baby-blue eyes, I began to realize that my reflection was superimposed on an American flag, which was hanging in the display case.

As I looked closer, I realized that the edges were frayed and its colors faded and I thought, hmmm, I wonder how it got that worn? What stories would it have to tell if it could talk?

I began to envision it in battle somewhere or draping the coffin of a Vietnam War veteran, or, it looked pretty old, maybe even a World War II veteran. What if someone's grandfather had passed it down to his son and that man passed it to his son who was now honoring the memory of his grandpa by hanging that flag in his storefront window. Or did this flag fly outside of an elementary school where children of the SOs lined up in the courtyard to pledge their allegiance to the flag and sing ''My Country 'Tis of Thee.''

My eyes drifted to the 50 stars and I began to realize how hard each state must have fought to gain a spot on this symbol of American Unity.

As a person, I'm one among millions, but as an American I am an integral part of the greatest nation on earth. The stripes of the flag represent the purity in the American heart and sacrifices made by men just like me. I look back on the giants of history and feel my own insignificance. I am humbled knowing my own inability to measure up to their achievements.

I may never command American men in battle on foreign soil and, I pray to God I never command them on American soil. I many never land on the moon. I may never discover a cure for cancer. My name may never be used to inspire school-children to greater heights.

I may do nothing more than mean it when I say the pledge, sing the words of the National Anthem at a ball game, or feel the country's collective sadness when a soldier's flag-draped coffin is shown on the evening news.

But when I say the pledge maybe one other of my classmates may see my sincerity and share in it as well. When I sing the anthem at a ball game, those around me may hear the words clearly and be inspired to believe in the power behind the lyrics.

I may never become a giant in American history, but if I can in some small way influence others to feel the love I feel for America . . . if I can live my life as an example of heartfelt patriotism . . .

If I can raise my children with strong American values, then I will have made America stronger. When you are the one looking at your own reflection in a store window, or in a mirror, who will look back at you? Will you be able to say, ''Yes, I am an American citizen.''

We are all united under the American flag and its symbolic colors. We can be separate individuals or we can work together to make America stronger, one citizen at a time.

REMEMBER AND HONOR LIEUTENANT COLONEL FRANK H. SIMONDS, SR., USMC (RET)

HON. JOHN T. DOOLITTLE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. DOOLITTLE. Mr. Speaker, today I wish to remember and honor a loyal patriot, neighbor, and friend. Lieutenant Colonel Frank H. Simonds, Sr., USMC (Ret), of Oakton, Virginia. Following a lifetime of dedication and service to his family and our nation, LtCol Simonds passed away on March 31, 2004, at the age of 85.

Frank was born October 1, 1918, in Sparta, Illinois. His parents, Thomas and Zuma Etta Simonds, owned and operated a grocery store while raising a family of six boys and two girls.

Frank attended Sparta Township High School and, in 1941, graduated from the University of Illinois at Urbana-Champaign with a Bachelor of Science degree in Physical Education.

In August of that same year, he joined the United States Marine Corps. While in service, he flew the SBD, SB2C, F4U, F7F–3N, and the F9F–8P. Stationed in the Pacific Theater during World War II, he flew out of such places as Guadalcanal, Bougainville, and Munda while serving with VMSBs–144/454.

Mr. Speaker, Frank also served in the Korean War with VMF (N)'s–531/513. After the war, he flew VMCJ–3 in the late 1950's. He had over 5,000 flight hours and was the Commanding Officer of VMF (N)–513, VMCJ–3, MCAS–4 and MWSG–27. For his remarkable service to the United States, he received the Silver Star, Distinguished Flying Cross with Gold Star, and Air Medal with four gold stars before he retired from the Marine Corps in December 1966.

Upon retirement from the Marine Corps, Frank began a career with Control Data Corporation, where he worked from 1966 until his retirement in 1988. At the time of his retirement, he was the Eastern and Southeastern Regional Administration Manager and had enjoyed a 22-year career with the corporation.

He is survived by his lovely wife, Bobbie; his son, Lt. Col. Frank H. Simonds, Jr., USMC; his daughter, Kelley Simonds Hardison; his grandchildren, Michael, Lindsey and Hayley Hardison; his brother, Robert J. Simonds; and his sister, Millicent Simonds Bates.

Mr. Speaker, on a personal note, my family had the great opportunity of becoming acquainted with Frank and Bobbie when we moved to Oakton several years ago. More than just neighbors, they became very close friends. In fact, they even took on a role like unto family, and seemingly helped raise our son and daughter. For the blessing of having them come into our lives, we shall always be grateful.

Today, I join with Frank H. Simonds, Sr.'s family, friends, and community to commemorate his life of hard work, good citizenship, and

family commitment. As his friend and neighbor, I will miss him. Yet, I am confident that Frank today is happy where he is, waiting for the eventual return of his loved ones.

RECOGNIZING CONTRIBUTIONS OF PEOPLE OF INDIAN ORIGIN TO UNITED STATES AND BENEFITS OF WORKING TOGETHER WITH INDIA

SPEECH OF

HON. PETER A. DeFAZIO

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. DEFAZIO. Mr. Speaker, I strongly support much of what H. Con. Res. 352 has to say about the valuable contributions people of Indian origin have made to the United States. As the resolution notes, people of Indian origin have made contributions in a wide variety of disciplines, including science, technology, the arts and public service.

However, I am concerned that H. Con. Res. 352 presents a uniformly positive view of U.S. trade relations with India that is unjustified. While the resolution mentions the export of U.S. goods to India, it fails to acknowledge the rampant export of American jobs to India.

U.S. trade policies, including our policies toward India, have failed American workers. The U.S. has lost millions of high-paying manufacturing jobs. Now, service sector jobs are increasingly shifting overseas. Around 400,000 service jobs, including 27,000 technology jobs, were siphoned off to India, China and other low-wage havens last year.

Morgan Stanley estimates the number of U.S. jobs exported to India will double to about 150,000 in the next three years. A University of California-Berkeley study found U.S. firms exported 30,000 service sector jobs to India while eliminating 226,000 jobs in the U.S.

It's not hard to see why: computer programming jobs in the U.S. that pay $60,000–$80,000 a year go for as little as $8,952 in China, $5,880 in India, or $5,000 in Russia.

The U.S. economy will never be on sound footing, and workers will never enjoy job security, as long as Congress and the Administration perpetuate the discredited dogma of ''free'' trade. The Bush Administration argues in its latest Economic Report of the President that, ''When a good or service is produced more cheaply abroad, it makes more sense to import it than make or provide it domestically.'' I disagree with the Bush Administration's argument that ''it makes more sense'' to flood the U.S. market with goods and services from low-wage havens like India just because it's cheaper.

I am disappointed that H. Con. Res. 352 does not present a more balanced view of U.S. trade relations with India.

IN SPECIAL RECOGNITION OF JOSHUA BOWMAN ON HIS APPOINTMENT TO ATTEND THE UNITED STATES AIR FORCE ACADEMY

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding young man from Ohio's Fifth Congressional District. I am happy to announce that Joshua Bowman of Crestline, Ohio, has been offered an appointment to attend the United States Air Force Academy

Mr. Speaker, Joshua's offer of appointment poises him to attend the United States Air Force Academy with the incoming cadet class of 2008. Attending one of our Nation's military academies is an invaluable experience that offers a world-class education and demands the very best that these young men and women have to offer. Truly, it is one of the most challenging and rewarding undertakings of their lives.

Joshua brings a special mix of leadership, service, and dedication to the incoming class of Air Force Academy cadets. While attending Crestline High School, Joshua has attained a grade point average of 4.0, which ranks first out of sixty-two students in his class. During his time at Crestline High School, Joshua has received several commendations for his superior scholastic efforts. During his first year, Joshua was named to the Honor Roll and received an Academic Team Award. His second year was again marked by his being named to the Honor Roll, receiving yet another Academic Team Award and also being named ''Bulldog of the Month''. Joshua maintained this high level achievement throughout his tenure at Crestline High School.

Outside the classroom, Joshua has distinguished himself as an excellent student-athlete and dedicated citizen of Crestline, Ohio. On the fields of friendly strife, Joshua has participated in Varsity Cross County, Varsity Basketball, and Varsity Baseball. He is a four-time Cross Country letter recipient. Joshua also received the ''Middle of the Pack'' award as well as the ''2nd Man Coaches Award'' during his participation in athletics at Crestline High School. In addition to his athletic accomplishments, Joshua is an active member in his community by participating in Key Club, National Honor Society, Teen Institute, Church youth group, and a local prayer group.

Mr. Speaker, I would ask my colleagues to stand and join me in paying special tribute to Joshua Bowman. Our service academies offer the finest education and military training available anywhere in the world. I am sure that Joshua will do very well during his career at Air Force and I wish him the very best in all of his future endeavors.

RECOGNIZING ROCKWALL COUNTY LIBRARY'S READING FOR ADULTS PROGRAM

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. HALL. Mr. Speaker, I am honored today to recognize the Rockwall County Library's Reading for Adults program.

Three years ago, the library began a literacy program to help community adults develop essential skills through reading. The Reading for Adults program is affiliated with the ''Dallas Reads'' initiative and ''Literacy Pro,'' a worldwide venture. What started with two students and five tutors has grown into a program that instructs 158 students and relies on the services of 75 volunteer tutors. Classes, which are held at the Rockwall County Library and in nearby Royse City, range from one-on-one instruction to small classes of 15–20 students.

The Reading for Adults program has already been a big success. Students have earned their GED and some have completed citizenship requirements. Students also report that they are able to function more effectively from day to day. For example, after working with tutors, parents can more clearly express their concerns to teachers and doctors. The program offers us a wonderful example of how innovative, caring, and committed people can help positively shape communities throughout America.

The Reading for Adults initiative relies on the generosity of the entire community. The Friends of the Library donate their time and money. The library also organizes an annual Rock and Read event to raise money to buy books and materials. Recently, IBM awarded the library four computers with sound recognition software to help students learn to speak and read. Without these valuable resources, programs like Reading for Adults simply wouldn't exist.

On behalf of the students, tutors, organizers, and community of Rockwall, I want to take this opportunity in the House of Representatives to salute the Reading for Adults program.

INTRODUCING THE MEDICARE EARLY ACCESS ACT

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. STARK. Mr. Speaker, in honor of ''Cover the Uninsured Week,'' I am pleased today to join with my colleague Rep. SHERROD BROWN and more than 80 additional cosponsors in introducing the ''Medicare Early Access Act.'' This important legislation would provide an affordable health insurance option for the fastest growing segment of the nearly 44 million uninsured Americans—those ages 55–64.

In 2002, 43.6 million Americans were uninsured. There are many approaches to how we should address this growing problem. As most of my colleagues know, I am an advocate of a universal health care system in which each and every American would have health coverage. That is the most fair, affordable, and

sustainable solution to our national health care needs.

However, that won't be accomplished overnight. In the meantime, there are steps that Congress can and should be taking to develop immediate, if smaller, steps to providing people affordable health insurance coverage options. One such step is to pass legislation that would provide certain groups of individuals the option of buying into Medicare—a program with a proven track record that works. That's exactly what the Medicare Early Access Act does for people age 55 through 64.

As we all know, the baby-boomers are quickly approaching retirement, and health insurance is a major concern. Unfortunately, retiree health benefits have vanished or are quickly disappearing, leaving people with few or no affordable coverage options. A recent employer survey suggests that only 38 percent of large employers offer any type of retiree health benefits. Other recent research shows that 10 percent of the largest employers terminated all subsidized health benefits for future retirees in 2003.

With shrinking retiree benefits and no affordable options available in the individual market, people age 55 through 64 are often uninsured or gravely underinsured. Besides the 3.5 million uninsured between ages 55–64, another 3 million are forced to buy inadequate, overpriced coverage in the individual market. Most near elderly cannot purchase individual coverage because age rating and other underwriting techniques result in excessive premiums. Those that are even offered coverage are often required to pay astronomical deductibles and co-pays, or are severely limited by pre-existing condition exclusions.

In 1965, Medicare was specifically designed to provide coverage for those the market would not insure. Today we have the opportunity to expand on the original purpose of Medicare by providing access to people the market does not adequately cover. The Medicare Early Access Act would reduce the number of uninsured, provide better coverage for the underinsured, and improve the health status of this vulnerable population without harming Medicare or other insurance markets.

That's why the Medicare Early Access Act makes so much sense. It would allow people in this cohort to buy into Medicare and enjoy the exact same benefits available to all other Medicare beneficiaries. Premiums for these new participants would be based on actuarial calculations of the cost of providing services to the population. There would be no effect on the Medicare trust fund because premiums will cover the entire cost of services provided.

To ensure premiums are affordable, the bill provides a 75 percent advanceable, refundable tax credit. Thus, participants would pay a monthly premium equal to 25 percent of the cost of the program—an amount similar to what employed individuals pay for their health benefits.

I am pleased to report that advocacy organizations representing consumers and seniors agree with us. The Medicare Early Access Act has been endorsed by The Leadership Council of Aging Organizations (LCAO) which is a coalition of national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena. I would like to thank the 27 members of the LCAO who signed a letter in support of the Medicare Early Access Act. The full text of their letter appears at the end of my statement.

In our quest to reduce the number of uninsured Americans, the Medicare Early Access Act, is a great start. This bill would provide affordable, comprehensive coverage to the most vulnerable uninsured who have few, if any, health insurance options in the current marketplace. The system necessary to implement this bill is already in place; all we have to do is agree the uninsured deserve viable coverage options. I look forward to working with my colleagues on both sides of the aisle to enact this proposal.

THE MEDICARE EARLY ACCESS ACT BILL

SUMMARY

ELIGIBILITY

Starting January 2005, individuals age 55–64 who do not have access to coverage under another public or group health plan are eligible to purchase Medicare. Enrollees will receive the full range of Medicare benefits. Participants are not required to exhaust employer-based COBRA coverage before choosing the Medicare buy-in option. At age 65, buy-in participants move into regular Medicare.

In addition, because employers are dropping retiree health benefits at an alarming rate, early retirees who have access to retiree health coverage may also participate, and their employers can wrap around the Medicare benefit.

PREMIUMS

Enrollees must pay a premium to receive Medicare coverage. The premium will be set by the Centers for Medicare and Medicaid Services at the actuarial level necessary to cover the full cost of services provided to the buy-in population. The premium will be adjusted annually to ensure its accuracy.

TAX CREDIT

Program enrollees receive a 75 percent refundable, advanceable tax credit to offset premium costs. Thus, participants in the Medicare buy-in are only personally responsible for their 25 percent of the monthly premiums. The tax credit is modeled on the payment mechanism created by the Trade Adjustment Assistance (TAA) health care tax credit for displaced workers, which was enacted in 2002.

FINANCING

Premiums are deposited in a new Medicare Early Access Trust Fund. Participant premiums and tax credits are transferred to the Early Access Trust Fund to pay for Medicare services, ensuring this new program does not financially affect Medicare.

LEADERSHIP COUNCIL
OF AGING ORGANIZATIONS,
Washington, DC, May 5, 2004.

Hon. SHERROD BROWN,
Hon. PETE STARK,
Member of Congress,
Washington, DC.

DEAR REPRESENTATIVES BROWN AND STARK: The undersigned members of the Leadership Council of Aging Organizations (LCAO) strongly endorse the bill you proposed to help individuals age 55–64 years buy into the Medicare program at an affordable price.

Older Americans who are not yet eligible for Medicare have a difficult time finding affordable health care and in some cases may find that no insurer will cover them at a time in their life when they most need health insurance protection.

Your bill, which combines the efficiency of Medicare's mass market purchasing power with the affordability provided by refundable tax credits, effectively solves one of our nation's toughest uninsured problems.

We wish you success in this important legislative effort, and we will be happy to work with you and your co-sponsors in promoting its passage.

Sincerely,

AFSCME Retiree Program.
Alliance for Retired Americans.
American Association for International Aging.
American Association of Homes and Services for the Aging.
American Federation of Teachers Program on Retirement & Retirees.
American Foundation for the Blind.
American Public Health Association.
Association for Gerontology and Human Development in Historically Black Colleges and Universities.
Association of Jewish Aging Services of North America.
B'nai B'rith International.
Catholic Health Association.
FamiliesUSA.
Gray Panthers.
International Union, UAW.
National Asian Pacific Center on Aging.
National Association for Hispanic Elderly.
National Association of Professional Geriatric Care Managers.
National Association of Retired and Senior Volunteer Program Directors.
National Association of Retired Federal Employees.
National Association of Senior Companion Project Directors.
National Association of Social Workers.
National Caucus and Center on Black Aged.
National Committee to Preserve Social Security and Medicare.
National Indian Council on Aging.
National Senior Citizens Law Center.
OWL, the voice of midlife and older women.
Volunteers of America.

NEW YORK CITY WATERSHED PROTECTION PROGRAM REAUTHORIZATION

SPEECH OF

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 5, 2004

Mr. STUPAK. Mr. Speaker, I misspoke when on May 5, 2004, I identified perchlorate as the contaminant found at Camp Lejeune, North Carolina. The contaminants identified in the drinking water at Camp Lejeune were trichloroethylene and perchloroethylene.

THE PYRAMID OF REMEMBRANCE LIVING MEMORIAL

HON. STEVEN C. LaTOURETTE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. LATOURETTE. Mr. Speaker, I was honored to visit Arlington National Cemetery this

morning for the dedication ceremony for the Pyramid of Remembrance Living Memorial. It was a privilege to be in the company of a group of amazing young people from Painesville Township, OH, who have shown compassion and integrity beyond their years.

The idea for the Pyramid of Remembrance Living Memorial originated in a classroom at Riverside High School in Painesville Township, OH, and was sparked by the sight of a U.S. soldier being dragged through the streets of Mogadishu, Somalia. That horrible image was seared into our Nation's consciousness, and in the classroom of Dr. Mary Porter it spurred discussion of other worthy sacrifice that is regrettably overlooked.

