SENATE—*Tuesday, December 17, 1985*

(Legislative day of Monday, December 9, 1985)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Let us pray.

Glory to God in the highest, and on earth peace, good will toward men.—Luke 2:14.

Thank You, Father in Heaven, for this simple formula for peace: good will toward men, which is love, and glory to God in the highest. Love each other—glorify God! With all our complicated proposals for peace, may we not ignore this transcendent event which has inspired armies to declare a cease fire and suspend hostilities for a day. With benevolent infusion, the Jesus' event permeates history and the holidays with a joyous spirit not even secularism with its materialistic, commercial preoccupation can vitiate. May the glory of God and good will toward each other transform the controversy which postpones adjournment sine die. Grant, Gracious God, that the burden of unfinished business not be allowed to mar this beautiful season of life and love and laughter with children, families, and friends. Loving Lord, surprise the Senate with joy! In the name of the Prince of Peace. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order the leaders have 10 minutes each, to be followed by routine morning business with statements not to exceed 5 minutes each.

NOMINATIONS

The Senate will then turn to the nomination of Anne Graham, to be a Commissioner of the Consumer Products Safety Commission, and we will also consider the nomination of Terrence M. Scanlon, to be Chairman of the Consumer Products Safety Commission.

Mr. President, I would hope that those who have problems with these nominees will let us vote on them. There is no reason that there should be some phantom hold. We understand that the Graham nomination is being held up at the request of House Members. If that is the case, maybe we ought to find out what the problems are.

I think these nominees have a right at this time of the session when we are about to adjourn, perhaps in the holiday spirit, to have those Members who have holds on these nominations be here and debate the merits of the nominations.

Mr. President, I hope we can dispose of the Graham nomination by 11 o'clock. By previous unanimous consent at 11 a.m. the Senate will begin consideration of the nomination of Mr. Buckley under a time agreement.

Mr. President, the Senate will stand in recess between the hours of 12 noon and 1:30 p.m.

ORDER FOR RECESS FROM 12 NOON UNTIL 1:30 P.M.

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

FARM LEGISLATION

Mr. DOLE. Mr. President, it is my hope that we can dispose of the farm credit bill today. There is one problem we are trying to work out with the distinguished Senator from Texas, Senator BENTSEN. If we can reach some agreement on that, there would likely be only one amendment by Senators HELMS and ZORINSKY. It seems to me it would be in the interest of American agriculture, American farmers, and the American Farm Credit System to pass this bill quickly.

Mr. President, I am advised that the farm bill will be finally drafted by midnight this evening. It is a very complicated and complex measure. The staff has been working almost around the clock and deserve a great deal of credit. It appears to me that we may be able to have that before us some time tomorrow.

CONTINUING RESOLUTION

Mr. President, of more immediate concern is the continuing resolution, a short-term resolution since the House defeated the long-term continuing resolution last evening. We hope to take that up without amendment as soon as it reaches the Senate floor so there will be no doubt about the Government continuing in operation.

RECONCILIATION

Mr. President, that leaves reconciliation. I am advised by the chairman of the Budget Committee, Senator DOMENICI, that they hope to complete most of the so-called subconferences tonight. One hangup, apparently, is the Superfund and how it should be financed. Should we have a new tax, a value-added tax, to finance the Superfund? That question has not been resolved between the chairman of the Finance Committee and the chairman of the Ways and Means Committee. Hopefully, that can be done sometime today.

There are a number of other minor items, but they will not come up unless we can work out an agreement. There is the Liberian resolution; the Angola resolution, and maybe some other resolutions that I do not know anything about at this point.

I think we have reached the point that if there is going to be extended debate on any legislative matter, it probably will not be brought before the Senate before adjournment.

Mr. President, we would appreciate it very much if those who have problems with any of the nominations on the Executive Calendar could make those objections known. Perhaps we can work out any problems.

Mr. President, I do believe, unless there is some just reason to hold someone over the holiday season and wait until we come back in late January for confirmation, we ought to make every effort to resolve any conflicts we may have on either side. I am not certain which side the objections are coming from so I am not pointing any fingers. I am speaking of whoever may be holding up these nominees.

The Graham nomination will be on the floor, as I said, at 9:30. Senators STAFFORD and DANFORTH on this side have been notified to be here when that nomination is called up.

Mr. President, I reserve the remainder of my time.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER. Under the previous order, the distinguished acting Democratic leader is recognized.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that 2 minutes of the Democratic leader's time be reserved for his use at his discretion later in the day.

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

GRAMM - RUDMAN - HOLLINGS GIVES ARMS CONTROL BIG BOOST

Mr. PROXMIRE. Mr. President, Gramm-Rudman-Hollings has become law amid a torrent of warnings in this

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

body and the press that it could severely cripple America's military strength. Defense Secretary Caspar Weinberger has been consistently reported as opposed to the measure as it passed. This Senator has called attention to the irony in U.S. military policy of this deficit reduction measure. Here is legislation sponsored by three of the ablest and most enthusiastic champions of U.S. military strength in the U.S. Senate. The measure that seems certain to sharply cut military spending was pushed hard by the most military minded President in a generation.

What is the answer? How can this happen? What will be the consequences of this Draconian requirement for a reduction in the Federal Government's deficit?

Many of those consequences have been discussed at length in the long debate on the legislation when it passed the Senate. But, Mr. President, one surprising consequence of Gramm-Rudman-Hollings has been completely overlooked. Here is a measure that offers the best opportunity in at least 5 years for arms control. Why? Let me ask, what is the one way this country can increase its national security while reducing the size, the cost, and the firepower of its nuclear and conventional military arsenal? Answer: Arms control.

Gramm-Rudman-Hollings may turn out to be the best friend arms control has had in a very long time for that precise reason. And arms control may permit Gramm-Rudman-Hollings to work. Consider just the present arms control treaties. The second Strategic Arms Control Treaty—SALT II—expires December 31, 1985. That's only a few days away. It may or may not be renewed. Gramm-Rudman-Hollings makes the renewal of SALT II in the clearest interests of this country. Here's why: SALT II restrains both the Soviet Union and the United States from constructing additional missiles. In fact, it will require the Soviet Union to retire more offensive missiles than the United States will have to retire.

And what happens if we permit this arms control treaty—SALT II—to die? It means the Russians will be free to build up their offensive missiles. Will they do so? Mr. President, if anything is obvious, it is obvious that the Soviet Union intends to respond to this country's expressed determination to proceed with the missile defense—that is SDI or star wars—with a buildup of their offensive missiles. So, yes, indeed; if SALT II expires, the Soviets will proceed vigorously to build more offensive missiles.

And, if SALT II expires, what will be the consequences for the United States? We will certainly respond with a matching buildup of our own nuclear arsenal. That buildup will cost billions of dollars. What could stop it? Gramm-Rudman-Hollings could stop it. But Gramm-Rudman-Hollings could only stop it if a continuation of the SALT II Treaty made that possible. Would it? Yes, it would. How? It would restrain the Soviets as well as the United States. The mutual restraint would mean that neither superpower would lose its power in relation to the other. Both would save billions of dollars in military expenditure.

Mr. President, SALT II is not the only arms control agreement that is in serious jeopardy. The antiballistic missile or ABM Treaty will be dead if the United States proceeds with SDI, the missile defense to which the President has given such dedicated support. After all, the whole purpose of the ABM Treaty was to stop the antimissile defense, not only because of the uncertainty, instability and danger such a defense creates but also because of the overwhelming cost of SDI. If we continue to abide by the ABM Treaty, we can negotiate with the Soviet Union a reduction in the construction of offensive missiles on both sides, and a far more stable, safer, less dangerous relationship between the two superpower adversaries. We can negotiate the most stringent kind of verification system with a reinforcement of the Standing Consultative Commission. An aggressively used SCC will permit America to go to the mat directly with the Soviet Union over any evidence of violation of the agreement.

Mr. President, nothing we can do will more surely permit deficit reduction as required by Gramm-Rudman-Hollings to work than ending the star wars proposal. That SDI program will cost at least half a trillion dollars and probably much more than a trillion. If we proceed with it, both taxes and deficits will soar out of sight. If we end it with an arms control agreement, deficit reduction may become a reality.

The effect of these two current arms control treaties, SALT II and ABM, in holding down military spending and permitting deficit reduction to work suggests the big contribution arms control can bring to deficit reduction. Future arms control agreements can continue to help greatly in keeping military spending under control. Consider, for example, the effect on United States military spending of an arms control agreement with the Soviet Union requiring a mutual, comprehensive prohibition of all nuclear weapons testing.

First, such an arms control agreement would end the immense expenditure this country pours into research to develop new nuclear weapons. In doing so, it would mean the cost of producing and deploying those new weapons would also be eliminated. Recently, our initiative in proposing a reduction in troop strength on both sides between NATO and the Warsaw Pact illustrated the positive role arms control can play in reducing spending on conventional arms—where, of course, far more of our spending is than in the nuclear area.

Mr. President, the new deficit reduction legislation will put more pressure on Congress to hold down spending in every area of Government than we have ever had in the past. Many good and constructive programs will either have to end or suffer major curtailment. That is too bad. It is also necessary. In the military area, on the other hand, arms control can permit a major reduction in military spending while we actually improve our national security. Here is a happy and neglected side effect of Gramm-Rudman-Hollings.

MYTH OF THE DAY: STAR WARS IS NONNUCLEAR

Mr. PROXMIRE. Mr. President, the myth of the day is that the strategic defense initiative, or star wars, is nonnuclear.

Have we not heard that SDI is to be a nonnuclear shield against long-range missiles? This is what you have heard. That is what I have heard also. And we have heard it from the President of the United States.

Mr. Reagan has said many times that star wars, if it is ever built, will be nonnuclear. He told us that when he returned from his talks with Soviet leader Gorbachev. Moscow is worried we might put offensive weapons, especially atomic weapons, in outer space. That is not so, said Mr. Reagan. What we want, he said, is a "nonnuclear defense system. * * *"

Is that all the President has said on the matter? No, there is quite a bit more. In speeches and interviews, Mr. Reagan has been very clear, very precise. Is the SDI nonnuclear, asked the editors of one news magazine—U.S. News & World Report? "That's right. Yes," said the President.

So the record seems evident. We have it spelled out, then, that star wars will not unleash atomic weapons in outer space and the world will be spared the horror of even more senseless weapons.

Is that clear to you from these words? Well, it sure is not clear to me. Why? Consider this: The orbiting x-ray laser. Sounds like science fiction, does it not? It is not and we are working to build them. General Abrahamson, who directs SDI, is trying to accelerate the x-ray laser program. There already has been one test and they hope for more. Someday in the not too distant future, we may build these devices and send them into orbit over our skies as part of star wars.

So what, you say? The x-ray laser will shield us from threatening missiles and that is good, right?

Well, as the old saying goes, if you believe that, you will believe anything. Why the fuss? Let me tell you, Mr. President.

The x-ray laser is an atomic bomb. And if we launch them into orbit, however many there might be, there will be nuclear weapons zipping over our heads, over our cities, over friend and foe alike. Think about that: Nuclear weapons orbiting the planet. It is the stuff of nightmares.

Let us look at some basics. The x-ray laser gets its knockout punch from an exploding atomic bomb. Listen to what I said: An exploding nuclear weapon. I did not say atomic powered with a safe nuclear reactor that many of our satellites use. No. The x-ray laser can only work if it blows up the atom bomb it carries on board.

Why am I making this point? Simply this: There is a glaring contradiction here.

You know people say to err is human. And I could add we all make mistakes. But this takes the cake! How could anyone call SDI nonnuclear when one of its important components, the x-ray laser, is obviously nuclear, and an atomic weapon at that!

What does the President mean when he says star wars is nonnuclear? How can he and his advisers and supporters keep saying that when confronted by the evidence of the x-ray laser?

Mr. President, maybe you remember that President Reagan said his SDI Program would render nuclear weapons impotent and obsolete. It is pretty obvious to me that using the atomic explosion of an x-ray laser to zap the nuclear warheads of Soviet missiles does nothing to rid the planet of nuclear weapons. It adds more!

When, I ask you, is it going to stop? When are we going to say no to more nuclear weapons? The x-ray laser as part of star wars represents another step down that long, dark pathway of nuclear weapons. I wonder with each step if this will be the last before we plunge into the nuclear abyss?

THE GENOCIDE CONVENTION WILL AID SOVIET REFUSENIKS

Mr. PROXMIRE. Mr. President, the struggle for human rights is often epitomized by the unfortunate plight of individuals suffering for the persecution of entire nations. Standing alone, they proclaim the violations of the freedoms of their people while enduring the burden of harassment and repression by their oppressors.

People like Leonid Volvovsky. Leonid is a refusenik in the Soviet Union. His open involvement in a large refusenik community in Gorky has landed him in court. It is feared that he may receive an overly severe condemnation for his actions.

Beginning in 1976, after being refused an exit visa to Israel, Volvovsky became an object of keen Soviet surveillance. He was the victim of unauthorized searches, his books and other materials were confiscated, and personal threats were issued against him. His Hebrew books were taken as was his modest apartment. In July, the KGB arrested Volvovsky for speaking out against the Soviet Government. He awaits trial and the unfortunate outcome of being made an example for his outspoken behavior.

Volvovsky calls for the recognition of the injustices suffered by Soviet Jews and appeals for this people's freedom. A courageous call. And one to which we dare not turn a deaf ear.

But the road to freedom for people like Leonid Volvovsky will be a long one—far too long. A frustrating journey for those of us who want to play a positive role in the effort to end human rights abuses throughout the world.

Yet there is a step that we can take here in the Senate. A step that will result in immediate action—ratification of the Genocide Convention.

The Genocide Convention carries the same message as the brave actions of a Leonid Volvovsky. It declares the right of all people—every national, ethnic, racial, and religious group—to live without fear that their very identity as a group will be eliminated.

Ratification of the Genocide Convention will not, in itself, set Leonid and his people free. But it will give them hope. It will demonstrate that the leader of the free world has not given up on its commitment to establish basic fundamental human rights as the cornerstone of our foreign policy.

And it will give us the ability to go after those tyrants and nations which would seek to ignore these basic freedoms, which we declared inalienable so long ago.

Mr. President, Leonid Volvovsky should be a model of courage to each of us to do what we can: Ratify the Genocide Convention.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 9:30 a.m. with statements permitted therein of 5 minutes each.

SENATOR DURENBERGER'S REMARKS TO THE AMERICAN PUBLIC HEALTH ASSOCIATION

Mr. ANDREWS. Mr. President, protecting the health of the American people is one of our greatest national purposes. In these times of escalating budget deficits and cost-cutting, this body's concern for this purpose is evidence of our commitment to a healthy America.

As chairman of the Senate Finance Health Subcommittee and cochairman of the Senate Rural Health Caucus, my colleague, Senator DURENBERGER, is a leader in carrying out this purpose. As a chief national spokesman and advocate for protecting and promoting health, we should look to his recent remarks to the American Public Health Association for leadership and guidance in how we can cut excess cost and still maintain high quality health care for the American people.

Mr. President, I ask unanimous consent that the text of Senator DURENBERGER's speech be printed in the RECORD.

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

AMERICAN PUBLIC HEALTH ASSOCIATION RALLY

Seven years ago I was elected to the U.S. Senate to fill some very big shoes, those of the late Hubert H. Humphrey. Hubert had an unusual empathy and compassion for the less fortunate in our society. And I often think of the observation he made back in 1977, not long before his death, at the dedication of the Department of Health, Education and Welfare.

He said, "The moral test of government is how that government treats those who are in the dawn of life, the children . . . those who are in the twilight of life, the elderly . . . and those who are in the shadows of life—the sick, the needy and the handicapped."

That is the moral mandate that Hubert Humphrey charged us with, as we come to work every morning inside this building. It is a mandate shared in State Capitols and city halls across this nation. You have come here to help us do what we must to meet that mandate, to lend us your advice, your experience and your understanding—and for that we welcome you.

Given that quotation from Senator Humphrey, it's especially meaningful that we meet this year, during the 50th anniversary of Title V—the Maternal and Child Health program—and the 20th anniversary of Medicare and Medicaid.

These programs are ongoing proof of our commitment to health care. We will continue to push for reforms to make them more effective, and we will take our share of the budget cuts—only our share. But we will not break our commitment, our promise to the American people: That every individual will have access to quality health care, regardless of region, age or income.

But the nation's health care system is facing major change; if not a revolution, certainly an evolution. It's becoming a marketplace, a system more competitive, more efficient and more responsive to the needs of individuals. Americans are learning to be smart health care consumers, and the biggest consumer of all is the federal government. Millions of Americans depend upon us for access to proper health care.

Thirty million of those individuals are covered by Medicare. Last year we spent

more than $70 billion on the Medicare program alone. We're trying to spend that money more wisely. That's why we created the prospective payment system, reimbursing hospitals for Medicare patients based on fixed fees. And we've set up a voucher program, giving the elderly choices by allowing them to use their Medicare entitlement to join health maintenance organizations.

The Maternal and Child Health Block grant is another success story. Since 1950, we've cut the national infant mortality rate by more than 250 percent. By turning the program into a block grant, we've given the states even more leeway in targeting the money where they need it most.

Later today I will be joining with my colleagues, Senators Bumpers, Bentsen and Dole, in introducing legislation to commemorate the achievements of Title V, and to designate the first week in June as "National Maternal and Child Health Week."

No investment is better, wiser, more significant, than the investment in our children. In the words of James Agee "In every child who is born, the potentiality of the human race is born again." There is no stronger imperative than producing healthy children. Without that, we are simply legislating ourselves into an empty future.

If we can learn from our success with the Maternal and Child Health program, the chief lesson should be the importance of preventive health services. Those services can range from prenatal care to wellness programs for the elderly. It's a lesson we in Washington are learning only slowly.

Only 1 percent of all federal health dollars are spent on prevention. Look at our infant mortality rate. Despite the advances, it's still higher than a dozen developed nations, and the rate for blacks and American Indians is as much as triple the national average. Look around you: Take this group here today and multiply it by 20. That's how many American kids died last year before their first birthday.

Better prenatal care could have saved a lot of those kids, and thousands more whose lives are touched by handicaps and chronic illnesses. Yet, only now are we talking about allowing states to expand their prenatal care services for poor women under the Medicaid program. Only now are we realizing that we spend up to $5,000 a day to treat a critically ill newborn in a neonatal unit, while we spend a pittance to keep a child in the best incubator of all, the mother's womb.

How much money—and how many lives—can we save if we put our investment up front, to give our kids a running chance at a healthy life before they're born? And how much could we improve the length of our lives and the quality of our lives by teaching Americans how to lead healthy lifestyles?

As all of you well know, prevention is only part of the story. Quality is only part of the story. The other part is access. As the health care system becomes more competitive for the consumer's dollar, those who can't afford health care—preventive or otherwise—are being squeezed out.

Many Americans, including one out of every five children, have no health insurance of any kind, public or private. Not all of them are poor. Some are self-employed people or seasonal workers. But many of them are falling between the cracks. They may even be turned away from hospitals for critical treatment.

At a recent public hearing here in Washington, I heard the story of a pregnant woman in a battered women's shelter in Minnesota. She was ineligible for Medicaid. The only way she could ensure the proper medical care was to go back to the husband who had abused her. She was soon beaten again, and her unborn child was injured in the womb.

We should all feel our stomachs turn when we hear those stories. But they remind us of our compelling mandate—federal, state and local governments alike—to give all Americans somewhere to turn for adequate health care . . . those in the dawn of life, those in the twilight of life, and those in the shadows of life.

We in this building are here to give you what you need to make that mandate a reality. You are the eyes, the backs, the hands that turn public health policy into healthy human beings. Help us do our jobs better, so we can help you do yours.

PROFESSIONAL SPORTS BILL

Mr. EAGLETON. Mr. President, last week the full Senate made great progress toward finishing its work on S. 259, the Professional Sports Community Protection Act of 1985. We have studied the issue of sports franchise stability since 1980 when the Oakland Raiders announced plans to move to Los Angeles. Several bills were introduced that provided a variety of approaches to the problem. After thorough and careful deliberations, the Senate Commerce Committee decided that S. 259 merits full Senate consideration.

I would like to congratulate my colleague from Missouri, Senator DANFORTH, who joined me as a cosponsor of S. 259. As chairman of the Senate Commerce Committee, Senator DANFORTH held extensive hearings on this legislation this year. Two days of hearings were also held by the Commerce Committee during the 98th Congress. Under Chairman DANFORTH's leadership, the Senate Commerce Committee favorably reported S. 259. It is my view that this bill, which is the product of long and thoughtful consideration, merits the Senate's unqualified support.

At the time of the introduction of S. 259, I detailed the state of chaos that reigns over professional sports leagues, as a result of the unwarranted relocation of professional sports teams. I also described how S. 259 will protect our cities from the hardships and economic dislocations that can occur when a professional sports team decides to relocate to greener pastures in a new area.

We have witnessed the problems that can occur when a team leaves a city without any regard for the fans and local government who have provided it with loyal emotional and financial support over the years. In Oakland, the Raiders were one of the most profitable teams in the National Football League and enjoyed strong fan support. Also, the city of Oakland and Alameda County built a stadium for the Raiders which was financed by local bonds. Despite these commitments the Raiders chose to move to Los Angeles, leaving thousands of disappointed fans and the local government to pay the debts for the stadium without the revenues provided by the Raiders.

Recently, the city of Philadelphia had a similar but, ultimately, more fortunate experience. Last year, after over 50 years in Philadelphia, the Eagles announced their intention to relocate. However, the last minute efforts of Mayor Wilson Goode led to the Eagles staying in Philadelphia to continue their long-standing tradition and identification with that city.

Thus, when considering these incidents, it is not surprising that mayors across the country want a solution to this growing problem and are circulating a resolution in support of S. 259. To date, over 20 mayors have signed the resolution and the number of signatories is growing. The resolution has been signed by such distinguished mayors as Dianne Feinstein of San Francisco, Andrew Young of Atlanta, Richard Caliguiri of Pittsburgh, Vincent Schoemehl of St. Louis, W. Wilson Goode of Philadelphia, Ernest Morial of New Orleans, George Latimer of St. Paul, Henry Maier of Milwaukee, A. Starke Taylor of Dallas, Henry Cisneros of San Antonio, Richard Hackett of Memphis, Bud Clark of Portland, and Jake Godbold of Jacksonville.

Mayors, as the chief executive officers of our cities, know the financial and civic contributions that professional sports teams make to our urban areas. Mayors are also aware of and extremely sensitive to the hardships and economic dislocations that can occur when a well-supported team decides to seek a more profitable location. Moreover, many of the mayors I listed are also seeking expansion teams and want to improve chances for expansion. Once expansion occurs they want to ensure stability. Most mayors have enough problems running our cities and can ill afford the added pressures created by the musical chair movement of professional sports franchises.

S. 259 will relieve our mayors of these unnecessary added pressures. The bill will ensure that the substantial interests of local communities who have supported a team will receive proper consideration when that team decides to relocate. Professional sports teams will have to adhere to a specific process and professional sports leagues will be required to consider specific factors, such as the adequacy of a team's present playing facility, team revenues, the extent of fan support and any publicly financed financial support provided to the team. Local governments and stadium owners will also

have the right to seek judicial review of league team relocation decisions.

The mayors have also endorsed this bill because it will give professional sports leagues the authority to enforce their revenue-sharing rules and agreements. Revenue sharing is extremely important to medium-sized cities with professional sports teams because it provides the financial means to achieve competitive balance with teams in the major metropolitan areas. The use of revenue-sharing has allowed cities like Green Bay, Kansas City, Seattle, and New Orleans to field teams that are competitive with teams from Los Angeles, Chicago, and New York.

Finally, the mayors recognize that S. 259 will restore franchise stability and enable teams to expand to those cities that wish to acquire professional sports teams. Presently, it would not be prudent for many professional sports leagues to expand to a new city. Generally, an expansion team often faces financially difficult times in its early years, and the pressures to relocate could be great during that time. Recent court decisions have added to this problem by impeding the ability of leagues to enforce their team relocation rules. Hence, a league may not be able to prevent an expansion team from relocating after it has just arrived in its new home. S. 259 solves this problem by restoring the authority of professional sports leagues to enforce their rules governing team location. Thus, leagues can expand with the knowledge that a team will remain in its new home.

Moreover, by signing the resolution in support of S. 259, these mayors have expressed their disagreement with the advocates of forced expansion who contend that much of the problem of franchise instability can be attributed to an "artificial scarcity" of professional sports franchises. According to this view, professional sports franchises relocate because certain professional sports leagues have intentionally withheld franchises in order to maintain the high value of existing franchises. This proposition was specifically put to the Commerce Committee in the form a forced expansion amendment that was rejected by a vote of 14 to 2.

Further, an examination of the number of professional sports teams reveals the true nature of the myth of artificial scarcity. For example, the National Football League currently has 28 teams that play in 19 States. In addition, the United States Football League operates another nine football franchises. This is a total of 37 professional football teams that are currently operating throughout the country, with many clubs playing to less than stadium capacity audiences. The notion of artificial scarcity of professional football franchises is difficult to support given these facts.

When you compare football with the other professional sports, the scarcity argument seems even more transparent. Professional baseball has 24 teams in 14 States; basketball has 23 teams in 17 States; hockey has 14 teams in 11 States. Thus, whether you count the nine USFL teams or not, it is clear that professional football has more teams in more States than any other professional team sport.

The real issue is not artificial scarcity but rather whether professional sports leagues will be able to pursue consistent and orderly expansion policies based on sound business judgments. Decisions relating to team relocation and expansion are not judgments to be made on the spur of the moment based on emotional or other short term considerations. Such decisions require extensive planning and study because they affect the well-being of the entire league and all league sports communities. Professional sports leagues, not the Congress, possess the expertise and facts necessary to make these decisions. Just as Congress would not tell an automobile manufacturer when and where to locate an automobile plant, it should not tell a professional sports league when and where to place a team.

The Justice Department shares the view that there is no justification for legislatively-mandated professional sports league expansion. In recent testimony before the Senate Judiciary Committee, Assistant Attorney General Charles Rule of the Justice Department's Antitrust Division stated:

> [T]he Department believes that there is no justification for the legislatively-mandated expansion of Major League Baseball and the NFL. . . . In a free market system, firms—not regulators or legislators—are generally considered the best judges of how and where their products are marketed.

Mayors across the country are urging us to enact S. 259 to solve the problem of franchise instability. It is a problem that plagues our cities, and they deserve our help. I urge my colleagues to support this important measure when we return to this issue next year.

Mr. President, I ask unanimous consent for the reprinting of the mayoral resolution in its entirety in the RECORD.

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

SPORTS COMMUNITY PROTECTION LEGISLATION

Whereas, the public interest is served by the successful and stable operation of professional sports teams in communities throughout the Nation;

Whereas, the United States Congress is considering legislation that would clarify the application of federal law to professional sports leagues and promote the public interest in such matters;

Whereas, there has been strong support from local government officials and others for legislation that restores sports league authority to retain teams in communities where they are successfully operating and to share league revenues in a manner that enables teams to operate in many communities;

Whereas, legislation of this character is set forth in Senate bill S. 259 as well as other equivalent Senate and House bills, and the Senate Commerce Committee may shortly report S. 259 to the full Senate for consideration; and

Whereas, it is in the best interest of communities to support the foregoing community protection legislation that would clarify federal law with respect to team stability and revenue sharing within professional sports leagues;

Now, Therefore, be it resolved, by the undersigned local government officials in support of stable relations between professional sports teams and communities:

1. That the local government officials lend their wholehearted support to the enactment of S. 259 or other equivalent Senate and House legislation containing the essential team stability and revenue sharing features noted above.

2. That the local government officials direct that this Resolution be sent to all members of the United States Congress as evidence of their support for the passage of the aforementioned legislation.

SIGNATORIES ON MAYORAL RESOLUTION

Richard Berkley, Mayor, Kansas City, Mo.
Dianne Feinstein, Mayor, San Francisco, Ca.
George Latimer, Mayor, St. Paul, Minn.
Samuel J. Halloin, Mayor, Green Bay, Wisc.
Jim Maddox, City Councilman, Atlanta, Ga.
Richard G. Hatcher, Mayor, Gary, Ind.
Janice C. Pine, President, Nevada League of Cities
Andrew Young, Mayor, Atlanta, Ga.
Richard Caliguiri, Mayor, Pittsburgh, Pa.
Vincent Schoemehl, Mayor, St. Louis, Mo.
G. Thane Akins, Mayor, Midland, Texas
Valance Gill, Mayor, San Leandro, Ca.
Henry Maier, Mayor, Milwaukee, Wisc.
Jake M. Godbold, Mayor, Jacksonville, Fla.
Gary Falati, Mayor, Fairfield, Ca.
Richard Hackett, Mayor, Memphis, Tenn.
Ernest N. Morial, Mayor, New Orleans, La.
Federico Pena, Mayor, Denver, Co.
J.E. "Bud" Clark, Mayor, Portland, Ore.
Eugene "Gus" Newport, Mayor, Berkeley, Ca.
Henry Cisneros, Mayor, San Antonio, Texas
Barbara J. Potts, Mayor, Independence, Mo.
W. Wilson Goode, Mayor, Philadelphia, Pa.
A. Starke Taylor, Mayor, Dallas, Texas.

U.N. REPORT ON SOVIET ATROCITIES IN AFGHANISTAN

Mr. DOLE. Mr. President, the United Nations—never known for its forthrightness in criticizing the Soviet Union—has issued a devastating report documenting massive Soviet human rights violations in Afghanistan.

As a result of that report, the U.N. General Assembly, by an overwhelming 75-to-23 vote, expressed its "profound concern" over what the Russians are doing in Afghanistan. When you read the report, you realize that "profound concern" hardly characterizes what any civilized person should feel about the Russian tactics.

The Russian invasion has driven more than 4 million Afghans from their country and another 2 million from their homes—a refugee situation of unprecedented proportions. The main Soviet military tactic is that of mass terror—the use of indiscriminate bombings of villages, homes, hospitals, and even funeral processions, and the widespread use of torture against anyone suspected of opposing the Russians.

One particularly Soviet trick is so abhorrent that it is literally sickening—the Russians have taken to dropping toys out of airplanes, which village children of course rush to pick up and play with. These "toys," tragically, conceal bombs timed to go off in the childrens' hands, literally tearing them limb from limb.

Our President once called the Soviet Union an evil empire, and for that he has been criticized and ridiculed by some in this country and even some in this body. In my dictionary, though, an empire includes invading and occupying neighboring countries, and evil certainly would encompass the practice of enticing innocent children to death and dismemberment with booby-trapped toys. Perhaps some owe our President an apology.

Mr. President, I would like to include in the RECORD at this point and commend to all of my colleagues an editorial which appeared recently in the Washington Post, discussing the U.N. report. That editorial says that what the Russians are doing is so abhorrent that it goes beyond questions of human rights violations—"the word that comes to mind," says the Post, "is genocide."

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

AFGHANISTAN: THIS IS GENOCIDE

"Human rights violations" is a phrase used so often and so casually that even the most compassionate among us can take it as routine. The quick meaning in most people's minds, we suspect, centers on police abuses, roughing and locking people up, perhaps killing some of them. Something like that is what you may expect to find in a new United Nations report entitled "Situation of Human Rights in Afghanistan."

But it's different. The second report on Afghanistan by Austrian parliamentarian and academic Felix Ermacora and a companion report on Iran mark the first time the United Nations has debated human rights in those countries on the basis of official U.N. reports. By a vote of 75 to 23 with 33 abstentions—India, lamentably, was the lone democracy holding Moscow's hand—the General Assembly registered its "profound concern." Afghanistan was singled out not just because a Third World Moslem country is the victim of aggression but also because of the terrible and deepening intensity of its ordeal.

Soviet troops with their Afghan clients have driven 4 million people out of the country and perhaps another 2 million out of their homes. Massively and indiscriminately, they bomb civilians—they bomb funerals. They destroy villages, crops and agricultural facilities. For the chidren, they drop cute, limb-shattering booby traps disguised as harmonicas and birds. Torture is "commonplace" and the operation of the judicial system "creates an atmosphere of insecurity and anguish." "There is apparently no health care for the majority of the population. As a consequence, the infant mortality rate has reached 300 and 400 per 1,000." Civilian deaths number "approximately 500,000."