The students decided then—more than a decade ago—that a memorial should be erected in our Nation's Capital to honor the forgotten ones—those killed in circumstances other than declared wars, including training accidents, humanitarian efforts, peacekeeping missions and terrorist attacks. The students envisioned a large memorial, possibly near the Mall, but ran into many stumbling blocks because such memorials must honor those who have died in declared conflicts.

They could have gutted the intention and heart of their memorial to make it fit the stringent confines of law, but the entire purpose of this endeavor was to honor those whose sacrifice doesn't fit in one tidy category. They persevered.

Twice, legislation I introduced to create the memorial was passed by the House of Representatives, but never with enough time left in a congressional session for the Senate to take it up. The students have been to Washington several times in the last decade, and have testified before both the House and Senate, and the National Capital Memorial Commission. They brought with them letters of support from former President Bush, former Secretary Cohen, and others. They were patient as one Congress faded away and another began, and held out hope each time Senator VOINOVICH and I introduced legislation—this might be the time we'd get it done.

At every turn and by everyone they encountered, the students were praised. ''This is a wonderful idea, but . . .''

If you hear someone say, ''This is a wonderful idea, but . . .'' enough times, some might be inclined to give up and chalk it up as a great idea that was never actualized. Not this group.

Last summer, a last-ditch meeting was held in my office, and this time we had the ear of the Superintendent of Arlington National Cemetery, John C. Metzler, Jr. Superintendent Metzler was candid and told the Senator and me that we couldn't build a memorial of the scale the students wanted in Arlington due to limited burial space. In fact, he told us that if the memorial before us was one-inch larger we'd need an act of Congress to approve it. He offered an alternative to accomplish the students' noble goal.

Five years ago, Arlington discontinued its program of living memorials because there were already 174 such memorials throughout the cemetery. But Superintendent Metzler graciously made an exception for the students of Riverside High School so their dream could become a reality. I want to give special thanks to Superintendent Metzler and Arlington National Cemetery Historian Tom Sherlock for their unwavering efforts on behalf of the school.

Though some might argue that the living memorial we dedicated on this glorious May morning is not as grand in scale as the students initially envisioned, it is every bit as grand in purpose. Every person who visits Arlington National Cemetery from this day forward—more than four million people a year—can take comfort knowing that this living memorial will honor not only those killed in the terrorist attacks on the Pentagon and the USS *Cole,* but also those who lost their lives in Somalia, Bosnia, Kosovo and Panama; during the bombing of the Marine barracks in Beirut: during the failed rescue attempt of American hostages in Iran; and in the far too many deadly training accidents that occur on land, in air, and at sea, so that our forces can be ready for combat.

Throughout our land, our military bases are named for those who died so that our troops are ready for war. Kelly Air Force Base in San Antonio is named for Lt. George Kelly, the first Army pilot to lose his life piloting a military aircraft on May 10, 1911. Hill Air Force Base in Texas is named for Maj. Ployer ''Pete'' Hill, who was killed October 30, 1935, while test flying the first B–17 at Wright Field in Dayton. Even Wright-Patterson Air Force Base in my state of Ohio is similarly named. The Wright portion comes from the Wright Brothers, of course. The Patterson is 1st. Lt. Frank S. Patterson, who died in a training accident in Dayton on June 19, 1919, while testing newly installed machine guns in his plane.

Those who are honored by this living memorial have perished in non-declared war situations. The list is long and incomplete, and the sacrifice is often not given the recognition it deserves.

Earlier this year, I attended the funeral of Sean Landrus of Thompson, OH, a father of three who died in Iraq after major combat ended. In the month of April alone, more than 136 U.S. troops died in Iraq, nearly a year after the end of declared combat. At least 13 were teenagers.

Just two weeks ago, three soldiers from Ft. Bragg died when their Black Hawk helicopter crashed during a training exercise. One planned to retire in a few months, another had just married on Valentine's Day. One commander remarked: ''To lose someone on a training flight as opposed to in combat makes no difference.'' He is right.

We should not judge or quantify the sacrifice of those who serve for and die for their country.

This morning, I was humbled that so many attended our dedication ceremony, including Senator VOINOVICH and his wife, Janet; Superintendent Metzler; Lt. Gen. Richard A. Cody; Col. Ricky L. Rife; former Congressman Michael P. Flanagan; Col. Glenn Lackey; Lt. Col. Steve Geise; Dr. Mary Porter; and of course the nearly 60 guests from Riverside High School and Painesville Township.

I was also privileged to present the students with greetings from Secretary Anthony J. Principi of the Department of Veterans Affairs, Chairman DUNCAN HUNTER of the House Committee on Armed Services, and Vice President DICK CHENEY, who told the students: ''The ranks of the United States military have been filled with men and women of honor who place duty and country above self-interest. Whenever a service member is killed, our country mourns its loss. We also rededicate ourselves to continuing the tasks to which they dedicated their lives—to the defense of our country and to the lasting security, and peace of the world. Thank you again for establishing this fine memorial. It will always stand as a fitting tribute to those who lost their lives while in the service of our great Nation.''

I am incredibly proud of the students of Riverside High School for their idea and their tenacity, and their desire to share this memorial with the Nation. Visitors to Section 55 of Arlington National Cemetery will find a beautiful Southern Magnolia tree and a red granite base with a bronze marker. They will notice that many words are engraved on the marker, but not the name of Riverside High School.

The students' gesture to make the Pyramid of Remembrance Living Memorial a gift from America's youth is incredibly selfless, thoughtful and mature. On behalf of all Americans, I thank you and honor you.

HONORING MARINE LANCE CORPORAL PHILLIP E. FRANK

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. HYDE. Mr. Speaker, I rise today to pay tribute to the ultimate sacrifice of Marine Lance Corporal Phillip E. Frank, of Elk Grove Village, Illinois. He died April 8, 2004 of gunshot wounds sustained during combat operations in the Al Anbar Province of Iraq in support of Operation Iraqi Freedom.

Corporal Frank dedicated his young life at the age of 20 to the service of our country and restoring peace. Our deepest sympathies go to his wife, Keri Johnson Frank; his parents, Roy and Georgette Frank; his sister Cyndi; and other family, friends and community members who mourn his loss.

Lance Cpl. Frank was assigned to the 2nd Battalion, 1st Marine Regiment, Regimental Combat Team 1, 1st Marine Division, I Marine Expeditionary Force, based in Camp Pendleton, California. He was a recipient of the National Defense Medal.

Lance Cpl. Frank was born on July 5, 1983, and grew up in Cliffwood Beach, New Jersey.

ELECTIONS IN PUNJAB MAY 10—THIS IS AN OPPORTUNITY TO CLAIM FREEDOM

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. TOWNS. Mr. Speaker, India is undergoing a cycle of elections. Unlike this country, India does not hold the elections on a single day but over a period of time. I guess it's difficult to hold elections on one day when you have a billion people.

Elections in Punjab have been scheduled for May 10. Recently, the Council of Khalistan put out an open letter to the people of Punjab urging them to use these elections to bring about independence for the Sikh homeland, Punjab, Khalistan.

It looks like the elections will result in a hung Parliament. The militantly Hindu nationalist Bharatiya Janata Party (BJP), which has

been leading the government, seems to have lost some ground. A coalition government will need to be formed.

That brings substantial power to the regional parties in the various states and regions of the country. These parties could well control who runs the Indian government. The Council of Khalistan called on these regional parties to band together in a ''freedom bloc'' to unite for freedom and self-determination for all of the minorities of South Asia.

The open letter notes that both the BJP and the rival Congress Party are dangerous to the freedom of the Sikhs and other minorities, and the regional Akali Dal is in coalition with the BJP. The Akali leaders invited the Congress Party government of Indira Gandhi to invade the Golden Temple, the seat of the Sikh religion, and they surrendered quickly when the attack came.

This letter points out these and other reasons why it is important to use these elections as a springboard to achieve freedom for Khalistan and the other nations seeking to free themselves of Indian rule.

Mr. Speaker, we all know the brutality of India's suppression of these freedom movements. They have murdered over 250,000 Sikhs since 1984, over 85,000 Kashmiri Muslims, over 300,000 Christians in Nagaland, and tens of thousands of other minorities. Now, according to the Tribune of Chandigarh, the Indian government is demanding that the government of Punjab pay them back for the costs accrued in suppressing the Sikhs.

This is outrageous, Mr. Speaker. As the beacon of freedom, the United States must be strong against this kind of repression. We should stop all American aid to India until it stops the repression and allows all people within its borders to enjoy their most basic human rights fully. And we should put this Congress on record as supporting self-determination for the Sikhs of Khalistan, the Muslims of Kashmir, the Christians of Nagaland, and all the other people seeking freedom from India's brutal rule.

The right to self-determination is the essence of democracy, Mr. Speaker. The lack of self-determination and the repression show that India's claim to be a democracy is fake. It is time for us to take a stand on behalf of freedom for all.

Mr. Speaker, I would like to insert the Council of Khalistan's open letter into the RECORD at this time.

OPEN LETTER TO THE SIKH NATION,
April 27, 2004.

Elections in Punjab have been set for May 10. Elections under the Indian Constitution will not free the Sikh Nation. Use this opportunity, however, to elect committed, hottest Sikhs who are committed to freeing Khalistan to Parliament.

These elections will certainly result in a hung Parliament. No party is capable of putting together the national majority needed to control Parliament on its own. A coalition government will be formed. The regional parties will be very important in deciding who will control the government. This gives the regional parties and the regions they represent enormous power. We must use this power to our benefit. It is time for the regional parties to form a ''freedom bloc'' to work together for freedom for Khalistan, Kashmir, Nagaland, and all the minority nations seeking their freedom from India's brutal rule. We agree with L.K. Advani when he said, ''When Kashmir goes, India goes.'' By securing freedom for any of the captive nations of South Asia, we bring about freedom for all of us. Working together in a common, unified effort will hasten that day for everyone.

Congress and the BJP are both the enemies of the Sikh Nation. They both watch out for the interests of the Hindu majority at the expense of the Sikh Nation and other minorities. The BJP has murdered Muslims in Gujarat, in Kashmir, and elsewhere and Christians in Nagaland and throughout India. They have forcibly reconverted Christians back to Hinduism. They preach Hindutva (total Hindu control of the culture and society) and openly preach that if you live in India, you must either be Hindu or be subservient to Hinduism.

The Congress Party attacked the Golden Temple, the most sacred shrine of the Sikh Nation, 125 other Gurdwaras throughout Punjab. Over 20,000 Sikhs were murdered in those attacks, known as Operation Bluestar, including Sant Jamail Singh Bhindranwale, General Shabeg Singh, Bhai Amrik Singh, and over 100 Sikh religious students ages 8–13 who were taken out into the courtyard and shot. The BJP congratulated Indira Gandhi on the attack and said it should have been done earlier.

These attacks accelerated the Sikh independence movement and deepened the desire for independence in the hearts of Sikhs, a fire that burns brightly in the hearts of the Sikh Nation to this day. Sant Bhindranwale said that the attack on the Golden Temple would ''lay the foundation stone of Khalistan'' and he was right. Late in 2003, former Member of Parliament Atinder Pal Singh organized a seminar on Khalistan at Baba Makhan Shah Labana Hall, Sector 30, Chandigarh. This shows that the flame of freedom is still burning in the hearts of Sikhs. Sikhs can never forgive or forget the Indian government's military attack on the Golden Temple. It is time to take action to free our homeland.

The Badal Akalis are totally controlled by their coalition partners, the BJP. Chief Minister Captain Anarinder Singh is in bed with the Congress Party. He honored the former Chief Minister, Beant Singh, who is responsible for the mass murder of hundreds of thousands of Sildis and gave over 41,000 cash bounties to police officials for Killing Sikhs. Neither will protect the interests of the Sikh Nation. They have undermined Sikh character and Sikh values. Simply by joining the Congress Party, Captain Amarinder Singh is undermining Sikh values. Badal, Tobra, and Longowal said that India would have to get to the Golden Temple by rolling tanks over their dead bodies, then quickly surrendered. The Alkalis invited the Indian Army to the Golden Temple to murder Sant Bhindranwale, General Shabeg Singh, Bhai Amrik Singh, and so many other committed Sikhs.

Do not support Badal or the Alkalis. The Badal government was the most corrupt government in the history of Punjab. They sold jobs for a fixed fee. They came up with a new, dignified term for bribery: ''fee for service.'' If you didn't pay the fee, you didn't get the service. Badal's wife was so experienced that she could pick up a bag of money and tell how much money was in it. Parkash Singh Badal was a disaster for Puniab and a disgrace to the Sikh Nation. Yet the Akali Dal continues to support Badal, even though he was prosecuted and jailed for his corruption. What has happened to the character of the present-day Alkalis? They are defaming the name of the pre-partition pious Akalis who suffered and sacrificed for the cause of the Khalsa Panth.

Not even a singe Akali protested the unprecedented corruption of Badal. According to India-West, the Punjab Vigilance Bureau carried out raids on Badal's properties for several months and filed a charge-sheet in a local court charging Mr. Badal with siphoning off Rs. 784 million, the equivalent of $17 million in U.S. money, during his five years as chief minister. The article says that Mr. Badal and his family hold assets of Rs. 4326 crores (nearly $1 billion), most of which are located outside India. Half the population of India lives below the international poverty line. About 40 percent live on less than $2 per day.

Lalit Mansingh, the outgoing Indian Ambassador to the United States, has said, ''There is no India without Sikhs and no Sikhs without India.'' He is wrong. The Sikh Nation has survived perfectly fine without India. Before there was an India, Sikhs flourished. The Sikhs ruled Punjab as an independent country from 1710 to 1716 and again from 1765 to 1849. Sikhs stopped the invasion from the West, annexed Kashmir from the Afghans, and occupied Kabul for a short period.

Remember the words of Professor Darshan Singh, former Jathedar of the Akal Takht, during the celebration of Guru Nanak's birthday: ''If a Sikh is not a Khalistani, he is not a Sikh.'' He was only reiterating the Guru's blessing, ''In Grieb Sikhin Ko Deon Patshahi.'' The time to achieve our independence is now.

The opportunity these elections provide must be used to liberate our homeland, Khalistan, from Indian oppression. We must choose leaders who will work for freedom for the Sikh Nation. Remember, you get what you vote for. Always remember our heritage: Raj Kare Ga Khalsa; Khalsa Bagi Yan Badshah. Freedom for Khalistan is very close. Let us take this opportunity to make it happen.

Panth Da Sewadar,
DR. GURMIT SINGH AULAKH,
President, Council of Khalistan.

REMEMBERING DR. JAMES E. HAYES

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. HALL of Texas. Mr. Speaker, I am honored today to pay tribute to an esteemed physician and administrator from the Fourth Congressional District of Texas, Dr. James E. Hayes, who died recently at the young age of 49 of multiple myeloma. Dr. Hayes was nationally renowned as an effective and innovative emergency room physician and administrator during his twenty-two year career.

Jim Hayes was born in Sherman, Texas, and graduated from Whitesboro High School in 1972 and Grayson County College in 1973. He received his bachelor's degree from Texas Tech University in 1976, graduating summa cum laude, and received his medical degree from Southwestern Medical School 4 years later.

Jim dedicated his career to serving the healthcare needs of the citizens of North Texas. He began as a staff emergency physician in 1981 at Methodist Medical Center, where he was named associate medical director of emergency services. In 1991, while at Methodist, he was named medical director for CareFlite Dallas.

He left Methodist in 1992 to become chairman of the emergency medicine division of the department of surgery at UT Southwestern. At the same time he served as director of the Poison Control Center and director of emergency services at Parkland Memorial Hospital. In 1997, in recognition of his years of outstanding leadership and service, he was named to the Riggs Family Chair in Emergency Medicine at UT Southwestern.

In 1999 Jim joined EMCare, a Dallas-based emergency department management company, as the chief of medical affairs and served in that capacity until September, 2003, when he left EMCare for medical reasons. In October, as a testament to his many contributions to his profession, he received the James D. Mills Award for Outstanding Contributions to Emergency Medicine from the American College of Emergency Physicians.

Dr. Jim Hayes will be long remembered as a dedicated physician, talented administrator and emergency room innovator. The citizens of North Texas have lost a valuable asset and a good friend, and we send our heartfelt condolences to his family—mother, Helen Acker Hayes of Whitesboro; brother, Bill Hayes of Whitesboro; and sister, Diane Hayes Gibson of Sherman.

I have lost a great personal friend—one I could always rely on for advice and direction regarding any pending health issues. He was a kind and valuable friend—and the world is better off because he walked this way. Jim had unquestioned ethics, determined loyalty to his patients, and was pure class in all of his dealings with those of us who loved and admired him.

Mr. Speaker, as we adjourn today, I want to take this opportunity in the House of Representatives to pay our respects to this dedicated physician, esteemed citizen and my good friend—Dr. James E. Hayes.

HONORING JOHN JERMANIS, SAN LEANDRO CITY MANAGER EXTRAORDINAIRE

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. STARK. Mr. Speaker, I rise today to pay tribute to John Jermanis, City Manager of San Leandro, California. This year, John is marking 35 years of outstanding service in municipal government.

John was born and raised in Berkeley, California. He attended Berkeley High School, received his bachelor's degree in business administration from San Francisco State University, and has done graduate studies in public administration with California State University Hayward.

He began his municipal government service in 1969 as an accountant with the city of Livermore. In 1971, John was hired by the city of San Leandro as assistant Finance Director and has been with the city for 33 years. In 1982, he became the City's Finance Director, and in 1977, he was appointed by the City Council as City Manager.

John has a proven track record with the city of San Leandro that is hard to beat. His professionalism, intellect, and commitment to the city are exemplary. He is focused on making sure San Leandro stays on sound fiscal footing and is responsive to the needs of its citizens.