When half the population is unrooted and a third driven into exile, when infant mortality reaches plague levels, when half a million civilians die and uncounted millions of others are maimed and malnourished, when, as Prof. Ermacora reports, the situation is getting worse, all this moves Soviet conduct well beyond what is ordinarily called "human rights violations." The word that comes to mind when one reads this report is genocide.

Soviets who talk about Afghanistan with foreigners sometimes solicit a certain sympathy for their policy dilemma and their costs. This is callous and arrogant. The people who deserve the sympathy are the Soviet Union's victims. Says a desperate Prof. Ermacora, "every hour lost is detrimental to the population"—the Afghan population. Moscow is committing one of the great crimes.

DEMONSTRATIONS PROTEST STATUS OF JEWS IN SOVIET UNION

Mr. SARBANES. Mr. President, on May 1 of this year a demonstration to protest the Soviet Government's treatment of its Jewish population took place near the Soviet Embassy. There have been other demonstrations for the same purpose in the past, and indeed for many years a silent vigil of protest has continued in the vicinity of the Embassy. The May 1 demonstration was different from the others, however, because the participants peacefully but deliberately moved within 500 feet of the Embassy, thereby violating the law. As a result of this action, 24 rabbis and a Lutheran minister were arrested.

The decision to violate the law was not taken lightly. Those involved in the demonstration have long been concerned, as indeed we all must be, about the status of Jews in the Soviet Union. Thousands upon thousands of Soviet Jews are truly prisoners in their own country even when they are not actually confined to camp or prison. They are not permitted to live openly in the Soviet Union as Jews, or freely to practice their religion, or to learn Hebrew or see that their children learn it. Refused these liberties at home, they are also refused permission to emigrate; and once having taken the courageous step of applying to emigrate they are generally denied gainful employment and forced to live a marginal existence where they are subject to harassment, abuse and, always, the threat of arrest and imprisonment on spurious charges. Emigration rose consistently in the 1970's and exceeded 51,000 in 1979. But in 1984 only 896 persons were permitted to leave, and this year the total is expected to be even lower. Families continue to be torn apart, and lives destroyed.

The plight of Soviet Jewry is an issue that must continue to be raised with the Soviet Government at the highest levels: That is our challenge and our responsibility. On May 1, 24 rabbis and a Lutheran minister chose to demonstrate their concern by gathering peacefully within 500 feet of the Soviet Embassy, for which they were arrested and charged. Following their example, others have similarly demonstrated near the Embassy in recent months, and 132 persons have been arrested.

The May 1 demonstrators were found guilty last week of the misdemeanor charge of congregating within 500 feet of an Embassy. For this they were fined, given 15-day suspended sentences, and 6 months' probation. Five of the convicted rabbis rejected the suspended sentence and chose instead to serve the 15 days in jail. As Rabbi David Oler, chairman of the Washington Board of Rabbis' Committee on Soviet Jewry, put it, their decision was "an act of solidarity with Soviet Jews."

Mr. President, in a moving and eloquent statement Rabbis David Oler, Mark Levine, Leonard Cahan, Bruce Kahn, and H. Steven Bayar explained their reasons for choosing to serve out the sentences handed down to them. I ask that the statement be reprinted in its entirety, along with recent newspaper articles about the case, in the hope that all Americans concerned about the basic human rights that we so cherish in our daily lives will read and reflect on the profound commitment expressed in these documents.

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

TEXT OF STATEMENT BY JAILED RABBIS, DECEMBER 13, 1985

Elie Wiesel, the Holocaust survivor and philosopher, wrote, "The opposite of love is not hate, it is indifference."

The Soviet Union is engaged in a cultural genocide, a spiritual holocaust. This year has been the worst in recent memory. Jews in Russia can not freely study Hebrew or Bible, pray, or conduct religious ceremonies. Scores of self-educated Hebrew teachers have been imprisoned. Their only crime was to assert their Jewish identity.

We are expressing our religious and moral obligation to act on their behalf. We can not give them material support in their struggle

to be free. We can only give ourselves to their righteous cause. It is our responsibility as Jews and as Rabbis to see to it that every Jew is safe to study Torah.

This act will be worthwhile only if it will generate awareness and action on behalf of Prisoners of Conscience languishing in Soviet prisons.

We will not remain indifferent to their plight. We ask that the press not write or report about us, or our families, or our conditions during these fifteen days. We ask that instead the media focus on our oppressed brethren in Soviet jails, their families, and on the unbearable conditions of Soviet Jews who seek to live in freedom.

Today, on this festival of Chanukah, this festival of dedication to religious freedom, we call on the Soviet Union to let our people go. Furthermore, we call upon the world community to continue pressing the Soviet Union to live up to its international obligations toward human rights.

We will never be silent.

RABBI H. STEVEN BAYAR,
RABBI LEONARD CAHAN,
RABBI BRUCE KAHN,
RABBI MARK LEVINE,
RABBI DAVID OLER.

[From the Washington Post, Dec. 12, 1985]

EIGHT AREA RABBIS MAY GO TO JAIL DURING HOLIDAY

(By Marjorie Hyer)

Eight Washington area rabbis said yesterday that they may choose to serve 15-day jail sentences, including the remainder of the Jewish holiday of Hanukkah, to dramatize their concern for the treatment of Soviet Jews.

The eight are among 24 rabbis and a Lutheran pastor who were convicted yesterday in D.C. Superior Court for congregating within 500 feet of the Soviet Embassy during a demonstration May 1 and given 15-day suspended sentences.

Judge Colleen Kollar-Kotelly, who rejected the argument that their protests on behalf of Soviet Jews were compelled by their religious beliefs, yesterday gave the eight until 9 a.m. today to decide whether they will accept the suspended sentences or go to jail immediately. She also sentenced each protester to six months of unsupervised probation and fined each $50.

Rabbi David Oler of Gaithersburg, one of the eight and chairman of the Washington Board of Rabbi's Committee on Soviet Jewry, said it was "a matter of principle," that some of the rabbis "are not comfortable accepting probation . . . Some of us feel that Jews in the Soviet Union don't have the choice of accepting probation or paying a fine."

Oler, who said the protesters were acting in response to the Old Testament directive; "Do not stand idly by while your colleague's blood is being spilled," criticized the judge for "taking a very hard line."

"We still regard it as selective prosecution," he said, alluding to the fact that the thousands arrested during antiapartheid demonstrations at the South African Embassy throughout the last year have not been prosecuted.

The men and women convicted yesterday launched a series of demonstrations at the Soviet Embassy that have resulted in 132 arrests, including one group of 22 college students arrested in October. On Dec. 5, Kollar-Kotelly rejected the selective prosecution plea offered by a group of 21 rabbis arrested June 10, also fining them $50, and suspending 15-day jail terms.

One defendant, Rabbi Michael Berenbaum, pleaded guilty yesterday, was fined $10 in court costs and given the same suspended sentence and unsupervised probation.

The Rev. John Steinbruck, pastor of Luther Place Church, said last night he was undecided as to whether he will serve the jail term because it would extend through Christmas, when he has major responsibilities with his church.

[From the Washington Post, Dec. 13, 1985]

FIVE AREA RABBIS OPT FOR JAIL TO STRESS SOVIET JEWS' PLIGHT

(By Marjorie Hyer)

Five Washington area rabbis decided yesterday to dramatize the plight of Jews in the Soviet Union by serving 15-day jail sentences rather than accept six months' probation and were ordered to report this morning to the federal prison in Petersburg, Va.

The five, who were among 24 rabbis and a Lutheran pastor arrested May 1 during a demonstration near the Soviet Embassy, attempted to postpone serving the sentences—which will continue through the remainder of the Jewish holiday of Hanukkah—but D.C. Superior Court Judge Colleen Kollar-Kotelly rejected their pleas.

"The choice to go to jail is the choice they have made, not the court," she said.

Rabbi David Oler of Gaithersburg, who must report to Petersburg, said the five were accepting the sentences as "an act of solidarity with Soviet Jews," but called the sentences "extreme, considering our crime was reading the Torah in front of the Soviet Embassy."

The rabbis, who argued during their trial Wednesday that they were compelled by their religious convictions to demonstrate, had sought to argue that they were being unfairly singled out for prosecution because more than 3,000 persons arrested for congregating outside the South African Embassy during antiapartheid demonstrations have not been prosecuted.

Defense attorney Henry W. Asbill said he attempted to raise the issue but was "denied the right to investigate that" by the judge.

A spokesman for the district attorney's office, Clendon Lee, said he could not comment on the question of selective prosecution because "our policy is that we can't discuss cases that are under litigation."

In another case involving a demonstrator outside the Soviet Embassy, D.C. Superior Court Judge Warren P. King ruled in July that the U.S. attorney's office may use broad discretion in deciding whom to prosecute and that the safety of American diplomatic personnel in other nations can be a factor in such decisions.

The Lutheran minister and 16 rabbis, who along with the five were convicted of the misdemeanor charge of congregating within 500 feet of an embassy, accepted fines of $50, suspended sentences of 15 days and six months of unsupervised probation. One rabbi pleaded guilty and was assessed only $10 in court costs.

A bench warrant has been issued for two rabbis who did not appear in court this week because they were out of the city.

Yesterday, as each stood before Kollar-Kotelly for sentencing, several rabbis spoke about their concern for Soviet Jews and their dissatisfaction with the trial's outcome.

Said Oler, "I feel we have not been treated fairly in terms of the spirit of the law . . . I feel there are moral imperatives involved here."

"[Writer] Elie Wiesel has said that the opposite of love is not hate but indifference," began Rabbi Mark Levine of Silver Spring. In recent years, he said, there has been a growing indifference to the plight of Soviet Jews.

"It is unfortunate that this court did not see fit to hear our argument" that the rabbis were conscience-bound to call attention to the hardships inflicted on Soviet Jews, he said.

"Let me correct you on that," the judge interrupted amiably. "We spent two hours on that yesterday."

"We are talking about serious matters in a very rational way while people are being arrested and tortured," Levine countered.

"The courtroom is not the forum for speaking out on some of the issues you have raised," the judge replied.

The only point on which the judge gave ground was in granting Asbill's request for the rabbis—Oler, Levine, Leonard Cahan of Potomac, Bruce Kahn of Chevy Chase and H. Steven Bayar of Greenbelt—to check themselves into the Petersburg prison this morning "so they will not have to be in the D.C. Jail overnight."

They are being sent to Petersburg because of the overcrowding in the D.C. Jail.

The Rev. John Steinbruck, pastor of Luther Place Church, said he accepted the suspended sentence yesterday because of responsibilities during the Christmas season.

"I'll be back on Jan. 30, your honor," he told the judge. In addition to the May 1 arrest, Steinbruck was arrested in another protest in October.

During court recesses, the rabbis and their supporters clustered in the hallway, talking somberly. Some busied themselves at pay telephones, trying to arrange for colleagues to take over congregational duties during their imprisonment.

Bayar, of Greenbelt, took turns with his wife Ilene holding their 3-month-old daughter, Meira. Nuzzling the sleeping infant, he said softly, "In 15 days she won't know me."

[From the Washington Post, Dec. 14, 1985]

FIVE RABBIS REPORT TO U.S. PRISON

(By Marjorie Hyer)

Five rabbis who chose to go to jail to protest the treatment of Jews in the Soviet Union reported to the federal prison in Petersburg, Va., yesterday morning, proclaiming "we will never be silent" about the problems of Soviet Jews.

The five, who were convicted of violating a federal law by demonstrating in May outside the Soviet Embassy, issued a statement urging that attention not be focused "on us or our families or our conditions" in prison. Instead, they asked that attention be given "our oppressed brethren in Soviet jails, their families, and on the unbearable conditions of Soviet Jews who seek to live in freedom.

Going to jail, the rabbis said, "will be worthwhile only if it will generate awareness and action on behalf of prisoners of conscience languishing in Soviet prisons."

The five were among 24 rabbis and a Lutheran pastor arrested May 1 for violating the law against congregating within 500 feet of an embassy. But they rejected the sentences, handed down Thursday in D.C. Superior Court, of $50 fines, six months of unsupervised probation and 15-day suspended jail terms.

Rep. Michael D. Barnes (D-Md.) has urged President Reagan to pardon the five rabbis.

He called the sentences "unusually harsh" for the crime involved and Judge Colleen Kollar-Kotelly's refusal to postpone the jailings "an outrage" in light of the government's refusal to prosecute protesters arrested outside the South African Embassy.

The national membership organizations of both Reform and Conservative rabbis, representing the majority of rabbis in this country, also have petitioned for a presidential pardon for all who have been "sentenced for this act of human rights."

In a related development, the D.C.-Maryland chapter of the Anti-Defamation League of B'nai B'rith has agreed to underwrite the defense of all those arrested in the series of anti-Soviet protests. Nearly 90 protesters have yet to be tried. In addition, the attorney for 44 demonstrators already found guilty filed appeals of their convictions yesterday.

Helene Karpa, president of the Jewish Community Council of Greater Washington, issued a statement of support yesterday for the jailed rabbis.

PENALTY PROVISIONS IN THE TAX CODE

Mr. PRYOR. Mr. President, in this Christmas season, I thought I would let the Senate know about a present a constituent of mine recently received.

The present did not originate at the North Pole. It originated in Austin, TX. The location was the regional service center of the Internal Revenue Service. Santa Claus did not deliver the present—the U.S. Postal Service did.

What was the present? A form letter from the IRS office in Austin telling this taxpayer that because of an 11 cent error on a quarterly tax return involving over $37,000, it would have a penalty imposed of $319.11.

Just think about it, Mr. President, you make an error that is one-half the cost of a postage stamp when making a quarterly tax return involving thousands of dollars. Then, you get a letter telling you that a penalty of over $300 will be imposed. Just the correspondence between the Government and the taxpayer in this case will be four times the amount of the error. That does not even take into account the amount of time the business spent going over forms and trying to correct the situation.

There are several possible explanations, Mr. President. Perhaps a computer made a mistake. Maybe someone pushed the wrong button. Or, maybe the computer did everything correctly, and it is a problem with the penalty provisions now in the Tax Code. Whatever the reason, it seems absolutely incredible to me that we have a situation where an $0.11 error gives rise to a $319 penalty.

I think several things need to be done, Mr. President, and I want to highlight a couple today. First, we should have a thorough examination of all the penalty provisions in the Tax Code. We all know they are there for a good reason. Interest and penalty provisions must be in the code or individuals and corporations could simply not file returns on time, or not pay the proper amount of tax, and simply not have the worry about paying any more in the end. When the penalty provisions become so confusing, however, that the taxpayers cannot understand them, and even when the IRS does not know what they are, I think it is time to look at them. Today, I have written to the chairman of the Finance Committee, the Senator from Oregon, [Mr. PACKWOOD], and asked that the Oversight Subcommittee of the IRS hold hearings on the overall penalty provisions in the code to see if they cannot be improved. These hearings could provide us with the information necessary to make some sensible, much-needed changes in this area. It seems to me that with all the talk about tax reform and making the Tax Code simpler, this would be a good place to start.

Further, I think we need to consider whether there should be some de minimis level, or threshold amount, below which the penalty provisions would not apply in the absence of fraud. I do not know what a reasonable level would be, but it should act to prevent situations like this one from reoccurring.

Finally, Mr. President, I think we should once again review the computer operations. The problems last year in the Philadelphia region have been in the press frequently. While it is my understanding that many of them have been resolved, I think further work needs to be done.

I look forward to working with my colleagues in the Finance Committee on these issues, Mr. President, and I hope we can hold hearings early next year on these matters.

MIROSLAV MEDVID

Mr. SIMPSON. Mr. President, I would like to comment on a recent flurry of statements in the CONGRESSIONAL RECORD concerning the Soviet sailor Miroslav Medvid, and the proposed Senate resolution that would create a special panel on asylum to review our asylum policy to nationals of Communist bloc countries.