His colleagues know John Jermanis as City Manager Extraordinaire. This is a fitting description of his talent and a tribute to his expertise in city management.

SUPPORTING THE GOALS AND IDEALS OF PEACE OFFICERS MEMORIAL DAY

SPEECH OF

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. STUPAK. Mr. Speaker, today the House of Representatives will overwhelmingly support H. Res. 622, a resolution that pays tribute to Peace Officers Memorial Day, which takes place on May 15th, and honors those law enforcement officers who have died or become disabled in the line of duty. As a former officer with the Michigan State Police and Escanaba City Police Department as well as founder and co-chair of the Law Enforcement Caucus, I am a proud co-sponsor of this Resolution and want to thank my colleague Mr. HEFLEY for co-sponsoring it again this year.

Since September 11, 2001, many in this Nation and this Congress have come to recognize the importance of the sacrifices made by our law enforcement officers. Every day these men and women protect and serve, often putting their own lives at risk.

Peace Officers Memorial Day brings us together in honoring the sacrifice our Nation's law enforcement and public safety officers make to our communities and our Nation every day.

This sacrifice was all too clearly demonstrated in Detroit, Michigan this year. Jennifer Fettig, a 26-year-old Detroit Police Officer and her 21-year-old partner, were killed in February during a traffic stop. This tragic killing illustrates the danger our law enforcement officers face daily not only during crisis situations, but while performing routine duties.

I think it is important as we discuss and pass this resolution that we must also resolve to provide our public safety officers the resources they need to meet the daily challenges of their jobs—especially at a time when we have placed greater demands on them to fight and prevent terrorist threats. We can do that by fully funding important grant programs such as COPS, Byrne, and LLEBG.

That also includes providing assistance to help regional law enforcement and first responders talk to each other in times of emergency. My bill, H.R. 3370, The Public Safety interoperability Act, would provide grants to local law enforcement agencies to modernize their communication systems and become interoperable. These are the kinds of resources and tools I'm talking about. We need to do everything possible to ensure that our law enforcement officers are fully interoperable.

I am hopeful that my colleagues will follow up on their support of this resolution, and continue our commitment to law enforcement by supporting these important funding needs. It is the least we can do for those who put their lives on the line for us every day.

RECOGNIZING WILLIAM ''BILL'' DONOVAN FOR 25 YEARS OF SERVICE WITH NAFCU

HON. STEVEN C. LaTOURETTE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. LATOURETTE. Mr. Speaker, it is with great pleasure that I rise today to recognize my friend and a true public servant William ''Bill'' Donovan for 25 years of service here in Washington with the National Association of Federal Credit Unions (NAFCU). I know that many of my colleagues here today—both past and present—have had the opportunity to meet and work with Bill, and I hope they have enjoyed that opportunity as much as I.

Bill currently serves as the Senior Vice President and General Counsel for NAFCU. I came to know Bill early in my career as he and I and my colleague from Pennsylvania, Mr. KANJORSKI, worked for the passage of the Credit Union Membership Access Act in 1998. Following the passage of that historic legislation, Bill delivered a picture to my office with my head mounted on Mount Rushmore. Looking back at those years, it should have been Bill's head mounted on Mount Rushmore instead of mine, as no one was more instrumental in making sure that legislation passed than Bill Donovan.

In his 25 years of service to NAFCU, Mr. Donovan has been a tireless advocate and a leading voice for the credit union community on Capitol Hill. Just as amazing as his work for NAFCU is his commitment to family-life outside of work. Mr. Donovan and his wife Donna have seven children, and he has remained an active member of his church for many years.

I congratulate Bill on all of his fine work throughout his illustrious 25 years at NAFCU. I have enjoyed working with him on issues that are important to the credit union community, and I look forward to continuing to do so in the future. Congratulations on your 25th Anniversary at NAFCU, Mr. Donovan.

HONORING U.S. ARMY PRIVATE FIRST CLASS SHAWN C. EDWARDS

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. HYDE. Mr. Speaker, I rise today to pay tribute to U.S. Army Private First Class Shawn C. Edwards, of Bensenville, Illinois. PFC Edwards was killed on April 23, 2004 when his convoy hit a roadside bomb in Samarra, Iraq. He had been serving in Iraq since February.

PFC Edwards was a junior in high school when he made the adult decision to enlist in the U.S. Army. He told his father he could use

the discipline, and he didn't want his family worrying about paying for his education. He began his service after graduating from York Community High School in Elmhurst in 2002. He was assigned to the 121st Signal Battalion, Ist Infantry Division, based in Kitzingen, Germany. Like many of our soldiers, PFC Edwards had plans for the time when he would come back home. He was going to return to college. He loved computers and tinkering, and demonstrated his expertise in electronics during his brief Army service. At the time of his death, he was setting up cellular communication networks in support of Operation Iraqi Freedom.

PFC Edwards carried on a proud family tradition when he enlisted in the military. His father is a veteran of the Vietnam War, and his grandfather served in World War II.

PFC Edwards was only a young man of 20 when he made the ultimate sacrifice in service to his country. Our deepest sympathies go to his beloved family—his mother Elizabeth, his father Glen, and his sister Robin—as well as to his other family and friends. The entire community joins in mourning Shawn's loss.

We honor the memory of PFC Shawn C. Edwards and the dedication and bravery with which he served our nation and the people of Iraq.

OXYCONTIN IS ADDICTIVE

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. TOWNS. Mr. Speaker, I rise today to address a long-standing and unfortunately ever growing problem affecting our society, prescription drug abuse and addiction. Specifically, I would like to discuss the scourge that has been caused by the prescription drug OxyContin. OxyContin has caused countless deaths from overdose and toxicity. Equally important, however, OxyContin has caused thousands of individuals lawfully prescribed the drug to become addicted, causing a wide variety of destructiveness and in many instances ruining the lives of innocent people.

OxyContin is a schedule II narcotic pain medication as defined by the Controlled Substances Act. This is the most dangerous designation of legal, as opposed to illegal, prescription drugs under the Controlled Substances Act of 1970. It is in the same class as morphine. Unfortunately for the American public, the manufacturers and distributors of OxyContin have made concerted, intentional efforts to make this dangerous drug anything but ''controlled''.

Purdue Pharma is the manufacturer of OxyContin. This drug was promoted with the assistance of Abbott Laboratories. Over the last 6 years OxyContin has amassed sales of more than ten billion dollars as a result of an overly aggressive, inappropriate and, unfortunately for our citizens, highly effective marketing plan.

This drug was marketed to a broad range of physicians who, according to Purdue Pharma's own internal documents, were uneducated or at least undereducated on the use of opioids like oxycodone and morphine. Family practitioners in rural areas, gynecologists, sports medicine practitioners and even dentists were instructed by Purdue and Abbott representatives that they could prescribe this morphine-like drug for even moderate pain without the slightest concern of addiction. They were told to prescribe the drug in very high doses so long as the pain persisted. The most widely prescribed dose of OxyContin contains 20 milligrams of oxycodone. Taking one pill of 20 mg OxyContin would be the equivalent of taking 4 Percocets, a very strong narcotic pain medication, as well. The marketing plan and the assertions about the safety of the drug were based on false information. OxyContin can be addictive to prescription patients.

In fact, countless numbers of innocent pain patients have become addicted to OxyContin. They were told both by the company and unwitting physicians that this drug was not addictive. That was not true. There is no support for the theory that the OxyContin is not addictive. Moreover, the manufacturers and promoters of this dangerous drug have conspicuously failed to study the addictiveness of this drug over the last 6, very prosperous years. It is only logical that the results of those studies would only undermine their very persuasive sales claims that this drug was not addictive.

Purdue will most certainly tout their concern for the pain patient, claiming that their drug provides pain relief to the masses of unfortunate sufferers of chronic pain. I am not persuaded nor will I be deceived by this argument. I am truly concerned for the pain patient. It is not my purpose to take good medications away from pain patients, but it is also not my intent to permit American companies to mislead the pain patients as to the safety and effectiveness of pain medication. Misinformation about the addictiveness of this drug did not help the pain patient. Instead, it took advantage of the very condition that this drug was supposed to help.

I call upon Congress to convene hearings on the question of how this public health menace came to be, who is responsible, what was told to the American public and to healthcare professionals by the manufacturer, and what we, the Congress, can do to prevent tragedies like this from repeating themselves in the future.

A RENEWED CALL FOR MINING LAW REFORM

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. RAHALL. Mr. Speaker, an article on the front page of the May 11, 2004, Washington Post entitled, ''All Quiet On the House Side,'' by Charles Babington, contrasts ''the burgeoning scandal over U.S. treatment of Iraqi prisoners and persistent concerns about the economy and the deficit'' with the seemingly limitless lack of concern for meaningful action here in the House on any significant issue. This comes as no surprise to me or, evidently, Mr. Babington.

''The House's lean schedule is no accident. GOP leaders who set the agenda and floor schedule say they achieved most of their top priorities last year and are content to rest on their laurels through the election.''

For this reason, a great number of important issues lay by the wayside, collecting dust, while we convene in brief, three-day sessions to tackle the not-so-weighty issues of naming federal post offices, or designating days, weeks, or months to such non-controversial subjects such as ''Financial Integrity.''

A perfect example of an opportunity squandered by the Republican leadership is the total lack of attention being given to the need to reform this country's antiquated mining laws.

As many of my colleagues know, I have fought to reform the General Mining Law of 1872 for the past 17 years, and along with Representatives Shays and Inslee, continue to work on behalf of the taxpayer to ensure proper reimbursement for the natural riches mining companies extract from our public lands for the cost of a fast-food cheeseburger. Our bill, H.R. 2141, deserves consideration by the House Resources Committee, yet no hearings have been scheduled.

This is not going unnoticed by the public. On Monday, May 10, 2004, the Environmental Working Group released a new interactive report, located at www.ewg.org/mining, that shows how international and domestic mining companies have taken control of 9.3 million acres of public western lands under the archaic Mining Law of 1872. On the day following its release, three Western newspapers ran articles focused on local problems resulting from the mining industry's control of Western public lands:

''Group raises red flag over old mining law'' by Michael Doyle, Modesto Bee.

''Once public land goes private'' by Robert McClure, The Seattle Times.

''Bargain-priced mining claims abound in West, figures show. Report: 5.6 million acres staked out under 1872 law'' by Mike Soraghan, The Denver Post.

H.R. 2141 does not deal with coal, or oil and gas. These energy minerals, if located on Federal lands, are leased by the government, and a royalty is charged. Further, Mining Law reform does not deal with private lands. The scope of the Mining Law of 1872 and legislation to reform it is limited to hardrock minerals such as gold, silver, lead and zinc on Federal lands in the Western States.

H.R. 2141 would prohibit the continued giveaway of public lands. It would require that a holding fee be paid for the use of the land, and that a royalty be paid on the production of valuable minerals extracted from these Federal lands. And, it would require industry to comply with some basic reclamation standards.

The American public deserves a fair return from the gold, silver and other hardrock minerals produced from public lands and the hard rock mining industry should be required to meet the same environmental standards that all other extractive industries meet. As our distinguished Minority Whip, Rep. Steny Hoyer, noted on the floor today, ''Our constituents did not send us here to pretend to legislate. They sent us here to solve problems and fulfill our duty.''

It is time, well past time, that Congress replace the 1872 Mining Law with one that reflects our values and goals. Please contact the Resources Committee Democratic staff if you would like to co-sponsor this important legislation.

RECOGNIZING CONTRIBUTIONS OF PEOPLE OF INDIAN ORIGIN TO UNITED STATES AND BENEFITS OF WORKING TOGETHER WITH INDIA

SPEECH OF

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mrs. MALONEY. Mr. Speaker, as a cosponsor of H. Con. Res. 352, I strongly support this resolution which honors the contributions of people of Indian origin to the United States and declares that Congress is committed to working together with India to promote peace, prosperity, and freedom among all countries.

As the largest democracy in the world, India has shown a genuine commitment to improving its economic ties to the United States, and the U.S. and India have formally committed to work together to build peace and security in South Asia, increase bilateral trade and investment, meet global environmental challenges, fight disease, and eradicate poverty.

There is no doubt that the close relationship between the U.S. and India is crucial to world stability and to the economic futures of both countries. India's long-term economic potential is tremendous, and the U.S. is already its largest trading and investment partner.

I am hopeful that we will foster an even closer relationship in the coming years by working together to tackle new and existing challenges.

CELEBRATING GIRLS INCORPORATED OF THE ISLAND CITY

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. STARK. Mr. Speaker, I rise today to recognize the 40th Anniversary of Girls Incorporated of the Island City in Alameda, California. Girls, Inc. of the Island City held a successful 5th Annual Celebration of Excellence luncheon on May 1, 2004, in conjunction with their milestone anniversary.

Forty years ago, a group of Alameda citizens established a program for girls which was incorporated as Alameda Girl's Club, Inc. Kaye van Valkenberg, served as its first Board President (1964–1967) and together with other local civic leaders inspired what is now called Girls Inc. of the Island City. Over 300 girls currently participate in Girls Inc. of the Island City programs.

The mission of the organization is to inspire all girls to be strong, smart and bold through innovative programs, activities, and advocacy. The goal of its Activity Centers is to provide quality services to children and families, to encourage and support children's growth, and assist families to meet economic needs and family goals.

Girls Inc. of the Island City is a local member organization of the national Girls Inc. organization offering programs focused on helping girls of all races, ethnicity, economic and social backgrounds avoid violence, drug addiction, and teen pregnancy; teaching girls literacy in economics and the media; and encouraging girls to pursue careers in math, science and technology, and become community leaders.

Six program areas—careers, and life planning; health and sexuality, leadership and community action, sports and adventure; self-reliance and life skills; and culture and heritage are the foundation of Girls, Inc. of the Island City.

Girls, Inc. of Island City continues to inspire all girls to be strong, smart and bold and to have confidence and be safe in the world. I applaud its forty years of exemplary service and join the city of Alameda in appreciation for this organization's efforts to make a positive difference in the lives of girls.

REMEMBERING BILLIE ERLINE THORNTON

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. HALL of Texas. Mr. Speaker, today I would like to honor a dedicated and successful woman from Van Alstyne, Texas—Billie Erline Thornton, who passed away on March 17, 2004.

Billie was a successful businesswoman. After graduating from Anna High School and attending Draughn's Business College, she worked for the First National Bank in Dallas and the First National Bank in Anna. She finished her career as the manager of the Hurricane Creek Country Club, where she worked for nineteen years.

While she was a dedicated businesswoman, she was also a devoted wife, mother, and grandmother. She was married to her husband, Bob Thornton, for fifty-eight years and she helped raise their three daughters. She is survived by her husband, her daughters and their husbands, Sheryl and Walt Priest of North Little Rock, Arkansas, Brenda and Wayne Baggett of Friendswood, Texas, and Linda and David Wood of Van Alstyne, Texas. She was also the proud grandmother of Brian Priest and his wife Amanda, Stewart Priest, Emily Baggett and her husband James, Trevor Wood, and Tyler Wood. She also had one great-grandchild, Gabriella Hess. Her son, Bryan Norwood Thornton, preceded her in death, as did her parents, Bernie Reed and Effie Smith Bryan, one sister, Jimmie Wolfenson, and one brother, Richard Bryan.

Billie's warm smile and good heart will be missed throughout the community of Van Alstyne. On behalf of her family and friends, I want to take this opportunity in the House of Representatives to pay our last respects to this beloved woman—Billie Erline Thornton.

COMMEMORATING THE RETIREMENT OF LEMUEL M. PROCTOR, CHIEF OPERATING OFFICER, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, 2004

HON. ALBERT RUSSELL WYNN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. WYNN. Mr. Speaker, I would like to take a moment to recognize a man who has demonstrated that one person can make a difference in the lives of millions of people. If you are proud of the Metrorail system, you can thank Lemuel M. Proctor, who is the Chief Operating Officer for Rail Service at the Washington Metropolitan Area Transit Authority (WMATA). Today, I honor the almost-thirty years of service that Mr. Proctor has given to millions of citizens of Maryland and the Washington region.

A lifelong resident of Mitchellville, Mr. Proctor received his education and training in Prince George's County schools and the U.S. Air Force. From his modest beginnings as an electrical mechanic in 1974, Mr. Proctor steadily rose through the ranks to become one of the highest-ranking African-American executives at WMATA.

Mr. Proctor's credibility with rank and file employees has been critical to his success, particularly on September 11, 2001. On that day, Mr. Proctor had just overseen a busy morning rush hour, and many operators were returning to their home bases. After the morning's terrorist attacks, Mr. Proctor's task was to convince railcar operators to turn their trains around and transport passengers home safely. Mr. Proctor ensured that his employees had protective gear and sent them out to the system, where they performed their duties without hesitation. On that day, Metrorail transported passengers into and out of the region on back-to-back rush hours without incident.

With his energy and intelligence, Lem Proctor could have been a success in any line of work he desired. With the world at his feet, Mr. Proctor chose to make public service his vocation, and for that, we should all be grateful. I wish him the very best in his new endeavors.

IN HONOR OF CUYAHOGA SPECIAL EDUCATION SERVICE CENTER'S 30TH ANNIVERSARY

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. KUCINICH. Mr. Speaker, I rise today in honor and recognition of Cuyahoga Special Education Service Center (CSESC), as they enter into their thirtieth year of services and support focused on thousands of children with special needs and their families residing throughout Cuyahoga County. The staff of CSESC has provided priceless educational tools to enhance learning and discovery for countless children—enhancing their hopes and creating new dreams.

CSESC offers a variety of programs and services to more than 23,000 children and youth with disabilities throughout Cuyahoga County. The mission of CSESC is to provide outstanding educational opportunities for all children with disabilities aged 3–21, to elevate the academic achievement of these children, and to ultimately dissolve the divide that separates these special children from the mainstream. Moreover, this vital support serves to enrich every facet within the life of a child who faces these challenges on a daily basis.

From birth through adulthood CSESC offers comprehensive programs focused on the individual needs of every child and her family. Some of the main services provided by the

compassionate professionals at CSESC include instruction in Assistive Technology, Early Childhood Services, Vocational Services, Professional Development, Family Services and Consultation/Assessment Services.

Mr. Speaker and Colleagues, please join me in honor and recognition of the Thirtieth Anniversary of the Cuyahoga Special Education Service Center. This exemplary organization has uplifted the lives of thousands of children—from toddlers to young adults, who reflect courage, grace, brilliance and tenacity despite their personal challenges. The level of commitment from the staff at CSESC is equaled only to that of these children and their families—a commitment to hope, to dream, to believe, to achieve—to make a positive difference within our corner of the world and beyond.

A VISION FOR GENERATIONS

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. BERMAN. Mr. Speaker, I rise to pay tribute to three generations of the Abelson/Lasker families and Dr. Emil and Mrs. Erika Jacoby. All of these remarkable people will be honored at a special Adat Ari El dinner on May 16, 2004, appropriately themed, ''A Vision for Generations.''

Irv and Marcia Abelson, their children, and now their grandchildren have assumed key leadership positions and worked hard to build, support and improve Adat An El and the Jewish community. They have also provided critical support for a myriad of Jewish institutions both in Los Angeles and around the world, including Camp Ramah, the University of Judaism (UJ), the New Community Jewish High School, L.A. Hebrew High School, Heschel Day School, the Jewish Theological Seminary, the Women's League for Conservative Judaism, the Masorti Foundation for Conservative Judaism in Israel and the Bureau of Jewish Education.

Both Marcia and Irv have proven to be an indispensable part of the Adat Ari El community in so many ways. In addition to serving as Adat Ari El's Sisterhood President, Marcia worked with members of the Torah Fund for the Jewish Theological Seminary and the UJ.

Their daughter Jill was the second woman to ever become President of Adat Ari El. She was Vice President and Chairperson at the University of Judaism and served on various UJ committees for many years. Her husband, Marty Lasker, blows shofar—not an easy task—every year for the High Holy Days. He serves on several important Boards for organizations such as the New Community Jewish High School, Hebrew High School and Adat Ari El. My family and I are proud to call ourselves neighbors and friends of Jill and Marty.

The Laskers' children, Zachary and Jodi, continue in their parents' and grandparents' tradition of involvement and service. Zachary starred in several United Synagogue Youth (USY) plays and was President of the USY Chapter while in high school. Jodi worked at the Temple and was a USY Director during high school. Zachary has a masters degree in education from the UJ and Jodi holds an MBA and masters degree in education from the University. Both Zachary and Jodi have worked at Camp Ramah in California for many years in a variety of leadership positions. Currently Zachary is the assistant director for the camp and Jodi teaches at the Heschel Middle School in Northridge.

The Humanitarian Award recipients, Emil and Erika Jacoby, have also made invaluable contributions to Adat Ari El and are role models for all of us. Dr. Emil Jacoby worked in the Underground during WWII to help save Jews in Nazi-occupied countries. After the war he helped relocate displaced Jews to Israel. For many years he headed the Temple's religious school and served as Head of the Bureau of Jewish Education. He has a doctorate in education from the Jewish Theological Seminary, and was director of education for 16 years at Camp Ramah during the summer months and was also an adjunct professor at the Teachers Institute at the UJ.

Erika Jacoby taught in Adat Ari El's nursery school and served on many synagogue committees. She chaired the Holocaust Remembrance Committee which resulted in the dedication of a Holocaust Memorial Pillar. Erika also gives generously of her time and energy to speak with school children about her experience as a Holocaust survivor.

Mr. Speaker, I ask my distinguished colleagues to join me in saluting these incredibly accomplished and impressive people who have demonstrated an outstanding commitment to Adat Ari El and a longtime commitment to public service.

PERSONAL EXPLANATION

HON. LINCOLN DAVIS

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. DAVIS of Tennessee. Mr. Speaker, on rollcall No. 154, on agreeing to H. Res. 622—Supporting the goals and ideals of Peace Officers Memorial Day, I was present on the House floor but failed to vote. Had I voted, I would have voted ''yes.''

50TH ANNIVERSARY OF BROWN V. BOARD OF EDUCATION

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Ms. NORTON. Mr. Speaker, on May 17, 2004, the Library of Congress will celebrate the 50th anniversary of the Supreme Court's landmark decision, Brown v. Board of Education. This celebration will include an exhibit as well as a panel discussion on school integration. In conjunction with this celebration the Library's Leadership Development Program class of 2003–2004 sponsored a poster contest in the District of Columbia Public Schools. Children in three grade categories, grades 3–4, 5–6, and 7–8, were asked to submit posters which expressed the theme, ''How has the case changed our schools?'' The three winners of the poster contest are: Maria Oliva, age 9, Shepherd Elementary School, Teacher: Dee Dee Chambliss; Canaisha Vaughn, age 11, Hamilton Center, Teacher: Leslie Milofsky; and Nathan Johnson, age 13, Kramer Middle School, Teacher: Mary Jackson.

Congratulations to these three winners and to all students who participated in celebrating the 50th anniversary of Brown v. Board of Education.

CONGRATULATING MR. ROBERT J. ANADELL ON HIS RETIREMENT

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. VISCLOSKY. Mr. Speaker, it is with great pleasure and honor that I congratulate Mr. Robert J. Anadell on his retirement from the International Brotherhood of Electrical Workers Local 697. Bob has spent nearly 40 years dedicating his life to the interests of Local 697 as well as his community in Northwest Indiana. His career at Local 697 has allowed him the opportunity to touch the lives of numerous people. In honor of his gracious service to Local 697 as well as his community, there will be a celebration of his accomplishments on June 4, 2004, at the Avalon Manor Banquet Hall in Merrillville, Indiana.

Bob Anadell has accomplished many visionary goals throughout his career. Before joining Local 697 as a Journeyman Electrician in 1972, Bob admirably served in the United States Army during the Vietnam War until his Honorable discharge in 1968. After becoming a Journeyman Electrician, Bob faithfully served Local 697 on the Anprenticeship Committee and Executive Board. He served as President of Local 697 from 1985–1991 and again in 1993, and he also served as the Business Manager/Financial Secretary from 1966–2004.

Not only has Bob Anadell had many positive accomplishments throughout his career at Local 697, he has also actively contributed to his community through participation in various programs aimed at improving opportunities for the people of Northwest Indiana. He has been a powerful member of the Northwest Indiana Building Trades, Secretary Treasurer of the IBEW State Conference, Vice-President of the Indiana State AFL–-CIO, Trustee of the Lake Area United Way, Board of Directors of Trade Winds, Member of the Lake County Integrated Services Delivery Board, Chairman of the Board of Directors, Investment Committee, and Executive Committee of the Legacy Foundation, as well as Co-Chairman of the Heroes Committee of the American Red Cross.

Northwest Indiana has a rich history of excellence in its craftsmanship and loyalty by its tradesmen. Bob Anadell is an outstanding example of the quintessential tradesman. He has mastered his trade and has consistently performed at the highest level throughout his career. Bob has demonstrated his loyalty by his outstanding service to Local 697 and his community through his hard work and self-sacrifice.

Mr. Speaker, Bob Anadell has given his time and efforts selflessly to the people of Northwest Indiana throughout his years of service. He has taught every member of Local 697 and his community the true meaning of service to all members of the Northwest Indiana community. I respectfully ask that you and my other distinguished colleagues join me in

congratulating Mr. Bob Anadell for his outstanding contributions to Indiana's First Congressional District. I am proud to commend him for his lifetime of service and dedication.

RECOGNIZING CONTRIBUTIONS OF PEOPLE OF INDIAN ORIGIN TO UNITED STATES AND BENEFITS OF WORKING TOGETHER WITH INDIA

SPEECH OF

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. EMANUEL. Mr. Speaker, today I rise in strong support of H. Con. Res. 352, honoring the contributions of Indian-Americans and the people of India to the United States. This important resolution recognizes the benefits of our two nations working together towards our common goals of promoting peace, prosperity, and freedom among all countries of the world.

I am proud to count among my friends and neighbors many people of Indian origin, and I have seen first-hand the contributions they have made to the well-being and prosperity of our community. Indeed, the Fifth District of Illinois is enriched by the presence of longtime residents and recent immigrants from India, who have contributed their talents and energy to small business development, health care, science and the fine arts. Through their hard work and commitment to public service, our Indian neighbors have proven that America is made stronger by the contribution of its immigrant communities.

I am also pleased to recognize the continuing and growing friendship between the nations of India and the United States. India is the most populous democratic country in the world and has historically been a steadfast ally and loyal friend of the United States. We have benefited from our close and mutual friendship with India, through cooperation on security, trade and technological advancements which improve lives in both countries and help promote safety throughout the world.

With this bipartisan resolution, the American people recognize that we will be more effective and successful with India as a strategic partner in achieving our mutual objectives to promote democracy, combat terrorism, pursue nuclear non-proliferation, strengthen the global economy and trade, and slow the spread of HIV/AIDS.

Mr. Speaker, I thank the gentlelady from California for introducing this concurrent resolution, and I urge my colleagues to support it, as well as to continue all of our efforts to promote peace and cooperation between these two great nations.

MILLER MOTION TO INSTRUCT CONFEREES ON FY04 LABOR—HHS BILL, H.R. 2660

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Ms. WOOLSEY. Mr. Speaker, I support the Miller motion to instruct conferees because it ensures that those making as little as $23,660 a year are able to retain the overtime privileges they currently receive.

Mr. Speaker, I was a human resources professional for 10 years in a manufacturing human resources company, and then for 10 years I had my own company, advising high tech companies on their personnel policies and practices, including wage and salary structures. I know a thing or two about work structures.

Under the new overtime rules a ''Team Leader'' would be ineligible for overtime. I'm going to tell you what a team leader is: First of all, a team leader is not a professional that has a whole group of professional people working as a team negotiating for some grand project in some community. That team leader is a professional period, not a person paid on an hourly rate or a salaried nonexempt person.

In reality a team leader is a senior employee who has the background and the experience to earn the top of their pay rate. And because they've been around, because they know something, they've been asked to show more junior workers how to do the work, and to give them confidence and to give them guidance.

But they're doing the work right alongside of the worker they are mentoring. Today this person earns the top of their pay grade plus overtime. Under the new rules, without that overtime, that ''Team Leader'' is probably going to earn less than the person that they're working and guiding. The person the ''Team Leader'' guides will still qualify for overtime for the same hours worked.

So what are we talking about here? We're talking about people at the top of their pay grade getting less because they happen to have institutional knowledge, even though they are doing the same job. And I just don't see how anybody here in this Chamber believes that any new rules that impact workers like these are good for most Americans.

These rules help big business plain and simple, such as the newspaper publishers who were standing up and cheering Secretary Chao when she announced how these rules would allow them to stop paying overtime to journalists. They knew they were going to save money, lots of money.

Well, a rule that works for a handful of business owners and against most of the workers can't be the rule that works for the people of this country. That's why I urge my colleagues to support the Miller motion to instruct conferees and prevent our hard working Americans from losing the overtime they have come to depend on.

RECOGNIZING THE VETERANS WHO SERVED DURING WORLD WAR II, THE AMERICANS WHO SUPPORTED THE WAR, AND CELEBRATING THE COMPLETION OF THE NATIONAL WORLD WAR II MEMORIAL

SPEECH OF

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Mr. HASTINGS of Florida. Mr. Speaker, I rise today in support of House Resolution 409, recognizing with humble gratitude the more than sixteen million veterans who served in the U.S. Armed Forces during World War II, and all the Americans of that generation who supported the war effort at home. This resolution further celebrates the completion of the National World War II Memorial on the National Mall.

After years of devotion by numerous veterans, politicians, architects, actors, corporations, schools, and other individuals, the dedication of the National World War II Memorial serves as an honorable way to recognize the veterans and citizens who sacrificed so much for the cause of human freedom.

This extraordinary memorial at the heart of our Nation's Capital is a fitting reminder to us all that some of the most valorous and courageous moments in our history occurred when our Nation was unified in defense of liberty and democracy against the forces of fascism and barbarity.

I shudder to reflect on where our world might be without the exceptional courage and dignity displayed by the members of the U.S. Armed Forces in World War II. These veterans took it upon themselves to place their bodies in harm's way to defend against an evil that threatened not just our Nation, but all the world's nations. The men who stormed the beaches of Normandy, who flew hair-raising missions over Berlin, who fought beneath the surface of the ocean, and who weathered the Battle of the Bulge displayed the kind of selflessness that should be an inspiration to all who stand up against tyranny and aggression.

Mr. Speaker, World War II was won not just by soldiers alone but also by the nation that supported them. In the theater of war, men and women served as doctors, nurses, journalists, photographers, suppliers, drivers, and many other roles in direct support of the combat troops. Here at home, millions of women took to the factories to produce the material and machinery so vital to winning: planes, jeeps, ships, guns, radios, and thousands of other products used everyday by the troops in the field.

The new National World War II Memorial is an important and invaluable dedication to the men and women of the United States who stood up to the forces of tyranny and oppression. Their courage, dignity, valor, and sacrifice will inspire future generations to reflect on the meaning of our Nation and on the meaning of the values we hold so dear.

I urge my colleagues to give their full support to the passage of this legislation.

HONORING COMMANDER CHARLES L. STUPPARD, UNITED STATES NAVY AND THE OFFICERS, CHIEF PETTY OFFICERS, AND CREW OF THE USS ''ARLEIGH BURKE'' (DDG 51)

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. DAVIS of Illinois. Mr. Speaker, I would like to take this opportunity to congratulate Commander Charles L. Stuppard, United States Navy and the officers, Chief Petty Officers, and crew of the USS *Arleigh Burke* (DDG 51). USS *Arleigh Burke* was commissioned in Norfolk, Virginia, on July 4, 1991.

She is the first of the most powerful and survivable class of destroyers ever put to sea. She possesses the AEGIS Weapons System with ultifunction radar, capable of detecting and tracking hundreds of targets simultaneously while conducting multiple engagements.

On March 5, 2004, in Norfolk, Virginia, Commander Charles L. Stuppard became the 9th Commanding Officer of this powerful navy vessel. Commander Stuppard graduated from Cornell University in 1982 with a bachelor of science degree in mechanical and aerospace engineering. He worked for 3 years as a Design and Test Engineer for Fairchild Republic Corporation in the A–10A, T–46 and SF–340 Aircraft programs. In 1985 he joined the Navy as an aviation officer candidate. After commissioning and flight training, Commander Stuppard switched to Surface Warfare.

Commander Stuppard served successively on board the following ships, September 1987 to July 1990, as Boilers Officer and Advanced Combat Direction Systems/Computers Officer, USS *Biddle* (CG 34) in Norfolk, Virginia; November 1990 to May 1993, as Electronics Readiness Officer/Combat Systems Officer, USS *Reeves* (CG 24) in Pearl Harbor, Hawaii; January 1993 to September 1994, as Combat Systems Officer, USS *Sides* (FFG 14) in San Diego, California; April 1995 to September 1997, as commissioning Combat Systems Officer, USS *Gonzalez* (DDG 66) in Bath, Maine and Norfolk, Virginia. From September 1997 to November 1998, Commander Stuppard attended the Naval War College in Newport, Rhode Island where he earned a Masters degree in National Security and Strategic Studies. Afterwards, he served as Executive Officer of USS *Nicholas* (FFG 47) in Norfolk, Virginia.

After a 3-year tour of duty in the Pentagon as an Action Officer and then as an Executive Assistant to the Deputy Director for European Politico-Military Affairs, the Joint Staff Directorate of Strategic Plans and Policy, Commander Stuppard was selected as the Commanding Officer of the USS *Arleigh Burke* (DDG 51). Commander Stuppard's accomplishments and achievements are truly outstanding and serve as an example to all men throughout the country. Commander Stuppard is a fine citizen and an outstanding American. I congratulate Commander Stuppard and the crew of the *Arleigh Burke* for such a superb assignment.

HONORING LAW ENFORCEMENT OFFICERS

HON. RODNEY ALEXANDER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. ALEXANDER. Mr. Speaker, I rise today in the spirit of National Police Week to honor the 870,000 law enforcement officers who enforce our laws by risking their lives, and to remember the 145 officers who sacrificed their lives for our defense in 2003.

This week, law enforcement officers will gather with the families of officers killed in the line of duty to honor the commitment of our Nation's police forces and to remember those they have lost. Just as our soldiers are called to protect our interests overseas, we depend on our police forces to protect our freedoms, secure our communities and keep us safe and free from fear.

In this Chamber, we debate and pass laws to govern our country, to provide for the safety of our citizens. The laws we make are ineffectual without the selfless dedication of our police forces. Throughout history, these men and women have demonstrated strength and valor in protection and service on every level from local to national. From the routine task of guarding our neighborhoods to answering the call from terror on September 11, it is obvious that these men and women are heroes everyday.

It is with sadness that I recognize two heroes from my district. Patrolman First Class David Ezernack and Patrolman Jeremy Carruth were serving a routine search warrant on February 20, 2003, an attempted arrest that wounded three officers and cost Patrolmen Ezernack and Carruth their lives. Their families and friends, and several officers of the Alexandria Police Department, are in Washington this week to participate in the Candlelight Vigil and to see the names of these two officers unveiled at the National Law Enforcement Officers Memorial. We will never adequately express our gratitude, and our sympathies, to the sacrifice of these two officers.

I stand in this Chamber grateful to all law enforcement officers, but also to give special recognition to officers who are especially challenged, serving in our Nation's rural areas. Though violent crime rates are lower in rural areas, these incidences are not decreasing over the years as rapidly as violent crime rates in urban areas. Most of the victims of violent crimes in rural areas are assaulted in their own homes, by people they know—friends, neighbors, family members—a setting more prevalent than in large cities. David Ezernack and Jeremy Carruth served a rural area, and their beat was no less dangerous than a street in a large city.