In response to the proposal for a special panel on asylum, I would refer interested Members to a Dear Colleague letter of December 9, 1985—signed by Senator THURMOND, Senator KENNEDY, and myself—which takes exception to the creation of such a panel. To summarize, the letter notes that the Subcommittee on Immigration and Refugee Policy has already held two hearings on the Medvid issue: November 5 and November 7, 1985. These hearings revealed the following: First, INS agents failed to follow established procedures in the initial interview of Mr. Medvid; second, current INS procedures and regulations state that potential asylum cases from Communist bloc countries require immediate notification of INS district officials and the State Department, and if these procedures had been followed the Medvid incident would likely not have occurred; and third, once INS supervisors and the State Department became aware of the incident, Medvid was removed from the Soviet ship and given several other opportunities to declare asylum. I firmly believe these finds shed a sufficient light on this difficult situation to avoid the need for any special panel or other extraordinary investigations. The Judiciary Committee's oversight function can deal well with this matter.

If there is new evidence, or if there are appropriate witnesses not available to us at the time we held the hearings, please advise the staff of the subcommittee or full committee and we will hold additional hearings, if necessary. Presently the subcommittee is planning a joint hearing with the Subcommittee on Administrative Practice and Procedure to review even more carefully our procedures for dealing with defectors or asylum seekers from Iron Curtain countries.

I would also like to address two allegations raised by some proponents of the Special Panel on Asylum: First, that the second interview with Medvid may have been held with an imposter, and second, that the second interview with Medvid in a United States naval facility was not valid because Soviet personnel were always present.

First, we do have photographic and personal observation proof that the same man who was interviewed initially by INS agents was also interviewed by State Department personnel 4 days later on U.S. soil. The Border Patrol agents took a picture of Mr. Medvid during the first interview, and this picture was later used by State Department personnel to identify Medvid when he was taken from the *Marshal Koniev* for a second interview. In addition, the ships captain provided State Department personnel with Medvid's passport, and this picture on the Soviet passport was also used to verify that they were taking "the right person" to United States facilities for a second interview. Thus, Miroslav Medvid was positively identified by two independent photographs.

Second, despite the presence of Soviet personnel during the second interview, it should have been clear to all involved that the United States was fully in charge. Medvid was twice removed from ocean vessels—once from the *Marshal Koniev*, once from a United States Coast Guard cutter—both to the obvious displeasure of Russian Embassy officials. United States officials present at the negotiations inform me that it was absolutely

clear to Medvid that, had he expressed any wish or given any overture to declare political asylum, the Russian officials could not have prevented him from remaining in the United States. In addition, there is another critically important reason why Russian officials are allowed in these interviews—so that United States officials will be allowed to be present when Soviet officials interview American citizens in similar situations in Soviet waters. Would we wish to have the Soviets deny an official American presence when interviewing United States citizens in Russia? I should trust not, yet that is obviously the type of retaliation we could expect if we had excluded all Soviet personnel from our interviews with Medvid. 1Finally, I would like to include an editorial that appeared in the New York Times concerning the Medvid incident. While its references to the Senate Agricultural Committee's subpoena are no longer timely, the overall wisdom of the editorial still prevails.

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

[From the New York Times, Nov. 9, 1985]

THE SAILOR WHO SAID NO

Whatever now happens to poor young Miroslav Medved, reasonable Americans can agree on two points. One is that their Government handled his case disastrously at the outset. The other is that critics of the Administration are handling it so badly now.

The two low-level Border Patrol officers in charge could hardly have bungled worse in the case of the unhappy Ukrainian sailor. Twice he dived overboard to escape his ship docked in New Orleans. Twice, ignoring regulations, they sent him back. To them, ship jumpers are a dime a dozen, young men who have suddenly discovered that being a sailor is hard work—and are routinely turned back to their skippers.

In this case, the officers acted with relentless ignorance of Immigration Service policy for possible defectors from Communist countries. the officers should not only have called in their superior, but also *his* suprior in Washington.

By failing to do so, they have caused diplomatic turmoil on the eve of the Reagan-Gorbachev summit conference. They have opened the President to embarrassing attack from the right. They have even sparked a minor constitutional crisis, over the right of Congress to stick its subpoenas into executive branch business.

But granting every bit of that, the question remains: What to do about the sailor, Mr. Medved? No good remedy is possible. There's little doubt that once returned to this ship, he was subjected to threats and intimidation, physical and psychological. That contributes to American frustration and even fury as more and more people come to focus on the case. Yet the question still remains: What's the best possible remedy?

The prescription might go something like this: Insist on interviewing the sailor again, on shore, unrushed, after he's had a good, and safe, night's sleep. Have a doctor, maybe also a psychiatrist on hand. With an eye to the way Americans are treated in the Soviet Union, see to it that Soviet officials are on hand. Yet assure Mr. Medved that he can stay in this country if he wants to. Then, finally, look him in the eye and ask if he wishes to stay. If he says no, ask him please to put it in writing. And then, if he still says he wants to go back, there is no choice but to accede.

Why wasn't all that done? In fact, that's exactly what was done. The Immigration Service and State Department, sweating to make up for the original blunder, tried to set things straight in just that way, for 24 hours. They looked him in the eye. He went back to his ship.

All of that does not satisfy the Senate Agriculture Committee and other critics. Sanctimoniously, they demand that the Government conduct a third interview with Mr. Medved, as though it had ignored him in the second one. The result then was tragedy: an impetuous young man, forced to weight his freedom against his family, chose family. Where is the patriotism or humanity in trying to make him choose again?

THE ECONOMIC DISASTER IN THE FARM BELT

Mr. EXON. Mr. President, the present occupant of the chair, the distinguished Senator from North Dakota [Mr. ANDREWS] knows very well first hand what I am about to talk about today. There are those of us who have been warning for a long, long time about the totally disastrous situation economically in the Farm Belt.

Yes, it is true that, generally speaking, this Christmas is going to be a merry Christmas for most of the people of the United States. Things generally are humming. Unemployment generally has stabilized and is not going down, at least appreciably, in most sectors of the United States. The stock market has reached new highs and is giving signals that it might go even higher.

But, in view of the fact that we are about ready to face an important vote on a farm bill, which is only a momentary step, an interruption, if you will, on the farm crisis that is going to consume the Congress of the United States in the months to come, regardless of how bad or how good the farm bill is—and in my opinion it is a bad farm bill, on balance, although we did make significant improvements in that bill over what was originally envisioned by the administration and we were successful with our filibuster and other activities that took place in the conference between the House and the Senate on the agriculture bill to make some improvements—the bottom line still remains, as I view this upcoming bill, it is going to reduce farm income in 1986 and every year thereafter.

Now, in view of that, Mr. President, it seems to me that we better take a close look at where we are going, look back and see what we have done, and, therefore, consider appropriate action with regard to agriculture.

Mr. President, I can only tell you that the situation in my State of Nebraska—and I am sure that it is reflected in the Dakotas, in Kansas, certainly in Iowa, Minnesota, Oklahoma, and Missouri, with differing degrees of seriousness—is a very blanket attitude of things getting much worse before they get better. And I hope that the Senate will take that into consideration as it works its deliberations.

Over and above the farm bill, though, whether it is good or bad and how good or bad it is, rests like a meat cleaver the so-called Gramm-Rudman amendment that is poised and triggered to fall. I suggest, Mr. President, that the first brush of reality that the Farm Belt will be aware of up front and first hand is during the spring planting season of next spring. During that spring planting season of next spring there is a trigger that will be set in motion that will mandate and require the Congress to make an additional $10 billion to $11 billion decrease in expenditures for 1986, essentially a reconciliation move to put it into effect now.

Therefore, whatever we come out with in a farm bill, good, bad, or indifferent—you can take your choice on how you think it is—it is going to be cut. It is going to be cut, no question about it, because if agriculture is not one of those protected items as envisioned in Gramm-Rudman, I would simply say, Mr. President, that sooner or later the reality is going to hit home to all of those who do not seem to fully understand at the present time that, with more than 50 percent of the total Federal budget eliminated and protected from Gramm-Rudman cuts, a disproportionate and unfair share is going to fall on the rest of the budget.

Unfortunately, Mr. President, I am fearful that that is going to hit directly and very hard at agriculture. And that is going to happen next spring during the planting season. That is some way, is it not, Mr. President, for the distressed farmers and ranchers, and small businessmen that rely on them, to plan ahead, to plan their way out of the depression that they are in right now.

Mr. President, I come to the floor today to have printed in the RECORD some staggering new figures that have just come out of my State of Nebraska. If they have not come out in the surrounding States, they will be coming out in the very near future, because there is no way to go but down for agriculture. What we are doing, Mr. President, out in rural America is taking apart the very fabric of our society.

And I think that all too often that is not fully understood here on the banks of the Potomac, and certainly,

Mr. President, it is not understood at 1600 Pennsylvania Avenue.

Mr. President, there were alarming statistics, all in big bold print in the last 3 days in the newspapers in Nebraska. The first one that I refer to is from the Omaha World Herald of December 14. The headline is "State Ag Report Estimates 2,300 Now Insolvent," by Kent Warneke, World-Herald farm writer.

GRAND ISLAND, NE.—A Nebraska Agriculture Department report to be made public next week will show that Nebraska farmers and ranchers hold more than $1 billion in debt that probably will never be collected; said Chuck Schroeder, State Agriculture Department director.

The report indicates that more than 2,300 Nebraska farmers and ranchers are technically insolvent and more than 10,000 have debt-to-asset ratios of more than 70 percent, he said. Economists say ratios that high indicate severe financial stress.

Mr. President, the next item that I would like to refer to was dated the next day, December 15. This big bold black headline is "6.1% Unemployed, Jobless Rise in Nebraska 'Alarming'," by Dick Piersol, journal business editor of the Lincoln Journal.

The number of unemployed people in Nebraska has grown by 20,000 people, or two-thirds, from 30,000 to 50,000 in the past 12 months, according to state Department of Labor estimates.

Ten thousand more Nebraskans were added to the estimate of the unemployed in a month as the department's calculation of the unemployment rate rose 1.1 percentage points in November, up to 6.1 percent, compared to 3.7 percent a year ago.

The November report was one of the state's worst economic backslides since the recession of the early 1980s, and a reversal that demonstrates accelerated deterioration in the economy outside Lincoln and Omaha.

For the clarification of my colleagues, outside the metropolitan areas of Lincoln and Omaha means rural America, the heartbeat of our State, and the heartbeat of that whole great part of our great land.

It is particularly alarming, Mr. President, because while a 6.1 percent unemployment rate might seem small indeed to some States, as it affects Nebraska it is twice—twice—what the average has been in our usually sound financial state over the years. In fact, for the 8-year period that I had the privilege of serving my State as Governor, I think we were seldom, if ever, over 3 percent for that 8-year period. But that was another time and that was another era.

I simply say that the jobless rise is indeed alarming as stated in this interesting news story, and it is a harbinger, I suggest, of things to come. Likewise—I do not have a copy with me—in the last week the Department of Revenue of the State of Nebraska has announced another alarming decrease in the total tax receipts for Nebraska; another harbinger, I suggest, Mr. President, of things to come not only in Nebraska, but throughout the Farm Belt.

Another item that I have in my hand with big, bold headlines, and this is dated December 16—yesterday. This is from the Omaha World Herald, and the headline is "Farmland Declines In Value, Fed Says." Mr. President, this is written by Mr. Jeff Gauger, World Heralds staff writer, and it reads in opening paragraphs as follows:

Farmland values in Nebraska declined in the July-September period for the 17th straight quarter, falling to about 50 percent of the high recorded in early 1981, the Federal Reserve Bank of Kansas City, Mo., said Monday.

The bank said an acre of irrigated farmland in Nebraska cost $887 in the third quarter, down 8 percent from the second quarter and 23 percent from a year ago.

The third-quarter figure was 51 percent below the peak of $1,733 an acre recorded in the second quarter of 1981.

Weak farm income and high debt costs were to blame for the continued deline, the bank said in a November newsletter detailing results of a quarterly survey of 166 bankers in the Federal Reserve's 10th district, which includes Nebraska.

Mr. President, I am wondering what the average person in the United States today, rejoicing in having a merry Christmas, would think if the value of their holdings—if the value of their holdings—had gone down by 50 percent in the last 4 years.

An allied story, Mr. President, again from the Omaha World Herald, and this is dated yesterday also, December 16, 1985. "Bankers Meet, Discuss Farm Loan Proposals." The text of this article, by Mr. Steve Jordon, of the World Herald staff, deals with the uncertainty in the commercial bank structure today who have not had any help whatsoever. They are concerned with what we did with regard to the farm credit bailout a few days ago.

Mr. President, I ask unanimous consent that the articles that I have made reference to be printed in the RECORD in full immediately following the conclusion of my remarks.

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

[See exhibit No. 1.]

Mr. EXON. Mr. President, there have been those of us who have come to this floor time and time again for the last several years to highlight the coming catastrophe in rual America today.

I simply hope that any of our colleagues whom we have gotten through to on the crisis will understand we need help.

I say once again that I am extremely certain, and one of the reasons I strongly oppose the Gramm-Rudman amendment, among other reasons, is the fact that I think it will eliminate any long-term planning, it will eliminate the chance of cash flow, and it will be a dreary hatchet hanging over the head of that farmer, that banker, or that small businessman in rural America who goes in to make a renegotiation of loans that he cannot possibly pay for.

The situation is deteriorating rapidly. I only sound the alarm once again, and express a feeling for more thoughtful consideration for our part of the country than it has thus far received.

EXHIBIT No. 1

[From the Omaha (NE) World Herald, Dec. 16, 1985]

STATE AG REPORT ESTIMATES 2,300 NOW INSOLVENT

(By Kent Warneke)

GRAND ISLAND, NE.—A Nebraska Agriculture Department report to be made public next week will show that Nebraska farmers and ranchers hold more than $1 billion in debt that probably will never be collected; said Chuck Schroeder, State Agriculture Department Director.

The report indicates that more than 2,300 Nebraska farmers and ranchers are technically insolvent and more than 10,000 have debt-to-asset ratios of more than 70 percent, he said. Economists say ratios that high indicate severe financial stress.

Nebraska has between 55,000 and 60,000 farmers.

All together, there is more than $9.6 billion debt in Nebraska agriculture, and about 11 percent of that—about $1.1 billion—probably will have to be written off, Shroeder said.

"Next year's entire state budget wouldn't pay one year's interest on that total debt we have in Nebraska, agriculture," he said.

FARMERS UNION CONVENTION

Speaking Friday at the opening day of the Nebraska Farmers Union annual convention in Grand Island, Schroeder said the report was done to gauge the impact of the agriculture debt problem on Nebraska's economy.

"We especially wanted to show how much of the debt probably will never be able to be collected—that just extending more credit or delaying payments won't answer the whole problem," he said.

Schroeder said he was disappointed by a recent report by the University of Nebraska-Lincoln's Bureau of Business Research, which contends that while the agricultural economy is suffering, the economies of the state's cities will not be substantially affected.

"I'm not trying to pick a fight with those people, but we have got to show the economists the fallacies of their logic," he said. "We're the first to agree that economic diversity is healthy, the agriculture is not going to become a secondary industry in Nebraska—at least not in my lifetime."

Schroeder said Nebraska Job Training Council statistics indicate that 5,422 people have been laid off from their jobs in Omaha in the last year.

PENETRATED TO CITIES

"That's being described as an epidemic," he said. "The layoffs have occurred because the disease has penetrated into our cities, and the disease's roots are in agriculture."

Another emphasis of the department's report is to show how vital actions by the Farm Credit System can be in Nebraska.

"I see commercial lenders willing to work with their agricultural borrowers on debt workouts," he said. "But if the Farm Credit System, because of the large amount of ag-

ricultural lending it does, isn't willing to participate, it will be disastrous to all of us."

Some people say Nebraska agricultural is doing all right on the average, Schroder said.

"They say that on average, by golly, it's not too bad out there. But I don't know of any average people out there on farms. I think we're justified in looking at them as individuals and give them the opportunity to show their stuff."

[From the Lincoln (NE) Journal, Dec. 15, 1985]

JOBLESS RISE IN NEBRASKA "ALARMING"—6.1 PERCENT UNEMPLOYED

(By Dick Piersol)

The number of unemployed people in Nebraska has grown by 20,000 people, or two-thirds, from 30,000 to 50,000 in the past 12 months, according to state Department of Labor estimates.