Congress has continued to afford law enforcement officers with advancements in resources, such as bulletproof vests and enhanced technology. We must continue our commitment to providing our police forces with the best training and protection, and recognize the additional resources that may be necessary for the security of rural areas.

This week, let us extend to these men and women our profound gratitude, for their exhibitions of bravery and the sacrifices they are called to make, and our sympathies to their families. As these noble men and women sacrifice for a pledge to protect and to serve, it is our duty to honor them, past, present and future, to the highest degree.

IN RECOGNITION OF SISTER MARY PAUL JANCHILL, D.S.W.

HON. NYDIA M. VELÁZQUEZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Ms. VELÁZQUEZ. Mr. Speaker, I rise today on the floor of the U.S. House of Representatives to recognize the achievements of Sister Mary Paul Janchill, D.S.W., a tireless advocate for the rights of children and families, and one of the cofounders of the Center for Family Life in Sunset Park, Brooklyn.

For more than 50 years, Sister Mary Paul has been a pioneer and influential leader in child welfare. Sunset Park is a diverse, low-income neighborhood in Brooklyn, and almost a third of the population there is under the age of 18. Sister Mary Paul, a long-time advocate and leader in the fight for the rights of children and families, took her passion and strength, and cofounded the Center for Family Life.

Over the past 25 years, Sister Mary Paul has continued her work and dedication to meeting the needs of families that live in the financially distressed area of Sunset Park through her work at the center. She has continued the fight for low-income children and teenagers, especially those who are at risk of being swept into the social welfare system. The Center for Family Life offers services and advocacy to its clients, and already has two films, one of which received a 2003 Academy Award, that are based on its dedication and commitment to the community.

Sister Mary Paul, among her endless positive contributions, helped to modify the evaluation processes used by child welfare agencies and the family court system. She encourages people to view troubled teens as works in progress. Sister Mary Paul truly changes lives—individuals who have completed their programs later find themselves in leadership positions throughout the community. Her work is priceless, and is constantly felt by the significant number of youth, and families, that she reaches out to each and everyday.

Therefore, Mr. Speaker, I rise today to honor Sister Mary Paul Janchill, and join with my colleagues in the House of Representatives to recognize her extraordinary work in helping New York City's less privileged children and families.

ATTACHÉ SHOW CHOIR OF CLINTON HIGH SCHOOL

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. THOMPSON of Mississippi. Mr. Speaker, I would like to commend and congratulate the Clinton High School Attaché Show Choir upon completing its outstanding 2004 competition season.

The Clinton High School Attaché Show Choir was formed in September 1980, by Winona Costello. Since 1992, Attaché has been led and directed by David and Mary Fehr; the instrumental pit under the direction of Robert Allen; the crew under the direction of Wesley Quick.

Attaché was named Grand Champion of the Benton Community High School ''Touch of Class'' competition held in Van Home, Iowa on February 14, 2004. Attaché also received the Best Vocals, Best Choreography, Most Creative Show, and Best Male (Trey Finch) and Female (Jan Jefcoat) Soloist awards. Dexter Bishop was named the outstanding performer from Attaché.

Attaché was named Grand Champion of the Homewood High School ''South Central Classic'' competition held in Homewood, Alabama on February 21, 2004. Attaché also received the Best Vocals, Best Choreography, and Best Overall Effect awards. Attaché was named Grand Champion of the Mixed Show Choir at

the MIC Choral Competition held at North Central High School in Indianapolis, Indiana on March 20, 2004. Attaché also received the Best Vocals and Best Choreography awards.

Attaché was honored to be selected as the host choir for the Show Choir Nationals Competition held March 27, 2004, at the Grand Ole Opry in Nashville, Tennessee. The 2004 Senior Class of Attaché is undefeated, having earned Grand Champion honors at every competition at which they competed during their three years of performing.

It is with great pride that we recognize the contributions of this national and internationally known musical group which has brought honor and acclaim to Clinton High School, the Clinton community, and to the State of Mississippi.

TRIBUTE TO NEW HAMPSHIRE'S ''WE THE PEOPLE: THE CITIZEN AND THE CONSTITUTION'' AWARD WINNING TEAM

HON. CHARLES F. BASS

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. BASS. Mr. Speaker, I rise to recognize a group of students and their teacher from Nashua High School South. After months of studying and hard fought competitions, this group proudly represented New Hampshire in the national finals of the ''We the People: The Citizen and the Constitution'' competition.

The students demonstrated their understanding of the Constitution before simulated congressional committees made up of constitutional scholars, lawyers, journalists, and government leaders. Their comprehension and knowledge of the founding principals our country is established upon earned the team a Unit Award for expertise in the ''Extension of the Bill of Rights.''

I ask that my colleagues join me in recognizing these exceptional students from New Hampshire along with the more than 1,250 other high school students that also participated in the national finals. I proudly submit the members of the team for listing in the CONGRESSIONAL RECORD.

Daniel Aldrich, Rhiannon Campbell, Byron Chicklis, Aaron Chilelli, Keith Crouse, Nathan Domingues, Charles Dowdell, Amanda A. Duquette, Timothy E. Gilpatrick, Tara Goulet, Melissa Hodges, Eileen Hynes, James Kaklamanos, and Erik Kiser.

Cassandra Loftus, Gregory M. McDonald, Christie McHugh, Peter McNamee, Caitlin Meagher, Catherine Ngo, Michelle Potter, Adam Rheault, Michael Snelgrove, Philip Trzcinski, Matthew Van Wagner, Erin Lynne Walford, and Tarin LaFrance, Teacher.

IN HONOR OF WILLIAM I. ''IRVIN'' WARREN

HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. ETHERIDGE. Mr. Speaker, I rise today to pay tribute to one of North Carolina's leading citizens, Mr. William I. ''Irvin'' Warren of the Harnett County community of Dunn.

Tomorrow evening, I will have the honor of presenting to Irvin the Distinguished Service Award from the Occoneecheee Council of the Boy Scouts of America. The award is to be presented in recognition of his ''Exemplary Public Service and Lifelong Fidelity to the Scouting Creed of Service to the Community.'' As a longtime leader of the Occoneechee Council, I can think of no individual more deserving of this award.

William I. Warren was born on June 2, 1942 in Sampson County, North Carolina, and like me, worked on his family tobacco farm growing up. He graduated from the Sampson County public schools and East Carolina University where he earned his bachelor's degree in education in 1964. He went on to get his master's degree at North Carolina State University, in my Congressional District, where he taught for 6 years.

In 1975, Mr. Warren took his life savings of $14,000 and founded Warren Oil Company, Inc., where he sold motor oils packaged in his name. Mr. Warren is now Chief Operating Officer of Warren Oil, having led the company for 29 years. The company, which formerly was housed in 5,000 feet of rental space, now owns and occupies more than one million square feet of warehouse space, storing more than fifty million gallons of oil. Currently, Warren Oil Company has locations in North Carolina, Alabama, Arkansas, Illinois, Pennsylvania and Texas and employs more than four hundred and fifty workers. Throughout the course of his career, Mr. Warren has increased the size of this local business from a small community business to the largest independent oil company in North America. Warren Oil Company, Inc. currently owns twenty U.S. registered trademarks and exports to more than twenty countries worldwide.

Throughout his successful career in business, William Warren has served our community in numerous capacities. He has served on the boards of the Betsey Johnson Regional Hospital, Dunn Area Chamber of Commerce, Standard Bank & Trust Company, Harnett County Industrial Development and the New Century Bank. He has been a member of the Masonic Lodge and Shrine Club for more than 30 years and is past Chairman of the Board of Directors for Divine Street United Methodist Church. As a community activist myself for more than thirty years, I know that whenever a good cause needs support, the first thought on folks' minds is, ''Call Irv.''

A proud family man, William I. Warren has two children, Wendy and Bill, five grandchildren, Reed, Colby, Jaimmy Warren, Morgan Spell and Benjamin Spell. The Warren Oil Company is truly a family business. Finally, Mr. Speaker, as the father of an Eagle Scout, it gives me great pleasure to present Boy Scouts of America's Distinguished Service Award to William I. ''Irvin'' Warren. And on behalf of the Congress of the United States and the people of North Carolina, let me offer my friend our heartfelt gratitude.

IN SUPPORT OF OUR TROOPS

HON. KATHERINE HARRIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Ms. HARRIS. Mr. Speaker, I rise today to reaffirm my support for the best-trained, best-skilled, and most courageous men and women on the face of the earth as they risk everything for the cause of freedom in Iraq and Afghanistan.

Tragically, the brutality and depravity of a small handful of soldiers toward Iraqi prisoners threatens to soil the incredible humanity that our military has displayed during the war and its aftermath. At risk to their own safety, nearly all of our troops have striven to protect Iraqi lives to the greatest extent possible.

While we must harshly and unambiguously condemn the sickening abuse perpetrated by a miniscule number of individuals as criminal and un-American, we must not permit the heinous acts of a few to taint the selfless and honorable service of so many.

Their heroic efforts have unquestionably made America safer. They have liberated nearly 50 million people from the oppression and despair that breeds terrorists, and they are fighting valiantly to create the freedom and hope that defeats terrorists.

God bless our troops and God bless the United States of America.

HONORING THE CENTER FOR COUNSELING AT GARDEN CITY HOSPITAL

HON. THADDEUS G. McCOTTER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. McCOTTER. Mr. Speaker, I rise today to pay tribute to the Garden City Hospital's Center for Counseling upon the center's 30th anniversary.

In 1974, the vision of former Garden City Hospital President and CEO Allan Breakie led to the development of counseling services which responded to an identified community need and also served as a resource for the medical staff of the hospital. Initially, the focus was on providing treatment for the chemically dependent patient in an inpatient setting.

Under the leadership of Dr. Phil O'Dwyer, the Center expanded into the treatment of eating disorders and a broader range of mental health issues. The Center received national attention when its Patient-Treatment matching system was described as a ''model for the nation'' in the 1990 Institute of Medicine (IOM) Report to Congress.

In recent years, services for children and adolescents were added, in response to the growing national concern with teen problems. In 2002, the Michigan Health and Hospital Association awarded the Center for Counseling its prestigious Patric Ludwig award for innovative community programming for adolescents.

Today, the Center has an experienced staff which includes a Board Certified psychiatrist, doctoral and masters level psychologists, clinical social workers and professional counselors.

Over the past 30 years, more than 8,000 patients and their families have benefited from the treatment services of the Center for Counseling. Countless numbers have benefited from the prevention and education efforts undertaken through seminars, public presentations, and TV and radio appearances.

Mr. Speaker, on behalf of Congress, the 8,000 patients, and family members, I would like to thank the Center for Counseling at the

Garden City Hospital for their 30 years of service to the community.

RECOGNIZING OUTSTANDING TEACHERS IN BURR RIDGE, IL

HON. JUDY BIGGERT

OF ILLNOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mrs. BIGGERT. Mr. Speaker, I rise today to honor five outstanding teachers in my district: Virginia Bojan, Cate Nufer, Beverly Oliveri, Nancy Taylor, and Patricia Trudicks.

Virginia Bojan, a language arts and science teacher at Elm Elementary School in Burr Ridge, is retiring after 33 years of dedicated teaching. She is well respected among her peers for her excellent teaching methods and pleasant demeanor. Her students also love and respect her. It is obvious that Mrs. Bojan loves teaching, and this love is reflected in her devotion to her students. She will most certainly be missed.

Elm Elementary School also will be losing Cate Nufer, who is retiring after 36 years. Ms. Nufer is a talented teacher who is recognized for her leadership in the areas of writing and social studies. Her students have consistently excelled on all state tests. She has made a positive impact on hundreds of students in both their academic and personal development.

Beverly Oliveri is also retiring after 34 years of teaching and directing curriculum for School District 181 in Burr Ridge. Her work in mathematics led to a revision in curriculum to improve the way math is taught in the district. Her students always look forward to her unique style of story telling as a teaching method. Her love of life and of teaching is evident to all who encounter her.

Nancy Taylor is retiring after 34 years teaching language arts and mathematics. She has contributed to both the academic and social development of hundreds of children throughout her career. Her students thrive on her soft-spoken, gentle approach that helps her students. Her care and understanding of each child as an individual will be remembered.

Last but most certainly not least, Patricia Trudicks is retiring after 36 years of dedicated teaching. Ms. Trudicks is recognized in District 181 for her leadership in developing the Media Resource Center, which has become the hub of the school. It is continually updated to reflect the season, upcoming holidays and community events, and ongoing teaching units and student interests. Ms. Trudicks has shown how to make the library an exciting place for students and to encourage them to learn through the resources it provides. Her ability to provide children with hands-on experiences they will not forget has been greatly respected and will be deeply missed.

Mr. Speaker, it is my distinct privilege to honor these five teachers for their countless hours of hard work and dedication. They have positively impacted the lives of thousands of children, and their contributions to education will be recognized for many years to come. Teaching may be the most difficult profession, and these five outstanding educators are among the best. I know the students, parents and faculty of Elm Elementary are sad to see them retire, but join me in offering these outstanding teachers our heartfelt thanks and congratulations.

RECOGNIZING THE VETERANS WHO SERVED DURING WORLD WAR II, THE AMERICANS WHO SUPPORTED THE WAR, AND CELEBRATING THE COMPLETION OF THE NATIONAL WORLD WAR II MEMORIAL

SPEECH OF

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 11, 2004

Ms. SCHAKOWSKY. Mr. Speaker, I rise today to recognize the brave men and women who served our nation during World War II and to wholeheartedly support H. Con. Res. 409. The National World War II Memorial will be officially dedicated on May 29 to honor the 16,000,000 veterans who served in the United States Armed Forces duirng World War II and the millions of Americans who supported the war effort on the home front. Even today, we deeply appreciate the great service and sacrifice that those men and women gave in defense of our nation and the world.

The soldiers of World War II fought against unimaginable tyranny. They gave their blood, sweat, tears, and for many, their lives, to protect and preserve the American way of life. Veterans who served our country in World War II deserve a tribute to illustrate their valor and courage. The National World War II Memorial is a fitting and lasting tribute and only a down-payment to a debt we can never repay in full.

But to truly honor this nation's Greatest Generation, we must do more than just offer kind words and lasting memorials. It's time for Congress to live up to its promise to care for their health and well-being. It is time that we start adequately funding our veterans' health care system.

Today, only 1 in 4 World War II veterans are still surviving. Every day, 1,100 more die. Those surviving veterans are aging and their medical needs are increasing. It is a great dishonor to turn our back on those veterans; it is a great dishonor to make those men and women wait for needed health care and an even greater dishonor to turn them away from Veterans' Administration facilities.

There is a growing crisis in veterans' medical care: more than 30,000 veterans are waiting six months or more for an appointment at Veterans' Administration hospitals. Some are even dying before they see a doctor. In his 2005 budget, the President recommended a less than 2 percent increase in funding for veterans' medical care—not even enough to cover the cost of inflation. The President's budget also slashes $294 million in funding for long-term care for America's veterans, which will reduce the number of patients treated by more than 8,000. That is not acceptable.

While the House-passed budget does provide $1.2 billion above the President's wholly inadequate budget request, it is still $1.3 billion below the amount of funding suggested on a bipartisan basis by the House Veterans' Affairs Committee and $2 billion below the amount recommended by the Independent Budget. The House-passed budget will not give the VA the resources it needs to reduce the backlog of patients or improve the quality of care. It will not end the Survivor Benefit Penalty or end the disability tax for the two-thirds of disabled veterans whose pension and disability payments are still offset. It will not give our World War II veterans the care they deserve. Democrats have offered a plan that will give veterans the care they deserve.

I urge my Colleagues to join me in honoring the sacrifice of World War II veterans by voting for this resolution. I also urge us to further honor those brave men and women by committing enough funding to meet their needs.

HONORING FALLEN LAW ENFORCEMENT HEROES

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. COSTELLO. Mr. Speaker, I rise today to pay tribute to all the true heroes—our law enforcement officers—who have made the supreme sacrifice in service to their community so that all of us can live in peace and safety.

Supporting law enforcement is very important to me because of my service as a law enforcement officer before coming to Congress in 1988. I am also a member of the House Law Enforcement Caucus.

As we reflect on our fallen heroes, it is important to focus on providing the necessary funding and support to these individuals to combat the growing challenges they face. It is the least we can do for those who put their lives on the line every day.

Since September 11, 2001, many in this nation and this Congress have a deeper appreciation for the importance of the sacrifices made by our law enforcement officers. Every day, hundreds of thousands of men and women protect and serve, often putting their own lives at risk. In honor of these dedicated law enforcement officers who have given their lives or have become disabled in the performance of duty, Mr. Speaker, I ask my colleagues to join me in recognizing and paying respect to our fallen heroes.

HONORING REVEREND DOCTOR ROBIN G. MURRAY

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise today to commend and honor the Reverend Doctor Robin G. Murray of Spring Hill in my Fifth Congressional District of Florida. After thirty-five years as an Episcopalian minister, Reverend Murray is retiring in Spring Hill.

Reverend Murray was one of the first people I met when I moved to Florida. His friendship and civic-mindedness motivated me to become involved in the Hernando County Legislature, and he has been an inspiration ever since.

A loving husband, father of three, and grandfather of two, Reverend Murray has an

endless, mile-wide humanitarian streak of dedication to his family and community. His devotion improves the lives of everyone he meets. He is district governor of Spring Hill Rotary and a true civic leader who I am proud and fortunate to call my constituent.

It is my honor and pleasure to recognize Reverend Robin G. Murray on the floor of this chamber today.

Mr. Speaker, I yield back the balance of my time.

SUPPORTING FRIEDREICH'S ATAXIA AWARENESS DAY

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. ANDREWS. Mr. Speaker, I rise today in support of Friedreich's Ataxia Awareness Day, which is recognized each year on the third Saturday in May.