Ten thousand more Nebraskans were added to the estimate of the unemployed in a month as the department's calculation of the unemployment rate rose 1.1 percentage points in November, up to 6.1 percent, compared to 3.7 percent a year ago.

The November report was one of the state's worst economic backslides since the recession of the early 1980s, and a reversal that demonstrates accelerated deterioration in the economy outside Lincoln and Omaha.

Construction and manufacturing, particularly of farm and garden machinery, but also food processing, showed declines. Retail trade showed seasonal gains.

State Labor Commissioner Ron Sorensen said most of the increase in unemployment occurred outside the state's two largest cities. Of the 20,000 more people unemployed in the past year, 11,171 of them live outside Lincoln and Omaha. Almost 7,000 of them live in the Omaha area.

The numbers of unemployed outstate grew by 6,367 from October to November. In the past 12 months outstate, only about 1 in 12 of the new members of the labor force got jobs, according to the report.

Nationally, the unemployment rate was 7 percent for November, almost flat for the past six months.

A seasonal increase in unemployment is typical for November, but last year it actually fell in Nebraska, from 3.8 percent to 3.7 percent.

Soresen called the November report "alarming."

Two critical factors are the typical seasonal change of employment and the unusually early and severe winter, but Sorensen said that doesn't completely explain the increase in unemployment.

The state's labor force, those working or looking for work, grew from 801,232 to 828,254 people in the past year; of the growth, 27,000 people, only 6,000 have jobs. In the state's two largest cities, the growth in the labor force was split about evenly among those with jobs and those without, so the worst deterioration is clearly in the non-metropolitan parts of the state.

"We're getting back to the levels of '82, when things were pretty bad," Sorensen said.

"I'm not expecting it to be quite that severe, because of the national improvement, but agriculture is in a much worse situation than at that time," he said. "I see the (unemployment) rate continuing to go up. There just isn't much out there that makes me optimistic that we're going to get a drastic recovery in the economy."

The Lancaster County unemployment rate, too, rose 1.1 percentage points to 4.3 percent in November, compared to 2.4 percent a year ago.

In the county, the number of people employed rose by 686 to 112,093 in the past 12 months, while unemployment rose by more than 2,200 to 5,005. The monthly changes showed unemployment kept pace with jobs—employment growth of 998, unemployment growth of 1,084.

The Omaha metropolitan area unemployment rate rose form 5.6 percent to 6.2 percent during November.

[From the Omaha (NE) World Herald, Dec. 16, 1985]

FARMLAND DECLINES IN VALUE, FED SAYS

(By Jeff Gauger)

Farmland values in Nebraska declined in the July-September period for the 17th straight quarter, falling to about 50 percent of the high recorded in early 1981, the Federal Reserve Bank of Kansas City, Mo., said Monday.

The bank said an acre of irrigated farmland in Nebraska cost $887 in the third quarter, down 8 percent from the second quarter and 23 percent from a year ago.

The third-quarter figure was 51 percent below the peak of $1,733 an acre recorded in the second quarter of 1981.

Weak farm income and high debt costs were to blame for the continued decline, the bank said in a November newsletter detailing results of a quaterly survey of 166 bankers in the Federal Reserve's 10th district, which includes Nebraska.

ALL CATEGORIES DECLINE

"The word around here is, if you want to invest in farmland now is the time to do it," said bank spokesman Lowell Jones. "Basically, it's been a steady decline (in land values) since the first or second quarter of 1981."

Districtwide, the survey found that average values for all land categories declined 7 percent from the second quarter and 22 percent from the same period a year ago. Values for non-irrigated land, irrigated land and ranchland were collected.

In Nebraska, non-irrigated land values fell to $500 an acre from $538 in the second quarter, a 7 percent decline. That was 24 percent below the price of $665 an acre that bankers reported last year, and 49 percent below the 1981 peak of $979.

Nebraska ranchland also declined in value, falling 9.5 percent between the second and third quarters to $152 an acre. The price in the year earlier period was $240 an acre. Ranchland values have plummeted 54 percent from the 1981 peak of $330.

The survey contained responses from bankers in Kansas, Oklahoma, Colorado, Wyoming, Nebraska and parts of Missouri and New Mexico.

IOWA FARMLAND VALUES

In Iowa, farmland values declined 8 percent from the second quarter and 28 percent for the same period in 1984, according to a quarterly survey by the Federal Reserve Bank of Chicago.

The latest decline put Iowa land values 49 percent below the level recorded in the third quarter of 1981, said Bank Economist Peter Heffernan.

"The Iowa bankers were, for the most part, pretty pessimistic" about the direction land values move in the fourth or current quarter, Heffernan said. Of about 150 Iowa bankers surveyed, 70 percent predicted further declines, he said.

NEBRASKA FARMLAND VALUES

[Prices per acre]

	Non irrigated	Irrigated	Ranchland
1981:			
2nd quarter	$951	$1,733	$323
3rd quarter	979	1,712	330
4th quarter	870	1,582	332
1982: 3rd quarter	770	1,404	304
1983: 3rd quarter	768	1,401	273
1984: 3rd quarter	655	1,150	240
1985:			
1st quarter	555	990	179
2nd quarter	538	963	168
3rd quarter	500	887	152

Source: Federal Reserve Bank, 10th District Kansas City MO.

[From the Omaha (NE) World Herald, Dec. 16, 1985]

BANKERS MEET, DISCUSS FARM LOAN PROPOSALS

(By Steven Jordon)

KANSAS CITY, MO.—Commercial agriculture bankers met here Monday to refine their ideas for easing the nation's farm problems into a plan that will win the approval of Congress and federal regulators before next year's planting.

"Bankers are beginning to agree on some ideas," said Bob Brenton of Des Moines, president of the Brenton Banks of Iowa. "We just need to get things to jell. It's our intent to come up with some proposals."

About 55 bankers and bank association members from 14 states met at the Airport Marriott Hotel. The American Bankers Association and the Independent Bankers Association of America, which sent representatives to the session, will carry the group's proposals to Congress and to federal regulations.

Mel Adams, president of the Nebraska Bankers Association, said Sen. Edward Zorinsky, D-Neb., is one of the senators interested in the proposals.

CONGRESSIONAL HEARINGS

Bruce Meriwether, president of the Iowa Bankers Association, said Sen. Jake Garn, R.-Utah, has said he would hold hearings early next year to see what Congress can do to assist commercial bankers.

Adams said the proposals are intended to keep the Farm Credit System from gaining an unfair advantage over banks thanks to a bailout package recently approved by Congress.

Changes in the Farm Credit System will make it the equivalent of a large national agricultural bank, said Adams, who is chairman of the Keith County Bank of Ogallala, Neb. "I've got a problem with that."

Brenton said Congress is aware of the farm problem enough to take steps to help the Farm Credit System.

"It is assinine to think that they would help one leader and their customers but not another lending group and their customers," he said, referring to commercial agriculture banks.

Lyle Campbell, chairman of the First National Bank of Danville, Ill., said commercial bankers usually favor the Farm Credit System because it provides financing to farmers who would have difficulty finding other funds.

"But we don't want to create a monster here that the private sector can't compete with," Campbell said.

Proposals being considered by the bankers include:

Allowing agriculture banks to "stretch' defaulted farm loans over a period of as long

as 10 years rather than requiring a bank to immediately deduct loan losses from its capital;

Creating a "holding pool" of farmland. Rather than a bank foreclosing on a farm and trying to sell it on the depressed farmland market, the land would remain under control of the farm operator and off the market. A farmer could work to repay the loan;

Providing 80 to 90 percent federal loan guarantees for farmland so that farm banks would be supported by a healthy secondary loan market.

C.L. Gallagher, vice president of agriculture banking for the Bank of America in California, said the nationwide character of the farm industry problem is becomming more widely known.

Gallagher, who represents agriculture interest on the American Bankers Association's executive committee, said the broad scope of the problem makes it more likely that Congress and federal regulators will take action to provide relief.

"It is an agriculture problem, and it is not in any specific part of the country," he said.

He said 9.9 percent, of the United States' agribusiness loans are held by California banks, which are not considered agriculture banks because of the volume of other loans they hold.

California banks' $5 billion in farm debt is as large as the farm debt held in any two Midwestern states, he said, and the share of problem loans is just as high.

The bankers' proposals may or may not win support in Congress and among regulatory agencies, he said.

"I think the debate is still out on that," he said.

Illinois banker Campbell said declining farmland value is the key issue that bankers, Congress and others must address.

He recommended a "Farm Homestead Act" to set to set up a new agency, the Agricultural Homestead Corp. The agency would issue government-backed bonds and use the proceeds to buy up farm debt and then lease land to farm owners, who could repurchase the land later.

He said the system would eliminate forced liquidation of farmland, guarantee farmers the right to occupy land and to repurchase it and give farm families new hope, without requiring federal appropriations.

ECONOMIC CHANGES

Even if that specific proposal is not adopted. Campbell said, bankers agree that some mechanism should be created to give farmers and their banks time to adjust to economic changes.

With time to adjust, bankers can avoid foreclosures, and farmers can avoid being forced out of business, he said.

"That is not the solution, to have massive bankruptcies," Campbell said.

Adams said federal loan guarantees also would help stablize farmland values.

Federal loan guarantees have helped New York City, Lockheed and Chrysler, he said, and could help agriculture without costing federal funds.

C. G. "Kelley" Holthus, president of the First National Bank of York, Neb., said there are some signs that farmland values are reaching the bottom.

He said a farm York recently sold for $1,250 an acre when many observers expected $1,000 an acre. Althogh the sale was still below the land's peak value of about $2,000 an acre, Holthus said, it was still below the land's peak value of about $2,000 an acre, Holthus said, it was the best price paid recently for land in the area.

Besides Iowa and Nebraska, states represented at the meeting were North Dakota, Oklahoma, Wisconsin, Minnesota, South Dakota, Kansas, Missouri, California, Michigan, Illinois, Arkansas and Indiana.

THE PRAYER VIGIL OF ST. MARK'S EPISCOPAL CHURCH

Mr. HEFLIN. Mr. President, throughout the history of mankind, there has been an ongoing and never-ending quest for peace on Earth. As we prepare for another holiday season, I am sure that the thoughts of each of us turn frequently to the many areas of the globe fraught with chaos and turmoil and to the threat posed to all of us by the presence of war and terrorism.

I have recently learned of an outstanding idea to promote world peace being carried out by St. Mark's Episcopal Church in Birmingham, AL. Under the leadership of Father Edward Wilson and John Meehan, chairman of the program planning committee, this congregation is sponsoring a 16-hour New Year's Eve Prayer Vigil for World Peace.

The members of St. Mark's see the help which prayer can provide us in facing the conflicts and chaos of today's world, from unrest abroad to economic problems at home. Their prayer vigil, designed to bring together people of various religious faiths in a united effort, is an excellent idea. The program they have planned includes segments emphasizing world problems and civic unrest in various areas of the globe, from the Middle East to Northern Ireland, along with others dealing with problems on our national level, as well as those at the local and family levels.

Mr. President, I wanted to take this opportunity to wish the members of St. Mark's Episcopal Church the best in their efforts. My prayers are with them.

THE RUSSELL CORPORATION: A DESERVING WINNER OF THE SENATE PRODUCTIVITY AWARD

Mr. HEFLIN. Mr. President, a few years ago, this body passed a resolution establishing the Senate Productivity Award Program. Through this program, a person or company who has shown outstanding achievement in productivity improvement may be selected as a recipient of this award. By doing so, the U.S. Senate can recognize deserving achievers who are contributing significantly to maintenance of the international competitiveness which has made America a world leader in productivity.

This year, I am very pleased and proud to announce the award of a Senate Productivity Award to the Russell Corp. of Alexander City, AL. Russell Corp. is a textile and apparel firm with over 9,000 employees in three States, which manufactures and markets a complete line of specialized apparel for the leisure market, including activewear and athletic uniforms.

Mr. President, I believe that the Russell Corp. is uniquely qualified to receive this productivity award because productivity improvement has always been an important part of their company credo. In fact, it was only a few weeks after this company, which was then known as Russell Manufacturing Co., was started by Benjamin Russell that the quest for ways to improve productivity became an integral part of this company.

The first mill opened in April of 1902, with 12 workers. The first finished product was a ladies' undershirt, and the plant's beginning capacity was 150 garments a day. A few weeks after the first goods were shipped from the mill, Ben Russell found the garments were costing a little more than a dollar to produce, but were only bringing 60 cents on the market.

Meeting the problem in the head-on manner that has become typical of the Russell Corp., the employees were asked for ideas on possible solutions to this problem. Clearly, steps had to be taken to lower costs while improving quality. With such "company spirit," the mill overcame the early losses and began to expand.

In 1902, the plant consisted of 6 knitting machines and 12 sewing machines, which had been bought used from a mill in Georgia. Six years later, Ben Russell, tired of buying yarn for his knitting mill from other plants, started spinning operations with 24 spinning frames. Today, Russell's yarn manufacturing operations have grown to the point where they require not only several yarn plants at the Alexander City complex, but also spurred the corporation to acquire Georgia's Habersham Mills.

The year 1927 saw Russell celebrate a quarter of a century of existence by opening a weaving plant and a yarn and cotton dyeing operation. These steps were part of fulfilling Ben Russell's dream of achieving a completely vertical textile operation—one that would cover the entire spectrum of the textile industry, from raw fiber to finished fabric and garments. This dream was achieved in 1932, with the opening of a full-scale bleachery and finishing plant, making Russell one of the few textile facilities in the world to have such a vertical operation.

From its modest beginnings, the Russell Corp. is continuing to grow and prosper, not only in the number of employees, or the amount of net sales, but in research and modernization in every aspect of textile manufacturing.

In many ways, this continuing progress lies at the base of the decision to award the Russell Corp., with a Senate Productivity Award. Such progress is a clear indication of an emphasis placed by the entire company—both management and labor—on the need for constant improvements and increased efforts.

Sales for the last year show a record year—an increase of 11 percent over the previous record, which had been reached by a 1-year record increase of 16 percent the year before. This growth in productivity can be attributed to many factors, including Russell management's ability to adjust operations and inventory levels, the ability of their labor force to respond quickly to day-to-day variables, and the good business judgment to be positioned with the correct products to meet increased consumer demand.

Another major contributing force in the Russell Corp.'s progress is the emphasis they place on modernization of facilities. During 1984, the company spent some $32 million for modernization, bringing the total for the last 5 years to $144 million. These efforts have enabled Russell to improve manufacturing operations and customer service, as well as to increase production, all as part of the company's goal of remaining efficient and competitive in the highly competitive textile and apparel field.

Today, largely because of this long-range emphasis on modernization, on staying on the leading edge of manufacturing innovation and efficiencies, Alabama's Russell Corp. is recognized as one of the most technologically advanced companies in its field, one which should continue to help America keep its world leadership in industrial productivity.

Of course, Mr. President, as with many outstanding corporations, the steadfastness of Russell's course is a tribute to their continuity in management. After being led for its first 66 years by its founder, Benjamin Russell, and his two sons, Benjamin and Thomas, the corporation has been blessed in recent years with a continuation of this outstanding leadership. From 1968 to 1982, Eugene Gwaltney served as Russell's fourth president. Today, he remains a voice for progress and innovation in his position as chairman of the board and chief executive officer. In these leadership efforts, Mr. Gwaltney is accompanied by an outstanding partner, Dwight Carlisle, the president and chief operating officer. These two men have been integral in helping Russell Corp. earn this recognition, but, even more so, the Senate Productivity Award is an outgrowth of the dedication and company pride shown by every single one of Russell's 9,000 employees. They each share in this recognition, and I congratulate every one of them.

SOCIAL SECURITY DISINVESTMENT

Mr. MOYNIHAN. Mr. President, for 2 months, I have raised questions about the Treasury Department's management, this autumn and last, of the assets of the Social Security trust funds. Under financing pressures associated with our unwillingness to raise the debt limit without also agreeing to the Gramm-Rudman-Hollings budget plan—an irresponsible act in its own right—the Treasury disinvested assets from these trust funds to help finance the other operations of Government.