Friedreich's ataxia is a life-shortening neurological disorder that is usually diagnosed in childhood. It causes muscle weakness and loss of coordination in the arms and legs; impairment of vision, hearing and speech; scoliosis, diabetes; and a life-threatening heart condition. Most patients need a wheelchair full-time by their twenties. Life expectancy is reduced to early adulthood. There is currently no effective treatment or cure for Friedreich's ataxia.

Although there is no effective treatment or cure available, Friedreich's ataxia patients and families have more and more reason for real hope. An extraordinary explosion of research insights has followed the identification of the Friedreich's ataxia gene in 1996. Since that discovery, research scientists have learned a great deal about the disorder. We now know what defects in the gene cause the disease, what protein the gene is supposed to produce, what that protein is supposed to accomplish, and why a shortage of the protein results in the cell death that leads to the disease symptoms. Investigators are increasingly optimistic that they are drawing closer to understanding more fully the causes of Friedreich's ataxia and to developing effective treatments. In fact, they have recently declared that, ''in Friedreich's ataxia, we have entered the treatment era.''

At the National Institutes of Health and around the world, clinical trials for Friedreich's ataxia are being conducted on drugs that hold real promise. Growing cooperation among organizations supporting the research and the multidisciplinary efforts of thousands of scientists and health care professionals provide powerful evidence of the increasing hope and determination to conquer Friedreich's ataxia. There is also a growing conviction that treatments can and will be developed for this disease and that the resulting insights will be broadly applicable across a wide range of neurological disorders such as Parkinson's, Huntington's and Alzheimer's.

On the third Saturday of May, events will be held across our country to increase public awareness of Friedreich's ataxia and to raise funds to support the research that promises treatments for this disease. I applaud the Friedreich's Ataxia Research Alliance (FARA) for its contributions to these efforts and ask my colleagues to join me in recognizing May 15, 2004, as Friedreich's Ataxia Awareness Day to show our concern for all those families affected by this disorder and to express our support and encouragement for their efforts to achieve treatments and a cure. Thank you, Mr. Speaker.

MOTION TO TABLE THE MILLER MOTION TO INSTRUCT ON H.R. 2660

HON. JIM NUSSLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. NUSSLE. Mr. Speaker, as those who have followed previous debates on the administration's proposed overtime rule changes may know, my position is clear. I have voted a number of times to uphold overtime protection for workers in Iowa and across the United States. In the future, I will continue my commitment to Iowa's workers.

However, today's motion to instruct introduced by the gentleman from California, Mr. MILLER, is nothing more than.a twisted procedural gimmick. The ridiculous motion would instruct conferees to act on a bill that was signed into law months ago. There are no conferees to instruct.

I will keep standing up for Iowa's working families as we consider this matter in the future, but those debates should be real and meaningful. As such I will vote yes on the motion to table.

CELEBRATING THE LIFE OF MILDRED ''MILLIE'' JEFFREY

HON. CAROLYN C. KILPATRICK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Ms. KILPATRICK. Mr. Speaker, I rise today to honor the life of Mildred ''Millie'' Jeffrey, a strong leader, community activist and protector of our United States Constitution. Millie passed away on Wednesday, March 24, 2004.

Through seven decades of social activism, Millie Jeffrey demonstrated how one individual can influence the battle for social justice by empowering victims of exploitation and discrimination to fight for equality and opportunity.

Millie was on the Board of Governors at Wayne State University, and she was the Director of the United Auto Workers (UAW) Consumer Affairs Department. Millie served with dedication and brought to her endeavors a brimming optimism. Millie was a mentor for legions of women and men in the labor, civil rights, women's rights, and peace movements. She is most remembered for her humor, passion for life, and her goodwill that will be remembered for generations to come.

Millie once said; ''You never win freedom permanently. You have to win it time after time; whether it's union rights, civil rights, or equality for women.'' In the words of Michigan's Governor Jennifer Granholm, ''The greatest honor we can pay her, is to recommit to working for fairness and justice for all of our citizens today and everyday.''

Everyone knew that if they wanted to hear true wisdom one would have to talk to Millie. She helped pave the way for women in politics everywhere. With her long list of accomplishments and accolades she became an icon of modern politics. On August 9, 2000 President Clinton awarded Millie the Medal of Freedom, the highest civilian award bestowed by the United States Government, for her selfless acts for peace. When awarding her the Presidential Medal of Freedom, President Bill Clinton said, ''She may be small in stature and humble in manner, but she is very strong.

Mr. Speaker, in closing, I would like to pay tribute to the life and work of ''Millie'' Jeffrey and express my deepest condolences to her family and to all who knew, loved, and were touched by her life.

ADDRESS OF SECRETARY OF STATE COLIN POWELL AT THE BERLIN CONFERENCE ON ANTI-SEMITISM

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. LANTOS. Mr. Speaker, at the Conference on Anti-Semitism of the Organization for Security and Cooperation in Europe (OSCE) held in Berlin on April 28th, our very distinguished Secretary of State Colin Powell headed the United States delegation. It was my advice that the Secretary personally lead the American delegation to this conference because his presence would give the issue of European anti-Semitism the high-level attention it needs and deserves.

Today, Europe faces a disturbing rise in anti-Semitic rhetoric and anti-Semitic violence. I recently attended the inauguration of a new Holocaust museum in my native Hungary. Two days earlier, Hungarian police arrested a man plotting to blow it up. The decision to target a Holocaust memorial reveals the profound connection between the great nightmare of the mid-twentieth century and the racist threats that Jews around the world continue to face today.

Because of this intolerance, I co-founded the Congressional Task Force Against Anti-Semitism with a bipartisan number of Members of Congress. This organization is devoted to raising awareness and fighting the sickness of anti-Semitism wherever and whenever it occurs. On behalf of the Task Force, I would like to thank and commend Secretary Powell for his efforts at the Berlin Conference.

Mr. Speaker, as usual, Secretary Powell's remarks are eloquent and powerful, and they contain the wisdom of a man who has fought bigotry and racism himself during a lifetime of service to our nation. His emphatic reminder that ''political disagreements do not justify physical assaults against Jews in our streets'' is particularly welcome.

Mr. Speaker, I ask unanimous consent that the full text of Secretary Powell's address to the Berlin Conference against anti-Semitism be placed in the RECORD, and I urge all of our colleagues to give the Secretary's excellent speech their thoughtful attention.

REMARKS AT THE CONFERENCE ON ANTI-SEMITISM OF THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

Thank you very much, Mr. Moderator, Chairman Passy, Minister Fischer, Fellow

Ministers and Delegates, Ladies and Gentlemen. It is a great pleasure for me to be here representing President Bush and the people of the United States.

Chairman Passy, let me thank you for your leadership in planning and organizing this important conference on anti-Semitism. I also wish to extend my sincere appreciation to the German Government and to my good friend Joschka Fischer for hosting our gathering and for taking a strong stand against this age-old yet active and evolving form of intolerance. And let me take this occasion to honor President Rau, not just for opening the conference, but also for his leadership against anti-Semitism and on so many other compelling moral issues during his 52 years of distinguished public service to Germany and to the world.

Berlin is a fitting backdrop for our meeting. The firestorm of anti-Semitic hatred that was the Holocaust was set here in Berlin. The Holocaust was no ordinary conflagration, but a colossal act of arson, unprecedented in scale with the annihilation of a people as its purpose. Six million Jews and millions of other men, women and children perished in the flames of fascism. European civilization as we thought we knew it was rent asunder.

Yet, it was also here in Berlin that a new, democratic Germany rose from the ashes of the Second World War. And in this city, a new Europe, whole and free, was born after the fall of that other great tyranny of the 20th century: communism.

Now, in the opening decade of the 21st century, we, 55 democratic nations of Europe, Eurasia and America, have come to Berlin to stamp out the new fires of anti-Semitism within our societies, and to kindle lights of tolerance so that future generations will never know the unspeakable horrors that hatred can unleash.

When President Bush visited the Auschwitz death camp last year he renewed the United States' commitment to oppose anti-Semitism with these words: ''This site is a sobering reminder that when we find anti-Semitism, whether it be in Europe, in America or anywhere else, mankind must come together to fight such dark impulses.''

Today, we confront the ugly reality that anti-Semitism is not just a fact of history, but a current event.

At a planning session for this conference, Benjamin Meed, the President of the American Gathering of Holocaust Survivors, said ''Sixty years after the Holocaust I never thought that I would be invited to a meeting on anti-Semitism in Europe.''; Indeed.

We are appalled that in recent years the incidence of anti-Semitic hate crimes has been on the increase within our community of democratic nations. All of us recognize that we must take decisive measures to reverse this disturbing trend.

Our states must work together with non-governmental organizations, religious leaders and other respected figures within our societies to combat anti-Semitism by word and deed. We need to work in close partnership to create a culture of social tolerance and civic courage, in which anti-Semitism and other forms of racial and religious hatred are met with the active resistance of our citizens, authorities and political leaders.

We must send the clear message far and wide that anti-Semitism is always wrong and it is always dangerous.

We must send the clear message that anti-Semitic hate crimes are exactly that: crimes, and that these crimes will be aggressively prosecuted.

We must not permit anti-Semitic crimes to be shrugged off as inevitable side effects of inter-ethnic conflicts. Political disagreements do not justify physical assaults against Jews in our streets, the destruction of Jewish schools, or the desecration of synagogues and cemeteries. There is no justification for anti-Semitism.

It is not anti-Semitic to criticize the policies of the state of Israel. But the line is crossed when Israel or its leaders are demonized or vilified, for example by the use of Nazi symbols and racist caricatures.

We must send the clear message to extremists of the political right and the political left alike that all those who use hate as a rallying cry dishonor themselves and dishonor their cause in the process.

Regrettably, my country has its share of anti-Semites and skinheads and other assorted racists, bigots and extremists, who feed on fear and ignorance and prey on the vulnerable.

As a nation of many united as one, we are determined to speak out and take action at home and abroad against anti-Semitism and other forms of intolerance and to promote the rights of persons belonging to minorities. As President Bush has said: ''America stands for the non-negotiable demands of human dignity.''

Fortunately the overwhelming majority of Americans are repelled by these hate-mongers and reject their vicious ways, their vicious views, their vicious attitudes. Overwhelmingly the American people embrace diversity as a national asset and tolerance is embraced as a civic virtue. Our laws and our leaders reflect those enlightened sentiments.

Not only do we believe that combating hatred is the right thing to do, we think that promoting tolerance is essential to building a democratic, prosperous and peaceful world. Hatred is a destroyer, not a builder. People consumed by hate cannot construct a better future for themselves or for their children.

So much of the misery and instability around the world today is caused or exacerbated by ethnic and religious intolerance, whether it's central Africa or the Middle East, Northern Ireland or Cyprus, Kosovo or Darfur. The distance from prejudice to violence, intolerance to atrocity, can be perilously short. The lessons of the Holocaust are timeless and urgent. In this new century, it is more important than ever for our leaders and citizens to counter anti-Semitism and other forms of hatred whenever and wherever they meet them.

It is especially important that we instill in our children values and behaviors that can avert new calamities. The sixteen-nation Task Force for International Cooperation on Holocaust Education, Remembrance and Research has done a great deal already to increase understanding among young people of the Holocaust and its enduring lessons. And we welcome the growing interest on the part of other countries to join that Task Force.

Tolerance, like hatred, is a learned behavior passed from one generation to the next unless the new generation is educated differently. Let tolerance be our legacy. May future generations of schoolchildren read that in the early decades of the 21st century, mankind finally consigned anti-Semitism to history, never to darken the world again.

The United States delegation, led by former New York City Mayor Ed Koch, is here to listen. They're here to learn and to share best practices against anti-Semitism. We will have the benefit of Mayor Koch's direct experience dealing with hate crimes in the world's most ethnically diverse metropolis in my hometown, New York City. Our delegation also draws expertise from Members of our Congress and from close partnership with non-governmental leaders doing pioneering work in the tolerance field.

The exchange of insights and ideas among our delegations here in Berlin should form a solid basis for practical action by each of our nations. There is much yet that we can do in key areas of law enforcement, legislation and education to follow up on the decisions we took last December in Maastricht.

That's why I'm pleased that last week the Permanent Council of the Organization for Security and Cooperation in Europe committed all of our 55 states to take further concrete actions against anti-Semitism. The OSCE's Office for Democratic Institutions and Human Rights in Warsaw will play a central role. This office now has a clear mandate to work with member states to collect hate crimes statistics, to track anti-Semitic incidents and to report publicly on these matters. The office also will help states develop national legislation against hate crimes and promote tolerance through education. And I know that in the course of your deliberations here other ideas will arise as to how we can put action behind our words, and whether we have institutionalized these actions in a proper way.

So, my friends, here in Berlin, the 55 democratic nations of the Organization for Security and Cooperation in Europe have come together and will stand together and we will declare with one voice: ''Anti-Semitism shall have no place among us. Hate shall find no home within a Europe whole, free and at peace.'' Thank you, Mr. Moderator.

UPON RETIREMENT OF DR. RONALD L. FEIST

HON. JOHN T. DOOLITTLE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. DOOLITTLE. Mr. Speaker, today I wish to express warm thanks, congratulations, and best wishes to Dr. Ronald L. Feist upon his retirement as the superintendent of the Eureka Union School District, in Placer County, CA. Ron has done an outstanding job and deserves the appreciation of students, parents, and the general public in the community he has served so well for 22 years.

Ron grew up on a farm in Minnesota, where almost no one in his family had previously attended college and most only completed the eighth grade before turning to farming. However, following the example and encouragement of many fine teachers and coaches, Ron opted to set a new precedent for his family by accepting an academic scholarship and competing in basketball at the college level.

In 1965, Ron earned a bachelor of arts degree in Chemistry/Physics from Macalester College in St. Paul, Minnesota. Four years later, he completed a master of arts degree in the same field from Fisk University in Nashville, TN. Subsequently, he earned an Administrative Credential from California State University, Fullerton, in 1972 and a Doctorate of Education in Education Administration from Nova University in Fort Lauderdale, Florida, in 1978.

Ron stayed the course by becoming a coach and science teacher himself, first in his native State, then in Glendora, CA, before accepting administrative duties at Pamona Unified School District and Napa Valley School District. Then in 1977, he came to South Placer County as the principal of Oakmont High School.

In 1982, Ron launched his 22-year tenure as the superintendent of the Eureka Union School District. When he took over, the district

had only two and a half schools, 1,100 students, and negative finances. Today, as a result of his leadership, it boasts nine highly acclaimed schools, 4,250 students, and a sound financial condition, despite the difficult challenges facing state and local governments in California. Moreover, student achievement, as measured in test scores and parent satisfaction, is very high. I think it is also remarkable to note that, while heading such a successful district, Ron continued to teach school finance and law part-time at the University of LaVerne from 1988 through 2001.

Mr. Speaker, several prestigious honors have highlighted Dr. Feist's 38-year career as an educator. For example, he was the Napa County Teacher of the Year in 1974–75; in 1988, he was named the Placer County Distinguished School Administrator; in 1990–91, he was recognized as the Placer County Administrator of the Year; and in 2001–02, he was named Region 2 Superintendent of the Year. He also received the Napa Parent Teacher Association Distinguished Service Award in 1977 and the Oakmont Parents Club Outstanding Service Award in 1980.

Ron functions as the vice president of the Nevada/Placer County School Insurance Board and on the Placer/Nevada County Special Education Executive Committee. Additionally, he represented ten counties in Northern California for two years on the State Superintendency Committee of the Association of California School Administrators.

Mr. Speaker, beyond his role with the school district, Ron has been an invaluable member of the local community, having served on many boards and committees. He is the past president of the Granite Bay Chamber of Commerce, Roseville and Granite Bay Kiwanis Clubs, and Sierra Family Services, as well as past chairman of the Granite Bay Municipal Advisory Committee.

However, despite all the acclaim he has received professionally and civiclly, Ron's greatest success has occurred in the home. He and his wife of 42 years, Diane, raised three children Troy, Amy, and Heidi. In retirement, Ron looks forward to spending more time with his family, especially his nine grandchildren—Alexa, Hunter, Bryce, Jordan, Brennan, Hannah, Whitney, Devin, and Baron.

Ron will also have more time now to dedicate to his many interests, including golf, traveling, reading, cardio-training, and weight lifting. Nevertheless, it will be hard to keep him away from public education completely. He plans to do some consulting for school districts in the areas of finance and facilities.

Mr. Speaker, on behalf of the many people whom he has touched over the years, I thank Dr. Ron Feist for his service and wish him well in his future endeavors.

PERSONAL EXPLANATION

HON. JEFF FLAKE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. FLAKE. Mr. Speaker, today I voted "no" on final passage of H.R. 4280, the Help Efficient, Accessible, Low Cost, Timely Healthcare (HEALTH) Act of 2004.

This is not the first time I have had to make this difficult vote. On March 13, 2003, I voted against H.R. 5, which contained nearly identical language to H.R. 2480. Both in 2003 and today, I have heard arguments as to why the Federal Government should act and why this proposed reform is badly needed. Hearing these arguments on many occasions has not made it any less difficult to vote against this bill, but I am not convinced that the Federal Government should preempt State law in this area.

Those supporting this bill have made some compelling arguments as to why Congress should step in and institute these reforms. They cite the national nature of insurance plans, whereby a doctor in Arizona might have to pay more for malpractice insurance due to an over-the-top jury award in Florida. They also note that, as doctors close up shop or stop providing high-risk care in specialties such as emergency medicine and obstetrics and gynecology, patients are forced to cross State lines in order to seek out treatment. We have all watched with dismay as hospitals have been forced to shut their doors and doctors have opted to treat patients without malpractice insurance due to the high costs of premiums. Certainly, the trial attorneys who line their pockets with egregious fees aren't suffering as a result of the mess they've made with unscrupulous lawsuits. These arguments only underscore an already evident need for the States to pursue medical malpractice reforms. However, as one who believes firmly in federalism, I am wary of supporting legislation that would, in effect, preempt other States' constitutions.

For example, California instituted real medical malpractice reform 25 years ago, which H.R. 4280 seeks to emulate. However, if the final version of H.R. 4280 differs from California's reform, then their system may ultimately be usurped by the new Federal authority created by this legislation. Punishing California's sensible reforms would be a terrible outcome.

The natural evolution of health care delivery suggest that a Federal solution such as H.R. 4280 may one day be necessary. But right now it's up to the States to begin that process, and I am already a part of those efforts in Arizona. The States should follow California's example, which has been an undeniable success over the past 25 years.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, May 13, 2004 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 17

2 p.m.
Aging
To hold hearings to examine how the Equal Employment Opportunity Commission's recent rule affects retiree health benefits.
SD–628

MAY 18

9:30 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold an oversight hearing to examine the Federal Aviation Administration.
SR–253

Foreign Relations
To hold hearings to examine the way ahead in Iraq.
SD–419

10 a.m.
Banking, Housing, and Urban Affairs
To hold an oversight hearing to examine the Terrorism Risk Insurance Program.
SD–538

Energy and Natural Resources
To hold hearings to examine implications of a recent change in reporting of small business contracts by the Department of Energy.
SD–366

Health, Education, Labor, and Pensions
Substance Abuse and Mental Health Services Subcommittee
To hold hearings to examine proposed legislation authorizing funds for the Substance Abuse and Mental Health Services Administration.
SD–430

Aging
To hold hearings to examine social security reform issues, and comparing the U.S. social security system with other nations'.
SD–628

10:30 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2005 for HIV/AIDS programs and research.
SD–124

Judiciary
To hold hearings to examine preserving traditional marriage, focusing on states' perspective.
SD–226

2 p.m.
Judiciary
To hold hearings to examine the threat of animal and eco-terrorism.
SD–226

MAY 19

2:30 p.m.
Energy and Natural Resources
Water and Power Subcommittee
To hold hearings to examine S. 900, to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts, S. 1876, to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project, S. 1957, to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, S. 2304 and H.R. 3209, bills to amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project, S. 2243, to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska, H.R. 1648, to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District, and H.R. 1732, to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project.
SD–366

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings to examine personal gain relating to a transition from public sector to private sector.
SR–253

Foreign Relations
To continue hearings to examine the way ahead in Iraq.
SD–419

10 a.m.
Banking, Housing, and Urban Affairs
To hold an oversight hearing to examine the International Monetary Fund and World Bank.
SD–538

Indian Affairs
Business meeting to consider pending calendar business; to be followed by a hearing to examine S. 1696, to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.
SR–485

11:30 a.m.
Energy and Natural Resources
Business meeting to consider pending calendar business.
SD–366

2:30 p.m.
Aging
To hold hearings to examine Health Savings Accounts and the New Medicare Law, focusing on the future of health care.
SD–628

MAY 20

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings to examine SPAM.
SR–253

Indian Affairs
To hold hearings to examine S. 2382, to establish grant programs for the development of telecommunications capacities in Indian country.
SR–485

10 a.m.
Health, Education, Labor, and Pensions
To hold hearings to examine prescription drug reimportation.
SD–430

2:30 p.m.
Energy and Natural Resources
National Parks Subcommittee
To hold hearings to examine S. 1672, to expand the Timucuan Ecological and Historic Preserve, Florida, S. 1789 and H.R. 1616, bills to authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the City of Atlanta, Georgia, S. 1808, to provide for the preservation and restoration of historic buildings at historically women's public colleges or universities, S. 2167, to establish the Lewis and Clark National Historical Park in the States of Washington and Oregon, and S. 2173, to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.
SD–366

JUNE 2

9:30 a.m.
Foreign Relations
To hold hearings to examine the greater Middle East initiative.
SD–419

SEPTEMBER 21

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine the legislative presentation of the American Legion.
345 CHOB

CANCELLATIONS

MAY 19

9:30 a.m.
Health, Education, Labor, and Pensions
Business meeting to consider pending calendar items.
SD–430

Daily Digest

HIGHLIGHTS

The House passed H.R. 4279, to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

The House passed H.R. 4280, Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2004.

House Committees ordered reported 20 sundry measures, including the National Defense Authorization Act for Fiscal Year 2005 and the Postal Accountability and Enhancement Act.

Senate

Chamber Action

Routine Proceedings, pages S5241–S5382

Measures Introduced: Three bills and five resolutions were introduced, as follows: S. 2412–2414, S. Res. 357–359, and S. Con. Res. 107–108.

Pages S5371–72

Measures Passed:

Authorizing Use of Capitol Grounds: Committee on Rules and Administration was discharged from further consideration of H. Con. Res. 388, authorizing the use of the Capitol Grounds for the National Peace Officers' Memorial Service, and the resolution was then agreed to. **Page S5381**

Authorizing Use of Capitol Grounds: Senate agreed to H. Con. Res. 389, authorizing the use of the Capitol Grounds for the D.C. Special Olympics Law Enforcement Torch Run. **Page S5381**

Free Enterprise Education Week: Senate agreed to S. Res. 359, designating the Week of April 11 through April 17, 2004, as "Free Enterprise Education Week." **Page S5381**

Recognizing Science Program Anniversary: Senate agreed to S. Con. Res. 107, recognizing the significance of the 30th anniversary of the American Association for the Advancement of Science Congressional Science and Engineering Fellowship Program, and reaffirming the commitment of Congress to support the use of science in governmental decision-making through such program. **Page S5381**

Supporting Tinnitus Awareness Week: Senate agreed to S. Con. Res. 108, supporting the goals and ideals of Tinnitus Awareness Week. **Page S5382**

IDEA Reauthorization: Pursuant to the order of May 11, 2004, Senate began consideration of S. 1248, to reauthorize the Individuals with Disabilities Education Act, taking action on the following amendments proposed thereto: **Pages S5250–S5360**

Adopted:

By 96 yeas to 1 nay (Vote No. 92), Gregg Amendment No. 3145, to authorize appropriations for part B of the Individuals with Disabilities Education Act. **Pages S5328–44**

Clinton Amendment No. 3146, to require the Department of Education to participate in the long-term child development study authorized under the Children's Health Act of 2000. **Pages S5345–48**

Gregg Amendment No. 3147, to provide for attorney's fees. **Pages S5348–53**

Murray Amendment No. 3148, to ensure that children with disabilities who are homeless, are wards of the State, who are in military families, or who move school districts have access to special education services. **Pages S5353–55**

Pending:

Gregg (for Santorum) Amendment No. 3149, to provide for a paperwork reduction demonstration. **Pages S5356–60**

During consideration of this measure today, the Senate also took the following action:

By 56 yeas to 41 nays (Vote No. 93), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion

to waive section 302(f) of the Congressional Budget Act of 1974, as amended, with respect to Harkin Amendment No. 3144, to amend part B of the Individuals with Disabilities Education Act to reach full Federal funding of such part in 6 years. Subsequently, the point of order that the amendment was in violation of section 302(f) of the Congressional Budget Act of 1974, as amended, was sustained, and the amendment thus falls. **Pages S5326–27, S5344**

A unanimous-consent-time agreement was reached providing that following morning business on Thursday, May 13, 2004, Senate resume consideration of the bill, that there be 30 minutes equally divided with respect to Gregg (for Santorum) Amendment No. 3149; that it be in order for Senator Bingaman to offer one relevant second-degree amendment to Amendment No. 3149; that the only other amendment in order be a manager's amendment; that following the disposition of the amendments, there be 20 minutes of debate remaining on the bill. **Page S5356**

Messages From the House: **Page S5369**

Measures Referred: **Page S5369**

Executive Communications: **Pages S5369–71**

Executive Reports of Committees: **Page S5371**

Additional Cosponsors: **Pages S5372–73**

Statements on Introduced Bills/Resolutions: **Pages S5373–77**

Additional Statements: **Pages S5367–69**

Amendments Submitted: **Pages S5377–80**

Authority for Committees to Meet: **Pages S5380–81**

Privilege of the Floor: **Page S5381**

Record Votes: Two record votes were taken today. (Total—93) **Pages S5344, S5345**

Adjournment: Senate convened at 9:30 a.m., and adjourned at 6:31 p.m., until 9:30 a.m., on Thursday, May 13, 2004. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S5382.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS: DEPARTMENT OF DEFENSE

Committee on Appropriations: Subcommittee on Defense concluded hearings to examine proposed budget estimates for fiscal year 2005 for the Department of Defense, after receiving testimony from Donald H. Rumsfeld, Secretary, and Larry Lanzillotta, Acting Under Secretary (Comptroller), both of the Department of Defense; and General Richard B. Myers, USAF, Chairman, Joint Chiefs of Staff.

NOMINATIONS

Committee on Armed Services: On Tuesday, May 11, Committee ordered favorably reported the nominations of William A. Chatfield, of Texas, to be Director of Selective Service, Jerald S. Paul, of Florida, to be Principal Deputy Administrator, National Nuclear Security Administration, Mark Falcoff, of California, to be a Member of the National Security Education Board, Dionel M. Aviles, of Maryland, to be Under Secretary of the Navy, and Tina Westby Jonas, of Virginia, to be Under Secretary of Defense (Comptroller).

TELECOMMUNICATIONS POLICY

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine the future of telecommunications policy, focusing on a view from the industry relating to mobility and broadband networks, after receiving testimony from Ivan Seidenberg, Verizon Communications, Washington, D.C.; Brian L. Roberts, Comcast Corporation, Philadelphia, Pennsylvania; Scott Ford, ALLTEL Corporation, Little Rock, Arkansas; C. Garry Betty, EarthLink, Inc., Atlanta, Georgia; and Delbert Wilson, Central Texas Telephone Cooperative, Goldthwaite, Texas, on behalf of the National Telecommunications Cooperative Association.

GASOLINE

Committee on Environment and Public Works: Committee concluded a hearing to examine the environmental regulatory framework affecting oil refining and gasoline policy, focusing on domestic refining capacity, the fuel supply, reformulated gasoline, low-sulfur fuels, and reducing incentives for market manipulation, after receiving testimony from Bob Slaughter, on behalf of the National Petrochemical and Refiners Association, and the American Petroleum Institute, A. Blakeman Early, American Lung Association, and Mark Cooper, Consumer Federation of America, on behalf of the Consumers Union, all of Washington, D.C.; Michael Ports, Ports Petroleum Company, Inc, Wooster, Ohio, on behalf of the Society of Independent Gasoline Marketers of America and the National Association of Convenience Stores, and John R. Dosher, Jacobs Consultancy, Houston, Texas.

AFGHANISTAN

Committee on Foreign Relations: Committee concluded a hearing to examine continuing challenges in Afghanistan, focusing on allied efforts to defeat Al-

Qaeda and to assist Afghanistan in building democracy and rebuilding its economy, after receiving testimony from Mark L. Schneider, International Crisis Group, Robert M. Perito, United States Institute of Peace, and David C. Isby, all of Washington, D.C.; and Thomas E. Gouttierre, University of Nebraska Center for Afghanistan Studies, Omaha.

DIPLOMA MILLS

Committee on Governmental Affairs: Committee concluded hearings to examine allegations relevant to the issuance of bogus degrees, focusing on tax payer dollars subsidizing diploma mills, and the development of a government-wide policy to identify and discourage the use of bogus degrees, after receiving testimony from Sally L. Stroup, Assistant Secretary of Education for Postsecondary Education; Stephen C. Benowitz, Associate Director, Human Resources Products and Services, Office of Personnel Management; Alan Contreras, Administrator, Oregon Student Assistance Commission Office of Degree Authorization, Eugene; Lieutenant Commander Claudia Gelzer, U.S. Coast Guard Detaille, Senate Committee on Governmental Affairs; and Andrew Coulombe, Ventura, California.

TRIBAL SELF-GOVERNANCE ACT

Committee on Indian Affairs: Committee concluded a hearing to examine S. 1715, to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, after receiving testimony from David W. Anderson, Assistant Secretary for Indian Affairs, and William Sinclair, Director, Office of Self-Governance and Self-Determination, both of the Department of the Interior; D. Fred Matt, Confederated Salish and Kootenai Tribes, Pablo, Montana; Philip Baker-Shenk, Holland and Knight, Washington, D.C.; and Geoffrey Strommer, Hobbs, Strauss, Dean, and Walker, Portland, Oregon.

SATELLITE HOME VIEWER EXTENSION

Committee on the Judiciary: Committee concluded a hearing to examine S. 2013, to amend section 119 of title 17, United States Code, to extend satellite home viewer provisions, focusing on the statutory licensing regimes for over-the-air broadcast signals, royalty rates, and the transition to digital television, after receiving testimony from David O. Carson, General Counsel, Copyright Office, Library of Congress; Charles W. Ergen, EchoStar Communications Corporation, Littlewood, Colorado; Bruce T. Reese, Bonneville International Corporation, Salt Lake City, Utah, on behalf of the National Association of Broadcasters; Eddy W. Hartenstein, DIRECTV Group, Inc., El Segundo, California; Fritz Attaway, Motion Picture Association of America, Inc., Washington, D.C.; and John King, Vermont Public Television, Colchester.

INTELLIGENCE

Select Committee on Intelligence: Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.

Committee recessed subject to call.

House of Representatives

Chamber Action

Measures Introduced: 17 public bills, H.R. 4341–4357; and 4 resolutions, H. Con. Res. 421, and H. Res. 639–641 were introduced.

Pages H2917–18

Additional Cosponsors: **Pages H2918–19**

Reports Filed: Reports were filed today as follows:

H. Con. Res. 414, expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown (Rept. 108–485). **Page H2917**

Speaker: Read a letter from the Speaker wherein he appointed Representative LaHood to act as Speaker Pro Tempore for today. **Page H2817**

Chaplain: The prayer was offered today by Rev. Cynthia L. Hale, Pastor, Ray of Hope Christian Church in Decatur, Georgia. **Page H2817**

Amending the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements: The House passed H.R. 4279, to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, by a yea-and-nay vote of 273 yeas to 152 nays, Roll No. 163. **Pages H2821–29, H2838–53**

Rejected the Stark motion to recommit the bill to the Committee on Ways and Means with instructions to report the bill back to the House forthwith with an amendment, by a recorded vote of 202 ayes to 224 noes, Roll No. 162. **Pages H2850–52**

Rejected the Stark amendment in the nature of a substitute printed in part A of H. Rept. 108–484, by a recorded vote of 197 ayes to 230 noes, Roll No. 161. **Pages H2844–50**

H. Res. 638, the rule providing for consideration of the bill was agreed to by a recorded vote of 224 ayes to 203 noes, Roll No. 158, after agreeing to order the previous question by a yea-and-nay vote of 222 yeas to 202 nays, Roll No. 157. **Page H2835**

Permanent Extension of 10-Percent Individual Income Tax Rate Bracket bill: The House agreed to H. Res. 637, the rule providing for consideration of H.R. 4275, to amend the Internal Revenue Code of 1986 to permanently extend the 10-percent individual income tax rate bracket, by a voice vote, after agreeing to order the previous question by a yea-and-nay vote of 221 yeas to 203 nays, Roll No. 156. **Pages H2829–35**

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004—Motion to Instruct Conferees: The House agreed to table the motion to instruct conferees on H.R. 2660, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2004, offered by Representative George Miller (CA), by a recorded vote of 222 ayes to 205 noes, Roll No. 159. **Pages H2836–37**

Later Representative George Miller (CA) announced his intention to offer a motion to instruct conferees on the bill. **Page H2876**

Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2004: The House passed H.R. 4280, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, by a recorded vote of 229 ayes to 197 noes, Roll No. 166. **Pages H2853–74**

Rejected the Conyers motion to recommit the bill to the Committees on the Judiciary and Energy & Commerce with instructions to report the bill back to the House forthwith with amendments, by a yea-and-nay vote of 193 yeas to 231 nays, Roll No. 165. **Pages H2869–73**

H. Res. 638, the rule providing for consideration of the bill was agreed to earlier by a recorded vote of 224 yeas to 203 nays, Roll No. 158. **Pages H2835–36**

Suspensions—Proceedings Postponed: The House agreed to suspend the rules and pass the following measures which were debated on Tuesday, May 11:

Sense of the House regarding the military postal system: H. Res. 608, expressing the sense of the House of Representatives that the Department of Defense should rectify deficiencies in the military postal system to ensure that members of the Armed Forces stationed overseas are able to receive and send mail in a timely manner as well as receive and send election ballots in time to be counted in the 2004 elections, by a ⅔ yea-and-nay vote of 421 yeas with none voting "nay", Roll No. 160; **Pages H2837–38**

Recognizing the contributions of people of Indian origin to the United States: H. Con. Res. 352, recognizing the contributions of people of Indian origin to the United States and the benefits of working together with India towards promoting peace, prosperity, and freedom among all countries of the world, by a ⅔ yea-and-nay vote of 415 yeas to 2 nays and 2 voting "present", Roll No. 164; **Page H2853**

Calling on the Government of the Socialist Republic of Vietnam to release Father Thaddeus Nguyen Van Ly: H. Con. Res. 378, amended, calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release Father Thaddeus Nguyen Van Ly, by a ⅔ yea-and-nay vote of 424 yeas with one voting nay, Roll No. 167; **Pages H2874–75**

Recognizing those who contributed to the war effort during World War II and celebrating the completion of the National World War II Memorial: H. Con. Res. 409, recognizing with humble gratitude the more than 16,000,000 veterans who served in the United States Armed Forces during World War II and the Americans who supported the war effort on the home front and celebrating the completion of the National World War II Memorial on the National Mall in the District of Columbia, by a ⅔ yea-and-nay vote of 422 yeas with none voting "nay", Roll No. 168. **Pages H2875–76**

50th Anniversary of the Brown v. Board of Education decision—Order of Business: The House agreed that it shall be in order at any time without intervention of any point of order to consider H. Con. Res. 414, expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown; that the concurrent resolution be

considered as read for amendment; and that the previous question be considered as ordered on the concurrent resolution to final adoption without intervening motion or demand for a division of the question except (1) 30 minutes of debate on the concurrent resolution equally divided and controlled by chairman and ranking minority member of the Committee on the Judiciary and (2) one motion to recommit. **Page H2874**

Budget Resolution for FY 2005—Motion to Instruct Conferees: The House debated the Pomeroy motion to instruct conferees on S. Con. Res. 95, original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009. Further proceedings were postponed. **Pages H2876–82**

Quorum Calls—Votes: Eight yea-and-nay votes and five recorded votes developed during the proceedings of today and appear on pages H2834–35, H2835, H2835–36, H2836–37, H2837–38, H2850, H2851–52, H2852–53, H2853, H2873, H2873–74, H2874–75, and H2875. There were no quorum calls.