Now two independent inquires into these disinvestments have questioned the basic legality of the Department's actions. The two studies by the General Accounting Office and the Congressional Research Service, examined Treasury's failure to invest trust fund assets and their decision to redeem more than $25 billion of such assets this fall. The GAO found Treasury's actions "in violation of the requirements of the Social Security Act"; the Congressional Research Service stated that the Secretary of the Treasury, as managing trustee of the funds,

> seems to have exceeded his authority under the law . . . As such, it may be argued that he breached a duty to OASI/DI beneficaries, particularly as there is an all but certain loss of interest to the Trust Funds.

The facts are well-known but bear repeating: the Secretary of the Treasury, as managing trustee of the Social Security trust funds, redeemed $6.9 billion of Social Security's long-term securities in September, another $4.8 billion in October and $13.7 billion in November, drawing down such trust funds to a level—$11 billion—not even sufficient to pay 1 month's worth of benefits.

Disinvestment of this magnitude is unprecedented. Neither Congress nor the public trustees of the system received any notification of these extraordinary steps. Not until November 7, 1985, under intense questioning by members of the Senate Finance Committee, did the Treasury Department finally admit to the disinvestment of some $5.5 billion in Social Security assets more than a year previous, in October 1984, at a $440 million loss in interest income to the trust funds.

In response to these extraordinary acts, of commission and omission, on November 12 I offered and the Senate approved an amendment to the reconciliation bill, calling not only for restoration of redeemed assets and interest losses, but also and quite importantly, for 15-day prior notification of Congress and the public trustees of any future intention by the Treasury Secretary to either not fully invest trust fund assets or cash-in such assets. The Gramm-Rudman compromise also included a provision to restore the redeemed securities and pay back the foregone interest, but it did not include this crucial prior notification.

There are matters of right and matters of rightful authority at stake here. On November 26, I joined other interested parties, including two former Secretaries of the—then-named—Department of Health, Education and Welfare and a former Commissioner of Social Security, Robert M. Ball, in a lawsuit against the five Social Security trustees. Our suit seeks to ensure that in the future, the Treasury Department will, as required by the law, transfer all monthly estimated Social Security payroll tax receipts due to the trust funds and fully invest those receipts, thereby avoiding the wholesale redemption of long-term securities. The suit also asks the court to "order the defendant trustees to discharge their statutory and fiduciary duties to the beneficiaries of the trust funds."

The CRS report on Social Security disinvestment speaks to the fiduciary responsibility of the Secretary of the Treasury, stating:

> [T]he conclusion seems inescapable that in enacting the Social Security Act Congress to a greater or lesser extent had certain features of private trust law in mind.

Comparing the Secretary's fiduciary responsibilities to those of private fiduciaries, CRS reasons that public officers who are responsible for holding, depositing, and investing public funds are properly held to an even higher standard than are private fiduciaries. The report cites American jurisprudence:

> It has generally been held that a public officer, in the absence of statutory provisions to the contrary, is held to a much stricter liability than fiduciaries handling private funds; he is absolutely liable as an insurer for the safekeeping of funds in his custody until disbursed in regular course, and is therefore liable for losses which occur even without his fault, except possibly for losses by act of God or by public enemies. This standard of responsiblity is, in some cases, based on public policy, in others, on the theory that a public officer having public moneys in charge is a debtor bound to account and pay over the exact sums received . . . 63A Am Jur. 2d, Public Officers and Employees S 393.

The whole experience suggests to me that it is time, perhaps well past time, to act to reestablish the Social Security Administration as an independent agency—which it was for the first decade of its existence. Senator PACKWOOD has assured me that hearings on my proposal for an independent agency, S. 17, will be held early next year. This measure would help prevent such events in the future and help assure public confidence in the administration of this most vital of all our social programs.

I urge my colleagues to study the reports by the GAO and the CRS, and to consider acting, and soon, to establish

Social Security as a separate and independent agency.

HOUSE PASSAGE OF H.R. 3132, THE LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1985

Mr. MOYNIHAN. Mr. President, I rise today to call my colleagues' attention to a very important action just taken by the House: its overwhelming approval of H.R. 3132, legislation to regulate the manufacture, importation, and sale of armor piercing ammunition, known as "cop-killer bullets."

Mr. President, Representative MARIO BIAGGI of New York has been a tireless advocate of this cause, as he and I have waged a long struggle to bring this matter to the attention of Congress. Today, with its resounding passage of the Law Enforcement Officers Protection Act of 1985—by a vote of 400 to 21—the House has spoken on behalf of police chiefs and police departments around the Nation, who know all too well the grave dangers posed by cop-killer bullets and have joined the call to ban them.

This is the fourth Congress in which I have introduced legislation to ban cop-killer bullets. Each time, the Nation's law enforcement officers have been told to wait. Each time, they have come back in greater numbers to tell Congress of their support for such legislation.

Legislation to ban cop-killer bullets has been endorsed by the International Association of Chiefs of Police, the Fraternal Order of Police, the National Sheriffs' Association, the National Troopers' Coalition, the International Brotherhood of Police Officers, the National Association of Police Organizations, the Police Executive Research Forum, the International Brotherhood of Police Associations, the United Federation of Police, the Federal Law Enforcement Officers Association, and hunderds of State and local law enforcement agencies. In my own State, the measure has been unanimously endorsed by the New York City Council and the New York State Assembly. The members of Handgun Control, Inc. also have been especially diligent in their efforts to protect the public from these bullets.

One obstacle remains before the Senate has an opportunity to second the House's action. Mr. President, one of our distinguished colleagues has insisted that the Senate version of this legislation—S. 104, which I introduced with the distinguished chairman of the Judiciary Committee, Senator THURMOND, and the ranking minority member, Senator BIDEN—be amended with a revenue provision. Such amendment, we know, would preclude House consideration, as all revenue legislation must originate in the other body.

Our legislation would ban the manufacture, importation, and sale of solid projectiles and projectile cores made entirely or as a combination of tungsten alloys, steel, brass, iron, beryllium copper, or depleted uranium. Such bullets travel faster than do normal bullets, and they do not collapse when they hit their targets. The bill would not ban gunshot used for hunting, nor would it ban the manufacture of armor-piercing bullets for export, for the use of law enforcement and military agencies, or for testing purposes.

I am especially pleased that the Judiciary Committee voted unanimously to include restrictions on the sale of these bullets and that the Treasury Department supported this amendment. As amended, S. 104 would prohibit the "willful" sale of cop-killer bullets manufactured after this bill is enacted, and would require that all armor-piercing ammunition bear a distinctive marking to distinguish it from conventional rounds.

Since the development of Kevlar and similar materials used in bulletproof vests more than a decade ago, flexible body armor has saved the lives of more than 500 police officers. From 1974 to 1983, the number of law enforcement officers slain in the line of duty fell 43 percent. Many of those lives were saved by bulletproof vests; a single cop-killer bullet could have rendered any of those vests useless. In a test conducted by the California State Police, one armor-piercing bullet—the KTW variety—penetrated four bulletproof vests and five Los Angeles County telephone books stacked behind them. This is ammunition of no legitimate use to hunters or target shooters.

Speaking before the National Sheriffs' Association in June 1984, President Reagan said, "I fully expect to be signing a cop-killer bullet bill before this Congress adjourns." We have the chance now to give the President that opportunity, denied him in the last Congress. Now is the time to enact strong and comprehensive legislation to end the threat to our police officers posed by cop-killer bullets.

LIMITATION ON THE MANUFACTURE AND IMPORTATION OF ARMOR-PIERCING BULLETS

Mr. THURMOND. Mr. President, I join my distinguished colleague from New York in emphasizing the need for the Senate to join the House of Representatives in passing legislation to regulate the manufacture, importation, and sale of armor-piercing bullets.

Such legislation will limit the proliferation of so-called cop-killer bullets, whose only purpose is to wound and kill law enforcement officers and other public officials when they are wearing bulletproof vests. These bullets do not fit pistols normally used for practice shooting; they are useless for stopping game hunted by sportsmen; and they are unnecessary for self-defense.

The legislation is important to protect our law enforcement officers who put their lives at risk everyday to free our Nation of crime.

Today the House evidenced its overwhelming support for such legislation by a vote of 400 to 21. I know there is equally strong support in the Senate. S. 104 has 63 cosponsors. Similar legislation introduced in the 98th Congress was cosponsored by 95 Members of the Senate and unanimously approved by the Committee on the Judiciary. I believe the Senate is ready to act on this important legislation.

I hope that all of my colleagues will join in pressing for passage of S. 104 prior to the end of the session.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Anne Graham, Calendar No. 531.

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

CONSUMER PRODUCT SAFETY COMMISSION

NOMINATION OF ANNE GRAHAM TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Anne Graham, of Virginia, to be a Commissioner of the Consumer Product Safety Commission.

The Senate proceeded to consider the nomination.

Mr. HATCH. Mr. President, let me just say that we have the distinguished chairman of the Subcommittee on Education here with me on this nomination.

I just want to speak very briefly for Anne Graham. She has done a terrific job in the positions she has held so far.

Mr. President, I rise to support the nomination of Ms. Anne Graham, currently an Assistant Secretary of Education, for the Consumer Products

Safety Board. I rise as well to protest the treatment which has been accorded this nominee. It is not in keeping with our system of government founded on respect for the dignity of the individual.

This is a candidate nominated for office over 5 months ago, twice cleared by thorough FBI investigations, voted out of the Commerce Committee unanimously, and strongly endorsed by the two Secretarys of Education for whom she has worked.

What is holding up this confirmation?—A protracted investigation, requested by a Member of the House of Representatives on a personal, ideological vendetta, an investigation requested the very day Ms. Graham's nomination would have been considered by the Senate. Thus, I am particularly concerned that the U.S. Senate is being impeded in performing its constitutionally enumerated power of confirmation of Presidential appointments by a request from the House of Representatives for a GAO investigation. Furthermore, this investigation is being unreasonably prolonged in utter disregard of the request of this body for its own separate, expedited, but thorough investigation. In other words, I fear that GAO is now being used by one Member of the House of Representatives as a political tool to interfere with the Senate's performance of its constitutional power of confirmation. We must put a stop to this immediately.

Let me first say that since 1981, when Ms. Graham became Assistance Secretary of Education for Legislation and Public Affairs, I and my staff have found her to be diligent and effective at performing her job. Never once, as chairman of the authorizing committee, has there been any hint of incompetence or derelection of duty. Precisely the opposite is the case. I know that in this regard I speak also for my colleagues, Senators STAFFORD and PELL, the chairman and ranking minority of the Education Subcommittee as well.

Ms. Graham was nominated for this new position in the beginning of July—nearly 6 months ago—after a thorough FBI investigation. Her record was clean as a whistle. Only then were allegations concerning both her work and her character raised. The Commerce Committee did their own check on top of that performed by the FBI because they received anonymous calls and letters raising these allegations never heard before. Let me repeat, these were anonymous charges. The Commerce Committee found absolutely no substantiation for these charges—I repeat, after a full FBI check—the second one, since Ms. Graham had been investigated previously for the position she now holds—the Commerce Committee, presented with anonymous allegations, thorough rechecked Ms. Graham's record. The Commerce Committee, like the FBI, twice, found Ms. Graham eminently fit for the position of Commissioner on the Consumer Products Safety Board. The committee unanimously—let me repeat, unanimously—reported her nomination favorably to the Senate floor. That occurred in mid-November. The time spent investigating the validity of the anonymous charges was considerable. The Commerce Committee's decision was certainly no rush to judgment. Now, however, what do we have but some of these same old allegations surfacing again, this time in the request of a Member of the other House for an investigation by the GAO.

In response to this request by a Congressman—the second Congressman signing the request, I am told, has disassociated himself from it—and given our background of experience in working with Ms. Graham, the clearance by two FBI checks, and the further investigation by the Commerce Committee, Senators STAFFORD, PELL, and myself, on November 22 requested the GAO to do a preliminary investigation. They were to ascertain whether the questions posed by a Member of the House had any basis in fact. If they did, we requested an investigation be completed within 2 weeks so that the Senate could proceed to consider a nomination pending since July. Let me put this bluntly: The GAO has not complied with the request of the Senate. It replied that it was unable to do the expedited 72-hour investigation. And, do you know why? Because the very Congressman's office which requested the investigation, which made serious allegations of misconduct, was "unable for a week and a half to turn over to GAO the names of those making the charges." Wouldn't it be reasonable to expect that, if anyone thought that allegations were serious enough to request a GAO investigation, they would have had the fact of those allegations close at hand, available to be put in the hands of the investigators. But, no, this did not happen—perhaps with an eye to the hastening calendar in an attempt to kill a nomination. And, apparently, GAO has gone along with this.

Also, I am very distressed with the character of the investigation GAO has conducted. Let me explain. On November 25, my staff and that of Senators STAFFORD and PELL met with the GAO investigators. These investigators assured the staffs that they were well aware that a political appointee need not meet "specific production quotas" nor rigid clocked hours. They guaranteed that no such questions would be asked. Yet, listen to the list of questions which have been asked: "What time does she come in in the morning?" "Does she get her hair cut on her lunch hour?" "When she is away on her beeper, then you really don't know where she is?" Rather foolish, aren't they? And, certainly, they are exact questions GAO had admitted they knew were irrelevant and inappropriate to ask. So, instead we have had foolish and unnecessary questions asked for 3 weeks. Certainly this does not speak well of GAO's respect for a Senate investigation. We should not allow this disrespect for the Senate to win the day.

Let me also read you a firsthand report of someone interviewed in this investigation, and someone who can certainly speak for Ms. Graham's job performance. The report is contained in a letter, dated December 11, 1985, from Secretary of Education Bennett to the Honorable Charles A. Bowsher, Comptroller General of the United States. The letter reads:

DECEMBER 11, 1985.

Hon. CHARLES A. BOWSHER,
Comptroller General of the United States, General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: During the time I have known Anne Graham, Assistant Secretary for Legislation and Public Affairs, she has fulfilled her duties with ability and integrity and has advanced the goals of the Administration. I am confident that the current investigation of the General Accounting Office, fairly conducted, will confirm my judgment of Anne's work. I hope that the GAO will fulfill the request of Senators Hatch, Stafford and Pell for an expedited investigation so that her record can be promptly vindicated.

It is remarkable to me that such sweeping allegations against Anne have surfaced now for the very first time, more than four years after she came into this position, and while her nomination to serve as a Commissioner for the Consumer Product Safety Commission is pending before the United States Senate.

In a meeting yesterday with two of your investigators, I advised them that I had no evidence to support the anonymous allegations of misconduct which have been made against Anne. I was then posed certain very general questions: Had I ever criticized her work? (I have criticized each of those under my supervision at some time or another.) Did I no longer take her with me to Congressional meetings? (Anne's nomination to the Consumer Product Safety Commission has been pending since July 1, and I have increasingly relied upon a number of different employees for such meetings.) Other pointed questions, in my view, raised clearly unfounded questions of personal character. Frankly, this line of questioning seemed to me to bear little relationship to specific issues of misconduct in office. The tone of one investigator in particular was, in my view, discourteous and disrespectful, raising my concern as to what impression was being left with junior employees of the Department who were also interviewed. I must especially take exception to the peremptory statement of your investigators that they were questioning Ms. Graham's general competence for both the Consumer Product Safety Commission and Department of Education positions. Is such "questioning" really within the purview of a GAO investigation?

I want to go on record regarding the invaluable assistance Anne has provided me

over the past year, particularly during my transition from the National Endowment for the Humanities to the Department of Education. Anne's assistance was not limited to specific legislative or public affairs matters, for I have relied on her experience and judgment in countless matters of great importance to me. Had Anne not been nominated by the President to be a Commissioner of the Consumer Product Safety Commission, I would have been grateful to have her remain in her present capacity.

If there is anything further that I can do to help set the record straight, please do not hesitate to let me know.

Sincerely,

WILLIAM J. BENNETT.

Lest there be any doubt, one GAO investigator has admitted in front of my colleague, Senator STAFFORD, that, indeed, these were the questions asked of the Secretary.

Colleagues, certainly Secretary Bennett is correct in his complaint to the Comptroller General. Such an investigation is not within the purview of the GAO. The FBI had already satisfactorily completed such an investigation—twice. The Commerce Committee had rechecked when anonymous allegations surfaced. Both found Ms. Graham entirely worthy. Now GAO enters and pursues an investigation not pertaining to its charge and ranging improperly afield.

I strongly resent that the GAO has been this negligent in responding to a request from a coequal body, the U.S. Senate. It is very hard not to believe that, unwillingly or not, the GAO is letting itself be used for political purposes.

Let us go back to what the GAO admits it has found. It says that a few people make allegations; but many other people deny the validity of these allegations. On top of that, two Secretaries of Education have strongly praised both Ms. Graham's character and her performance at work. That evaluation was contained in the letter from Secretary Bennett which I just read. A similar laudatory evaluation was given by former Secretary of Education Bell in a telephone conversation with the GAO and which Secretary Bell confirmed in a phone conversation with Senator STAFFORD.

So, what do we have? We have a few allegations, all unproven, as the GAO investigators admitted last Thursday. And these allegations are positively denied by many others who have worked with Ms. Graham. Furthermore, two Secretaries of Education, on top of the FBI, and the Senate Commerce Committee, give her a clean and excellent rating. Whom should we trust? My colleagues, let me tell you, I'd put my trust in the FBI, the Senate Commerce Committee, and two Secretaries of Education.

How many of us would be confirmed for a position if unsubstantiated and positively contradicted allegations were to hold the day? How many of us can be sure that we would be free from someone spreading nasty rumors about us—absolutely none of us, I would venture to guess. This is certainly not a very good commentary on our system of government when unsubstantiated allegations can rule the day.

It is also not a good commentary on our system of government by law when one political body can misuse a supposedly independent agency to invade and impede the constitutional responsibilities of the President to nominate and the Senate to confirm appointees. This is particularly the case when the agency is exercising powers far beyond those it has by law.

This nominee has been found eminently qualified by all those legitimately charged with the task of making that judgment. Those of us who have worked with Ms. Graham for 5 years have every reason to agree with that evaluation. Let us get on with the business of the Senate, let us confirm this worthy nominee. I am pleased that many of my colleagues on the other side of the aisle are in agreement. This is not a partisan issue. This is an issue of fairness to one individual caught in the midst of a personal vendetta and this an issue of protecting the constitutional prerogatives of this Chamber.

Mr. STAFFORD. Mr. President, I thank the distinguished chairman of the full committee for yielding to me in connection with the nomination of Anne Graham. I simply wish to convey to my colleagues that during the past 5 years that I have served as chairman of the Education, Arts, and Humanities Subcommittee the committee staff has had fairly frequent contact with Anne Graham in connection with the business of the committee, that is educational matters at the Department of Education where she has been serving, and that generally—and I would say in every instance—the contacts between the committee staff and Anne Graham have been of a favorable nature. The work that has been done and the impression of her carrying out her duties at the Department has been very favorable.

Furthermore, it has been my privilege to know both of the Secretaries of Education who have served since 1980—Terrence Bell, the first Secretary, with whom I was on close and friendly terms; and, more recently, Secretary Bennett, who succeeded Secretary Bell, whom I am getting to know, and while we have had a few disagreements, I also find myself admiring the way he has carried out the Department.

In any event, I know both of the Secretaries quite well, well enough to be the recipient of their candid views on matters. Both of them have stated, not only to me, but to anyone who cares to interrogate them on the subject, that Anne Graham has carried out her duties to not only their satisfaction, but, in their opinion, in a very very good way while serving in the Department of Education.

It is also my understanding that Mr. DANFORTH is not here, but that, as chairman of the Committee on Commerce, Science, and Transportation, which reported her to the Senate favorably for confirmation to be a Commissioner of the Consumer Product Safety Commission for a term of 7 years, beginning last October 27, he feels she is well qualified to serve in that position.

So on the basis of her record at the Department of Education, as it is known to me with respect to educational matters, and on the basis of the statements given to the committee by two Secretaries of Education who served in that capacity during her tenure at the Department of Education, I urge the Senate to confirm the nomination.

Mr. PELL. Mr. President, it is a pleasure for me to join my distinguished colleagues, the chairman of the Labor and Human Resources Committee [Mr. HATCH] and the chairman of the Senate Subcommittee on Education, Arts and Humanities [Mr. STAFFORD] in supporting the nomination of Ms. Anne Graham to the Consumer Products Safety Commission.

For over 4 years we have worked closely with Ms. Graham in her capacity as Assistant Secretary of Education for Legislation and Public Affairs. Throughout that period, my office and my concerns were always delat with fairly and equitably. Ms. Graham consistently performed the duties of her office well, and in a most responsible and responsive manner. Our experience in working with her was an excellent one.

I am fully confident that Ms. Graham will bring to the Consumer Products Safety Commission the same kind of competence, dedication, and zeal for quality in public service that she brought to the Department of Education. I urge that her nomination be approved.

Mr. KASTEN. Mr. President, I wish to speak briefly on the pending business, the nomination of Anne Graham to be a Commissioner of the Consumer Product Safety Commission.

On September 10, 1985, I chaired a Commerce Committee hearing on Ms. Graham's nomination. On November 14, the Commerce Committee unanimously reported Ms. Graham's nomination.

Based on her experience at the Department of Education, I expect Ms. Graham will be a valuable addition to the Consumer Product Safety Commission. As the Department's chief congressional liaison, she has demonstrated a high degree of sensitivity to the need for a close and efficient

working relationship with Congress. In addition, she has remained constantly attune to the needs of the public and particularly State and local officials. I have no doubt that this appreciation for congressional and public views will stay with her in her new post. As she acknowledged during her confirmation hearing, a strong and flexible liaison effort among Federal, State, and local consumer officials best serves the Consumer Product Safety Commission in fulfilling its compliance, information, and education programs.

Anne Graham also understands the occasional difficulty in balancing the needs of manufacturers and consumers. She has indicated she will remain flexible in her dealings with industries subject to CPSC regulation and where feasible will work with manufacturers to develop voluntary product safety standards. But, in those instances where voluntary standards are inefficient Ms. Graham has stated she will have no hesitation about supporting Commission efforts to mandate product safety standards.

Mr. President, in a recent letter regarding Anne Graham, Secretary of Education William J. Bennett stated:

> I want to go on record regarding the invaluable assistance Anne has provided me over the past year, particularly during my transition from the National Endowment for the Humanities to the Department of Education. Anne's assistance was not limited to specific legislative or public affairs matters, for I have relied on her experience and judgment in countless matters of great importance to me. Had Anne not been nominated by the President to be a Commissioner of the Consumer Product Safety Commission, I would have been grateful to have her remain in her present capacity.

Mr. President, Anne Graham will bring this experience and judgment to the Consumer Product Safety Commission. Accordingly, I urge my colleagues to join me in supporting her nomination.

Mr. GORE. Mr. President, I rise to speak on this nomination.

I placed a hold on this nomination some time ago, and I wish to describe for my colleague the circumstances which led to that hold and to my opposition to proceeding on the nomination. I also wish to outline the reasons why I am now ending my opposition to his nomination.

As my colleagues are aware, certain allegations were made against this nominee during a hearing before a committee of the other body. Two Members of the other body, whom I regard highly and whose judgment I respect greatly, were concerned about the serious charges made against this nominee. Because of their concern, those two Members formally requested that the General Accounting Office conduct an investigation to determine whether there was any validity to the allegations. The GAO investigation is now underway.

Neither of those Members of the other body personally requested that I oppose this nomination or put a hold on this nomination. Upon learning of their actions and their concerns, I simply decided that the Senate should take a closer look at this nominee's qualifications and the charges that were made against her. I did not think the Senate should act on the nomination while such serious questions persisted.

Let me say that in normal circumstances I think allegations of the kind that were made against this nominee might not in and of themselves justify holding up a nomination even for a short time. However, if I may say this without a tone of partisanship, we have had a number of "klunkers" sent to the Senate by this administration. These have been a number of embarrassments because nominations have been rushed through without much consideration. Several times the Senate has come to believe that we should have taken a closer look at a nominee.

In light of the record of less-than-stellar appointments by this administration, I felt a stricter standard of scrutiny was justified for this nomination, as well as because of the allegations that had been made against her and the GAO investigation that is being conducted.

Several things have happened since I placed my hold on this nomination, however, that have caused me now to change my position. First the two Members of the other body who requested the General Accounting Office investigation have both said that their evaluation of the evidence against this nominee is such that they would not recommend her nomination be held up or opposed. Second, the General Accounting Office, despite urging on my part, and on the part of several of my colleagues to speed up their investigation, has not yet been able to substantiate the charges against the nominee. It is my understanding that GAO has encountered some difficulties in collecting information in an expeditious manner.

In an ideal world I would prefer that the Senate wait for the results of the General Accounting Office investigation before acting on the nomination. I remain concerned that the GAO may eventually substantiate the allegations against the nominee after the Senate has given its approval to her. Nevertheless, it is now clear that the GAO investigation will not be concluded before the Senate adjourns for the year. In light of the exceptionally strong support that the nominee has received from my colleagues, Senator STAFFORD, Senator HATCH, and Senator PELL, I think that when all the circumstances are taken into account, it is acceptable for us to go forward and end the delay over the nomination.

So I will no longer oppose this nomination.

I yield the floor.

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

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

Mr. HATCH. Mr. President, will the Chair put the question on the nomination of Anne Graham?

The PRESIDING OFFICER. The question is on the nomination of Anne Graham.

Without objection, the nomination is confirmed.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

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

Mr. STAFFORD. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report the next nomination.

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

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

THE JUDICIARY

NOMINATION OF JAMES L. BUCKLEY TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the nomination of James L. Buckley of Connecticut to be U.S. circuit judge for the District of Columbia Circuit.

The nomination will be stated.

The legislative clerk read the nomination of James L. Buckley, of Connecticut, to be U.S. circuit judge for the District of Columbia Circuit.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise today to voice my strong support

for James Buckley to be U.S. circuit judge for the District of Columbia.

Senator Buckley was born in New York City in 1923. He attended Yale College and served in the U.S. Navy as a commissioned officer from 1943 to 1946. He graduated from Yale Law School in 1949.

Following his formal education, Senator Buckley has compiled an impressive record in law, business and Government service. His Government service is particularly noteworthy in that he was elected and served as a U.S. Senator from New York from 1971 to 1977. From 1981 to 1982 he served as the Undersecretary of State for Security Assistance and as a Counselor. From 1982 to the present he has served as the president of Radio Free Europe/Radio Liberty in Munich, Germany. He has served with distinction in all these positions.

Senator Buckley appeared before the Judiciary Committee on October 30, 1985, where he answered all questions in a direct and forthright manner.

Senator Buckley is an individual who has demonstrated honor, dedication, and integrity. I urge my fellow colleagues to vote in favor of James Buckley to be a U.S. circuit judge for the District of Columbia.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Thank you, Mr. President.

Mr. President, I rise in opposition to the nomination of James Buckley to be U.S. circuit court judge for the District of Columbia. This nomination has posed a number of questions which involve the different roles a U.S. Senator is called upon to play. While I am confident of my decision to oppose this nomination, I would not be very candid with this body if I did not express some discomfort in that I consider Mr. Buckley to be extremely well-qualified for many other governmental positions, and in fact on two different occasions over the last 5 years I have supported his nomination to two other positions he has held in the present administration.

Mr. President, the solemn duty imposed upon U.S. Senators by our Constitution to the process of advise and consent is a responsibility which I and all others in this body take most seriously. For this reason the political considerations should have only slight if any bearing on this process. The fact that Mr. Buckley was my political opponent in the 1980 election for the U.S. Senate has had no effect on my decision to oppose this particular nomination.

To those who may feel that I am either seeking political retribution or letting Mr. Buckley, as some have suggested, off the hook too easily, I can only respond that my earlier support for Mr. Buckley, and my actions relative to other nominations do not substantiate these conclusions.

I have opposed very few Presidential nominees in the last 5 years. For positions in the executive branch I generally believe that the executive should be free to choose his or her administration free from the second-guessing based upon ideological or political differences. For these posts, these administration posts, Cabinet posts and the like, I looked in most instances to qualifications, potential conflicts and other such similar matters.

In the case of a lifetime appointment to a judicial postion, second only in importance to the U.S. Supreme Court, I believe that Senators have a higher responsibility, and that philosophical commitment does have a bearing. This court, this circuit court, and those whom we approve to sit on it will influence the policies of this Nation for decades to come. Quite frankly, I would have problems with anyone nominated to this court solely on the basis of ideology, whether conservative or liberal. Appellate judges interpret laws and the Constitution. They must be flexible to some degree in their approach to controversy so that their philosophies do not overwhelm their legal training and experience.

Based upon a review of Mr. Buckley's published record I am convinced that this nomination is being advanced almost exclusively for reasons of Mr. Buckley's ideological views. Whatever other qualifications and background as excellent as it is, Mr. Buckley is not a legal scholar who happens to hold strong conservative views.

Rather, this is a very ideologically conservative person who happens to be a lawyer. I am convinced further that he adheres to his principles with such rigidity and firmness that he would not be able in the future to exercise the judicial temperament to interpret our laws in relation to the changing mores of our society.

The court for which Mr. Buckley has been nominated has been given original jurisdiction in our judicial system for certain major Federal concerns such as the enforcement of the Voting Rights Act. During his service in this body, Mr. Buckley established a very consistent record of opposition to civil rights legislation and voted against extension, strengthening or even the preservation of the voting rights legislation at every available opportunity. I respect his purety of thought. I respect his position. But to place individuals to sit on this court which has original jurisdiction over these matters for years to come I think is going a step too far.

Based upon this record, I feel that the strength of his convictions, coupled with the lack of previous judicial record to evaluate, forces me to question his ability to undertake the unique mandate of this court.

Mr. President, the question may be asked as to whether I would oppose a nominee with credentials identical to Mr. Buckley except for philosophy. In the final analysis, Mr. President, no two nominees are alike, and my constitutents will obviously judge ultimately my philosophical consistency. I have acted with respect to Mr. Buckley's nomination in a manner which allows me to express my opposition. I have not chosen to delay this matter indefinitely and impose my will upon the U.S. Senate. I recognize that Senators have different tests which they apply to nominations. I hope that my colleagues will give very careful consideration to these remarks. If they share my views of our advise and consent responsibility, I trust they will join me in voting against this nomination to the Circuit Court of the District of Columia.

Mr. President, I ask unanimous consent to insert two additional matters into the RECORD at this point, if I may.

One is a statement that would come from the second circuit in New York. Mr. Buckley is not being selected or nominated for that particular court. His nomination was moved from the second circuit to the Circuit Court of the District of Columbia. But I think it is relevant to point out that the American Bar Association's ABA Committe on the Federal Judiciary in considering Mr. Buckley for that position which arguably is a far less significant court than the district court in the District of Columbia, given the mandate of jurisdiction, rated Mr. Buckley the lowest passing grade, a C. The New York City Bar resolved tht Mr. Buckley be not approved for the position as he failed to prove possessing a sufficient background and experience for the position.

I think it is worthwhile to further note, Mr. President, that when Mr. Buckley's nomination was sent to the Senate for the D.C. District Court, the D.C. Bar, which has no organized subdivision for passing judgment on appointments to the Federal benches—they usually rely on the ABA for such evaluation—on December 14 wrote to the chairman of the Judiciary Committee, the distinguished Senator from South Carolina, asking for 30 days' delay due to the fact that the nomination was suddenly shifted from the second circuit to the D.C. circuit.

Again, I do not want to place undue influence or to suggest that these committees should have an overwhelming amount of influence over the Judiciary Committee or the U.S. Senate as a whole, but I do think they are relevant. They should certainly be a part of this record.

Last, Mr. President, if I could, I would like to insert into the RECORD at

this juncture the various statutes, and they are numerous. They cover some three pages, the various statutes that require that this circuit court be the court of jurisdiction. As I mentioned in my statement, Mr. President, they cover the Voting Rights Act, various civil rights acts, various issues involving environmental issues, surface mining, Outer Continental Shelf, and the like. I think it is extremely worthwhile for that to be part of the record.

Mr. President, I ask unanimous consent that those materials be included in the RECORD at this juncture.