Adjournment: The House met at 10 a.m and adjourned at 12 midnight.

Committee Meetings

LEGISLATIVE APPROPRIATIONS

Committee on Appropriations: Subcommittee on Legislative held a hearing on the Library of Congress; the Architect of the Capitol; and the Capitol Visitor Center. Testimony was heard from James H. Billington, The Librarian of Congress; and Alan M. Hantman, Architect of the Capitol.

TRANSPORTATION, TREASURY AND INDEPENDENT AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Transportation, Treasury and Independent Agencies held a hearing on Election Assistance Commission. Testimony was heard from Deforest B. Soaries, Chairman, Election Assistance Commission.

NATIONAL DEFENSE AUTHORIZATION ACT; MISCELLANEOUS MEASURES

Committee on Armed Services: Ordered reported the following bills: H.R. 4323, To amend title 10, United States Code, to provide rapid acquisition authority to the Secretary of Defense to respond to combat emergencies; H.R. 4322, To provide for the establishment of the headquarters for the Department of Homeland Security in the District of Columbia, to require the transfer of administrative jurisdiction over the Nebraska Avenue Naval Complex; and H.R. 4200, amended, National Defense Authorization Act for Fiscal Year 2005.

COLLEGE ACCESS AND OPPORTUNITY ACT

Committee on Education and the Workforce: Held a hearing on H.R. 4283, College Access and Opportunity Act of 2004. Testimony was heard from public witnesses.

DIGITAL MEDIA CONSUMERS' RIGHTS ACT

Committee on Energy and Commerce: Subcommittee on Commerce, Trade and Consumer Protection held a hearing on H.R. 107, Digital Media Consumers' Rights Act of 2003. Testimony was heard from Representatives Boucher and Doolittle; and public witnesses.

NIH ETHICS CONCERNS

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled "NIH Ethics Concerns: Consulting Arrangements and Outside Awards." Testimony was heard from Elias Zerhouni, M.D., Director, NIH, Department of Health and Human Services; and the following officials of the National Academy of Sciences: Bruce Alberts, President; and Norman R. Augustine, Co-Chair, Blue Ribbon Panel on Conflict of Interest Policies.

STOCK OPTION ACCOUNTING REFORM ACT

Committee on Financial Services: Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises approved for full Committee action, as amended, H.R. 3574, Stock Option Accounting Reform Act.

COMMUNITY-BASED BANKS REGULATORY RELIEF

Committee on Financial Services: Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled "Cutting Through the Red Tape: Regulatory Relief for America's Community-Based Banks." Testimony was heard from Wayne A. Abernathy, Assistant Secretary, Financial Institutions, Department of the Treasury; John M. Reich, Vice Chairman, FDIC; and public witnesses.

DC CIVIL COMMITMENT MODERNIZATION ACT; POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT; PAPERWORK AND REGULATORY IMPROVEMENTS ACT

Committee on Government Reform: Ordered reported the following measures: H.R. 4302, District of Columbia Civil Commitment Modernization Act of 2004;

and H. Res. 612, amended, Recognizing and honoring the firefighters, police, public servants, civilians, and private businesses who responded to the devastating fire in Richmond, Virginia, on March 26, 2004; H.R. 4341, Postal Accountability and Enhancement Act; and H.R. 2432, amended, Paperwork and Regulatory Improvements Act of 2003.

EXPLORING HUMAN RIGHTS ABUSES—KASHMIR AND DISPUTED TERRITORIES

Committee on Government Reform: Subcommittee on Human Rights and Wellness held a hearing entitled "Decades of Terror: Exploring Human Rights Abuses in Kashmir and the Disputed Territories." Testimony was heard from the following officials of the Department of State: Michael Kozak, Principal Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor; and Don Camp, Deputy Assistant Secretary, Bureau of South Asian Affairs; and public witnesses.

UN CONVENTION ON THE LAW OF THE SEA

Committee on International Relations: Held a hearing on The United Nations Convention on the Law of the Sea. Testimony was heard from William H. Taft, IV, Legal Advisor, Department of State; ADM Michael G. Mullen, USN, Vice Chief of Naval Operations, Department of the Navy; and public witnesses.

UKRAINE'S FUTURE AND U.S. INTERESTS

Committee on International Relations: Subcommittee on Europe held a hearing on Ukraine's Future and United States Interests. Testimony was heard from Steven Pifer, Deputy Assistant Secretary, Bureau of European and Eurasian Affairs, Department of State; and public witnesses.

MISCELLANEOUS MEASURES

Committee on International Relations: Subcommittee on the Middle East and Central Asia approved for full Committee action, as amended, the following measures: H. Con. Res. 319, Expressing the grave concern of Congress regarding the continuing repression of the religious freedom and human rights of the Iranian Baha i community by the Government of Iran; H. Con. Res. 363, Expressing the grave concern of Congress regarding the continuing gross violations of human rights and civil liberties of the Syrian people by the Government of the Syrian Arab Republic; H. Res. 615, Expressing the sense of the House of Representatives in support of full membership of Israel in the Western European and Others Group (WEOG) at the United Nations; and H. Res. 617, Expressing support for the accession of Israel to the Organization for Economic Co-operation Development (OECD).

MISCELLANEOUS MEASURES

Committee on the Judiciary: Ordered reported the following measures: H. Con. Res. 414, Recognizing the 50th anniversary of Brown v. Board of Education; H.R. 3754, amended, Fraudulent Online Identity Sanctions Act; H.R. 1731, amended, Identity Theft Penalty Enhancement Act; S. 1301, amended, Video Voyeurism Prevention Act of 2003; and H.R. 1678, amended, Anti-Hoax Terrorism Act of 2003.

The Committee began markup of H.R. 2179, Securities Fraud Deterrence and Investor Restitution Act of 2003.

The Committee also approved private relief bills.

OVERSIGHT—REORGANIZATION OF TRUST MANAGEMENT

Committee on Resources: Held an oversight hearing on the current reorganization of trust management at the Bureau of Indian Affairs and the Office of the Special Trustee. Testimony was heard from the following officials of the Department of the Interior: Aurene Martin, Principal Deputy Assistant Secretary for Indian Affairs; and Ross O. Swimmer, Special Trustee for American Indians; and public witnesses.

ASSISTANCE TO FIREFIGHTERS GRANT REAUTHORIZATION ACT OF 2004

Committee on Science: Held a hearing on H.R. 4107, Assistance to Firefighters Grant Reauthorization Act of 2004. Testimony was heard from Representative Pascrell; the following officials of the Department of Homeland Security: R. David Paulison, Administrator, U.S. Fire Administration, Emergency and Preparedness Response Directorate; and Andrew Mitchell, Deputy Director, Office of Domestic Preparedness, Border and Transportation Security Directorate; and public witnesses.

WOMEN'S ENTREPRENEURSHIP: SUCCESSES AND CHALLENGES

Committee on Small Business: Held a hearing entitled "Women's Entrepreneurship: Successes and Challenges." Testimony was heard from Melanie Sabelhaus, Deputy Administrator, SBA; and public witnesses.

MISCELLANEOUS MEASURES

Committee on Transportation and Infrastructure: Ordered reported the following: a Fiscal Year 2005 Capital Investment and Leasing Program resolution; H.R. 3428, To designate a portion of the United States courthouse located at 2100 Jamieson Avenue, in Alexandria, Virginia, as the "Justin W. Williams United States Attorney's Building"; H.R. 3734, To designate the Federal building at Fifth and Richardson Avenues in Roswell, New Mexico, as the "Joe Skeen Federal Building"; H.R. 3742, To designate

the United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, as the ''Luis A. Ferre United States Courthouse and Post Office Building''; H.R. 3884, To designate the Federal building and United States courthouse located at 615 East Houston Street in San Antonio, Texas, as the ''Hipolito F. Garcia Federal Building and United States Courthouse''; H.R. 4056, amended, Commercial Aviation MANPADS Defense Act of 2004; H.R. 4226, amended, Cape Town Treaty Implementation Act of 2004; H.R. 4251, amended, Maritime Transportation Amendments of 2004; a resolution on National Transportation Week; and H. Con. Res. 420, Applauding the men and women who keep America moving and recognizing National Transportation Week.

BRIEFING ON IRAQI PRISONER SITUATION UPDATE

Permanent Select Committee on Intelligence: Met in executive session to receive a briefing on Iraqi Prisoner Situation Update. The Committee was briefed by departmental witnesses.

ALIGNING CIA HUMINT

Permanent Select Committee on Intelligence: Subcommittee on Human Intelligence, Analysis and Counterintelligence met in executive session to hold a hearing on Aligning CIA HUMINT. Testimony was heard from departmental witnesses.

TRANSPORTATION SECURITY ADMINISTRATION'S PROGRESS IN ENHANCING SECURITY

Select Committee on Homeland Security: Subcommittee on Infrastructure and Border Security held a hearing entitled ''The Transportation Security Administration's Progress in Enhancing Security.'' Testimony was heard from Stephen J. McHale, Deputy Administrator, Transportation Security Administrator, Department of Homeland Security.

COMMITTEE MEETINGS FOR THURSDAY, MAY 13, 2004

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Agriculture, Nutrition, and Forestry: to hold hearings to examine Commodity Futures Trading Commission regulatory issues, 10 a.m., SD–106.

Committee on Armed Services: to hold hearings to examine the contingency reserve fund request for fiscal year 2005, 9:30 a.m., SH–216.

Subcommittee on Readiness and Management Support, to hold hearings to examine acquisition policy issues in review of the Defense Authorization Request for fiscal year 2005, 2:30 p.m., SR–222.

Committee on Commerce, Science, and Transportation: Subcommittee on Science, Technology, and Space, to hold hearings to examine social science data on the impact of marriage and divorce on children, 2:30 p.m., SR–253.

Committee on Foreign Relations: to hold hearings to examine combating corruption in the multilateral development banks, 9:30 a.m., SD–419.

Subcommittee on European Affairs, to hold hearings to examine challenges and accomplishments as the European Union and the United States promote trade and tourism in a terrorism environment, 2:30 p.m., SD–419.

Committee on Health, Education, Labor, and Pensions: Subcommittee on Children and Families, to hold hearings to examine causes, research and prevention of premature births, 10 a.m., SD–430.

Committee on the Judiciary: Subcommittee on Constitution, Civil Rights and Property Rights, business meeting to consider S.J. Res. 23, proposing an amendment to the Constitution of the United States providing for the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated, 9:30 a.m., SD–226.

Full Committee, business meeting to consider S. 1735, to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, S. 1933, to promote effective enforcement of copyrights, S. 1635, to amend the Immigration and Nationality Act to ensure the integrity of the L–1 visa for intracompany transferees, S. 1609, to make aliens ineligible to receive visas and exclude aliens from admission into the United States for nonpayment of child support, S. 1129, to provide for the protection of unaccompanied alien children, S. 2013, to amend section 119 of title 17, United States Code, to extend satellite home viewer provisions, S. Res. 331, designating June 2004 as ''National Safety Month'', and the nomination of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, 10 a.m., SD–226.

Select Committee on Intelligence: closed business meeting to consider certain intelligence matters, 2:30 p.m., SH–219.

House

Committee on Appropriations, Subcommittee on Foreign Operations, Export Financing and Related Programs, on Millennium Challenge Corporation, 10 a.m., 2359 Rayburn.

Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, to mark up H.R. 4278, Improving Access to Assistive Technology for Individuals with Disabilities Act of 2004, 9:30 a.m., 2175 Rayburn.

Subcommittee on Workforce Protections, hearing entitled ''Examining the Federal Employees' Compensation Act and Its Benefits for Workers,'' 1 p.m., 2175 Rayburn.

Committee on Financial Services, hearing entitled "The US–EU Regulatory Dialogue and Its Future," 10 a.m., 2128 Rayburn.

Committee on Government Reform, hearing entitled "Harnessing Science: Advancing Care by Accelerating the Rate of Cancer Clinical Trial Participation," 10 a.m., 2154 Rayburn.

Committee on International Relations, hearing on The Imminent Transfer of Sovereignty in Iraq, 10:30 a.m., 2172 Rayburn.

Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, hearing on H.R. 3220, Business Activity Tax Simplification Act of 2003, 2 p.m., 2141 Rayburn.

Subcommittee on the Constitution, hearing on H.J. Res. 56, Proposing an amendment to the Constitution of the United States relating to marriage; and to mark up the following measures: H.J. Res. 568, Expressing the sense of the House of Representatives that Judicial determinations regarding the meaning of the laws of the United States should not be based on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the laws of the United States; and H.R. 1775, To amend title 36, United States Code, to designate the oak tree as the national tree of the United States, 10 a.m., 2141 Rayburn.

Committee on Resources, Subcommittee on Fisheries Conservation, Wildlife and Oceans, hearing on the following bills: H.R. 3433, To transfer federal lands between the Secretary of Agriculture and the Secretary of the Interior; H.R. 3479, Brown Tress Snake Control and Eradication Act of 2003; H.R. 4027, To authorize the Secretary of Commerce to make available to the University of Miami property under the administrative jurisdiction of the National Oceanic and Atmospheric Administration on Virginia Key, Florida, for use by the University for a Marine Life Science Center; and H.R. 4158, To provide for the conveyance to the Government of Mexico of a decommissioned National Oceanic and Atmospheric Administration ship, 10 a.m., 1324 Longworth.

Subcommittee on Forests and Forest Health, oversight hearing entitled "Firefighting Preparedness: Are we ready for the 2004 Wildlife Season?" 11 a.m., 1334 Longworth.

Committee on Science, hearing to examine federal high-performance computing research and development activities and to consider H.R. 4218, High-Performance Computing Revitalization Act of 2004, 10:30 a.m., 2318 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Aviation, oversight hearing on Avoiding Summer Delays and a Review of the FAA's Air Traffic Organization, 10 a.m., 2167 Rayburn.

Subcommittee on Economic Development, Public Buildings and Emergency Management, oversight hearing on How to Best Prepare for Acts of Terror: National Preparedness and First Responder Funding, 12 p.m., 2253 Rayburn.

Committee on Veterans' Affairs, Subcommittee on Benefits, to mark up the following bills: H.R. 4231, Department of Veterans Affairs Nurse Recruitment and Retention Act of 2004; and H.R. 4248, Homeless Veterans Assistance Reauthorization Act of 2004, 11 a.m., 334 Cannon.

Subcommittee on Health, to mark up the following bills: H.R. 1716, Veterans Earn and Learn Act; H.R. 3936, To amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, DC., metropolitan area, rather than only in the District of Columbia, and expressing the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for that Court and those it serves and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation; H.R. 4175, Veterans' Compensation Cost-of-Living Adjustment Act of 2004; and H.R. 4345, To amend title 38, United States Code, to increase the maximum amount of home loan guaranty available under the home loan guaranty program of the Department of Veterans Affairs, 9:30 p.m., 340 Cannon.

Committee on Ways and Means, Subcommittee on Human Resources, hearing on State Efforts to Comply with Federal Child Welfare Reviews, 10 a.m., B–318 Rayburn.

Permanent Select Committee on Intelligence, executive, hearing on Department of Homeland Security Intelligence Budget, 3:30 p.m., H–405 Capitol.

Subcommittee on Intelligence Policy and National Security, hearing on Intelligence Community Language Capabilities, 10 a.m., 2200 Rayburn.

Subcommittee on Terrorism and Homeland Security, executive, hearing on Information Technology Policy Sharing, 1 p.m., H–405 Capitol.

Joint Meetings

Conference: meeting of conferees on H.R. 2443, to authorize appropriations for the Coast Guard for fiscal year 2004, to amend various laws administered by the Coast Guard, 2:30 p.m., SD–628.

Joint Economic Committee: to hold hearings to examine the costs of health services regulations, 10 a.m., SD–628.

Next Meeting of the **SENATE**

9:30 a.m., Thursday, May 13

Senate Chamber

Program for Thursday: After the transaction of any morning business (not to extend beyond a period of 60 minutes), Senate will continue consideration of S. 1248, Individuals with Disabilities Education Improvement Act.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

10 a.m., Thursday, May 13

House Chamber

Program for Thursday:

Consideration of H. Con. Res. 414, expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown.

Consideration of H.R. 4281, Small Business Health Fairness Act of 2004 (modified closed rule).

Consideration of H.R. 4275, to amend the Internal Revenue Code of 1986 to permanently extend the 10-percent individual income tax rate bracket (modified closed rule).

George Miller (CA) motion to instruct conferees on H.R. 2660, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for FY 04.

Rolled vote of Pomeroy motion to instruct conferees on S. Con. Res. 95, Concurrent Resolution on the Budget for FY 05.

Rolled vote on Suspensions:

H.J. Res. 91, Recognizing the 60th Anniversary of the Servicemen's Readjustment Act of 1944.

Extensions of Remarks, as inserted in this issue

HOUSE

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