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

THE DISTRICT OF COLUMBIA BAR,
Washington, DC, November 14, 1985.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN THURMOND: At its regularly scheduled meeting on November 12, 1985, the District of Columbia Bar Board of Governors discussed the status of the nomination of James L. Buckley to the United States Court of Appeals for the District of Columbia Circuit. The consensus of the Board reflected grave concern about the process by which this nomination has come to be before your Committee. Because the nomination was shifted at the last minute from the United States Court of Appeals for the Second Circuit to the United States Court of Appeals for the District of Columbia Circuit, the American Bar Association apparently did not conduct its usual inquiry of the lawyers and, as importantly, the Judiciary in the District of Columbia area regarding this nominee. The Board of Governors delegated to the Executive Committee of the Bar the forwarding of a resolution reflective of that concern, including a request that specific action be taken by your Judiciary Committee. The Executive Committee met immediately following the Board meeting on November 12, 1985 and passed the resolution which is attached.

I hope that it is clear from this Bar's previous correspondence to and the testimony before your Committee that our concern is with the integrity of the process. As you know, the District of Columbia, whose Bar numbers 44,000 lawyers, is without the great protection of senatorial privilege. Thus, reliance is made upon Senators from all states to guarantee that citizens of this jurisdiction and its Judiciary receive no less in fairness of process than the other citizens of this nation.

We thank you for your consideration of this most important matter.

Sincerely,

FREDERICK B. ABRAMSON,
President.

RESOLUTION OF THE DISTRICT OF COLUMBIA BAR (UNIFIED) CONCERNING THE JUDICIAL NOMINATION PROCESS INVOLVING JAMES L. BUCKLEY TO BE A CIRCUIT JUDGE FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Whereas, the District of Columbia Bar, through its Board of Governors, respects the customary process by which judges are nominated by the President and confirmed by the Senate to serve on the United States Court of Appeals for the District of Columbia Circuit;

Whereas, the District of Columbia Bar is troubled by the process by which the nomination of James L. Buckley to that Court was evaluated and then submitted to the Committee on the Judiciary of the United States Senate;

Whereas, the District of Columbia Bar understands that the evaluation of James L. Buckley for that Court was undertaken and his nomination submitted to the Senate Judiciary Committee without the customary inquiry and investigation undertaken of a nominee to a federal court in this jurisdiction; namely, that the American Bar Association Standing Committee on the Federal Judiciary ("the ABA Committee"), as part of its full and complete investigation of the nominee, did not follow its customary practice of contacting members of the Bar of the jurisdiction in which the nominee will serve, and of contacting the Bar leadership and members of the Judiciary in that jurisdiction;

Whereas, although the ABA Committee reviewed James L. Buckley's candidacy, it reviewed him as a nominee for the United States Court of Appeals for the Second Circuit and not as a nominee for the District of Columbia Circuit for which he is now being considered;

Whereas, the District of Columbia cannot call upon senatorial privilege to defer the confirmation of nominees to federal courts in this jurisdiction until full screening has been completed and material problems resolved;

Whereas, the District of Columbia Bar, therefore, has come to depend on the ABA Committee's evaluation of judicial candidates as its primary means of commenting on a proposed nomination;

Whereas, in the absence of a thorough ABA Committee investigation, or similar investigation, which includes the opportunity for comment by the Bar and the Judiciary in the District of Columbia, the 44,000 lawyers of the District of Columbia Bar and the citizens of the District of Columbia are denied an important means to screen a nomination to a court within the jurisdiction;

Now, Therefore, be it resolved That the District of Columbia Bar requests that the Committee on the Judiciary of the Senate or the Senate itself, as appropriate, in order to preserve the integrity of the judicial nomination process:

1. Delay action for thirty (30) days on the nomination of James L. Buckley to the United States Court of Appeals for the District of Columbia Circuit; and

2. During that period, (a) request that, with respect to the nomination, the ABA Committee conduct its customary investigation of a potential nominee to the United States Court of Appeals for the District of Columbia Circuit by contacting its normal and usual sources of information, including the leadership of the District of Columbia Bar (Unified), the Judiciary in the District of Columbia, the organized voluntary bar associations of the District of Columbia and individual lawyers who practice in the District of Columbia, or (b) itself undertake a thorough investigation of James L. Buckley, including the making of the contacts and the obtaining of the information that the ABA Committee normally would make and obtain as indicated above.

NEW YORK CITY BAR ASSOCIATION RELEASES JUDICIARY COMMITTEE EVALUATIONS OF JUDGE FRANCIS X. ALTIMARI AND FORMER SENATOR JAMES L. BUCKLEY IN CONNECTION WITH THEIR PROPOSED NOMINATIONS AS JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

New York, New York, September 20, 1985 . . . The Chair of the Committee on the Judiciary of the Association of the Bar of the City of New York, Justin N. Feldman, today reported that at a meeting of the Committee held on Thursday evening, September 19, 1985, to evaluate the qualifications of Judge Francis X. Altimari and former Senator James L. Buckley for appointment to the United States Court of Appeals for the Second Circuit, the Committee adopted the following resolutions;

With respect to Judge Altimari:

Resolved, That Francis X. Altimari be approved for the position of Judge of the United States Court of Appeals for the Second Circuit; with respect to Mr. Buckley:

Resolved, That James L. Buckley be not approved for the position of Judge of the United States Court of Appeals, Second Circuit, by reason of his failure affirmatively to demonstrate that he possesses the professional background and experience required for the position he seeks. Although Mr. Buckley has supplied certain of the requested biographical information, his refusal to submit to an interview has deprived the Committee of the opportunity to explore whether his experience, dedication, and other qualities would demonstrate his fitness for that position.

Mr. Feldman noted that the Judiciary Committee had completed its evaluations pursuant to the Association's By-Laws and in response to the request of the American Bar Association's Committee on the Federal Judiciary.

The Association's By-Laws provide that:

The Committee shall endeavor to secure the nomination, election, certification, or appointment of qualified candidates, to prevent the nomination, election, certification, or appointment of unqualified candidates, and to prevent political considerations from outweighing fitness in the selection of candidates for . . . the United States Court of Appeals for the Second Circuit. . . .

In accordance with its usual practice, the Committee is reporting its conclusions to the Committee on the Federal Judiciary of the American Bar Association, and to President Ronald Reagan, Attorney General Edwin Meese III, Senator Strom Thurmond and Senator Joseph R. Biden, respectively the Chairman and Ranking Minority Member of the Senate Committee on the Judiciary, and to New York's Senators Alfonse M. D'Amato and Daniel P. Moynihan.

STATUTES VESTING SPECIAL JURISDICTION IN THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF COLUMBIA

United States Code (Title/Section)

2/159—Suits for the purpose of enforcing the provisions of any trust accepted by the Library of Congress Trust Fund Board.

2/437g(8)—Suits filed by parties aggrieved by an order of the Federal Election Commission dismissing complaint alleging violation of the Internal Revenue Code or certain election laws.

5/552b(g)—Suits filed by any person, under the Government in the Sunshine Act, to require an agency to promulgate regulations to conduct open meetings.

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7/150dd(d)—Secretary of Agriculture has authority to order emergency measurer, including destruction of products, etc., to prevent dissemination of plant pests. Suit may be brought within one year after such emergency action by the Secretary by persons for just compensation under certain circumstances.

7/2462—Suit against the Secretary of Agriculture for failure to grant a certificate of plant variety protection to breeder of novel variety of plant.

7/2463—Suits against parties in interest relative to a decision under the plant variety protection provisions when there are adverse parties in a plurality of districts not in the same state or adverse parties residing in a foreign country. Case may be transferred by the court.

7/2569—Suits against proprietors not residing in the United States under plant variety protection provisions if none designated for service of process in United States.

15/160—Every China Trade Act [of 1922] corporation shall maintain an accredited agent in the District of Columbia for purposes of service in any suits to be brought.

15/1071—Jurisdiction of civil actions based upon decision of Commissioner of Patents and Trademarks or Trademark Trial and Appeal Board when adverse parties reside in a plurality of districts not in the same state or a party lives in a foreign country.

15/1312(d)(2)—Service of Department of Justice civil investigative demands when the recipient thereof is not to be found in the territorial jurisdiction of any court of the United States.

17/116—Suit may be brought against proprietors of establishments having phonorecord players if such proprietor refuses access to authorized individuals trying to determine the contributions of individual recording artist to the profit of the player.

20/127—Suits to seek reimbursement if Howard University should transfer certain property.

22/276ee—Suits to enforce the provisions of the Kermit Roosevelt fund administered by certain United States Army personnel.

26/6110—Suits to be brought either in the United States Tax Court or United States District Court for the District of Columbia relative to certain information pertaining to determinations made by the Secretary of the Treasury.

26/7428—Suits may be brought in the United States Tax Court, United States Claims Court or this court relative to the determination that an organization is tax exempt.

28/1391(f)(4)—Suits brought against a foreign state under Foreign Sovereign Immunities Act of 1976.

30/1276(a)(1)—Suits relative to the action of the Secretary of the Interior in promulgating rules and regulations or approving or disapproving state programs under the Surface Mining and Reclamation Act of 1977.

2/687—Comptroller General authorized to bring civil suit to require budget authority to be made available for obligations under certain circumstances.

35/32—Court may review the action of the Commissioner of Patents and Trademarks in suspending individuals from practice before the Patent and Trademark office.

35/145—An applicant, dissatisfied with the decision of the Board of Appeals, in a patent or trademark case, may seek remedy against the Commissioner of Patents and Trademarks unless appeal has been taken to the United States Court of Appeals for Federal Circuit.

35/146—Any party to an interference, i.e. conflict with a pending application or unexpired patent, decision by the Commissioner of patents and Trademarks, may seek remedy by civil action. If parties residing in a plurality of districts not in the same state or in a foreign country.

35/293—If a non-resident patentee doesn't have locatable agent residing in the United States, this court has jurisdiction over suits involving such person.

40/193h—Prosecution of offenses pertaining to the Capitol or the grounds thereof, including conspiracies, shall be in this court.

40/193s—Prosecution of certain offenses at the Smithsonian Institution and National Gallery of Art.

40/1973b—Jurisdiction over suits for declaratory brought by states or subdivisions under the Voting Rights Act.

42/1973c—Jurisdiction over suits for declaratory judgment brought by states or political subdivisions under the Voting Rights Act.

42/1973k—Jurisdiction over suits by states or political subdivisions to require the Attorney General or Director of the Census to take certain actions to relieve the plaintiffs of certain burdens under the Voting Rights Act.

42/6384—Penalties may be assessed by the Comptroller General for failure to comply with orders to supply certain energy information to that Officer. Such penalties may be collected by a civil action only in this court.

43/1335—May review determinations of the Secretary of Interior relative to validity of a mineral lease, and operations thereunder, issued by any state and covering the submerged lands of the outer Continental Shelf.

43/1349—May review cancellation of an oil and gas lease by the Secretary of Interior when such lease, governing submerged lands of the outer Continental Shelf, was issued by the Secretary.

50 Appx/34—Claimants whose claim has been disallowed in whole or in part by the Custodian of Office of Alien Property may bring suit for review of this determination under the Trading With the Enemy Act.

50 Appx/2158—Under the Defense Production Act of 1950, the court has jurisdiction to enjoin certain actions and order production of certain materials by the Government.

Mr. DODD. Mr. President, let me say in conclusion, if I may, to my colleagues, as I know there are others who may want to speak on this nomination, admittedly as I said in my statement this is somewhat awkward for a former opponent to be in opposition to this nomination. I stress once again that on previous occasions Mr. Buckley has been nominated for other positions. I have not only voted for his nomination in those cases, but I did so with some pleasure. I happen to have a great deal of respect for this individual. Too often those words are said on this floor as usually a forewarning of some devastating attack on an individual. That is not my purpose at all.

I am as deeply concerned about the lack of adequate legal background that this administration seems to be pursuing in suggesting nominations for our Federal courts. Again, it is not a question of Mr. Buckley's not being qualified for anything, but to place this individual on the second most important court in our land, with the unique jurisdictional responsibilities of this court, coupled with Mr. Buckley's strong ideological views, which in many ways, while I disagree with him, I respect his consistency.

I must tell my colleagues in the Chamber that during the 1980 election effort one of the things that I grew to respect about my opponent in that race was that he did not shift around from day to day, given shifts in public opinion and mood. You could count on him every single day regardless of where the winds were blowing to take his position and take it firmly and to argue it intelligently. I respect that. Too few people in our political environment today do not adhere to that same set of principles and explain their political convictions.

But it is that same sense of conviction, that same purpose of conviction which I respect so much in the political arena or in this Chamber, that concerns me about serving in the judiciary. There I think more temperance is needed, more temperance is involved and must be involved, particularly when you consider the jurisdiction that this court covers.

With those thoughts in mind, Mr. President, I reserve the remainder of my time.

Mr. THURMOND. Mr. President, the distinguished Senator from Connecticut is certainly my friend.

I want to say that Mr. Buckley is well qualified for this position. Mr. Robert Fisk, chairman of the Standing Committee on the Judiciary of the American Bar Association, was contacted concerning Senator Buckley's ABA investigation. Mr. Fisk stated that the ABA Standing Committee looks at the qualifications of the individual for the position to which nominated. The individual circuit for which the individual was nominated has no effect on the committee's deliberations.

The ABA committee was aware that Senator Buckley had been nominated for the D.C. Circuit and found him qualified for that position.

Mr. HATCH. Will the Senator yield?

Mr. THURMOND. I yield 5 minutes to the distinguished Senator from Utah.

Mr. HATCH. Mr. President, we are today considering the nomination of a former Member of this body, Senator James L. Buckley, for a seat on the U.S. Court of Appeals for the District of Columbia. Former Senator Buckley is uniquely qualified for the post for which the President has wisely nominated him. In recent years, the District of Columbia Circuit has come to play a vital role in governmental affairs. This circuit is the appropriate venue for many challenges to Federal

Government activities pertaining to both foreign and domestic policy.

By virtue of his experience in this body as well as his service for 4 years in various influential posts in the executive branch, including Under Secretary for Security Assistance at the Department of State and president of Radio Free Europe, he has acquired and demonstrated a sensitivity and understanding of the types of issues likely to be adjudicated before the District of Columbia Circuit. The District of Columbia Circuit has become a primary judicial body for reviewing Federal Government actions. Few individuals have had the diversity of legislative and executive experience that uniquely qualify former Senator Buckley to participate in judicial oversight of governmental decisions.

Former Senator Buckley's legislative experience will undoubtedly serve the Nation well on the court of appeals for another reason. Senator Buckley will grasp that legislatures have historically been as protective of minority interests and rights as have courts. Exemplary of this principle is the constellation of Federal statutes protecting minority interests enacted over the past few decades. The Civil Rights Act of 1964, the 1965 Voting Rights Act, the 1968 Fair Housing Act, the Age Discrimination Act of 1967, the Equal Credit Opportunity Act, the Higher Education Amendments of 1972, and the Civil Rights Attorneys' Fees Awards Act of 1976 are among the many legislative enactments whose beneficiaries are not majoritarian interests. Former Senator Buckley served in Congress from 1971-77 when many of those laws were enacted or amended. This will provide him with a personal insight into and respect for the legislative process with regard to these and other vital statutes.

For just a moment, I would like to add just a comment about the general subject of nominations by President Reagan. In connection with this nomination, we have heard many comments about the degree to which President Reagan is reshaping the judiciary. In fact, President Reagan has not had a disproportionate impact on the Federal bench. In 5 years, President Lyndon Johnson appointed 54 percent of the Federal judiciary. In the same period, President Reagan has appointed 30 percent. To give some other comparisons, President Carter appointed nearly 40 percent in 4 years—in other words, they had more impact in less time than President Reagan.

President Kennedy, too, appointed 31 percent of the Federal judiciary in 3 years. President Nixon appointed 45 percent in his term of office. These statistics illustrate that the orderly processes of judicial selection have not given President Reagan a disproportionate role in appointing Federal judges.

In conclusion, I commend President Reagan for appointing individuals of great merit to serve on the Federal bench. Justice Sandra Day O'Connor is an example of his insightful selection of judges. Former Senator Buckley falls into the same category.

I can name countless others because I believe he has done a very good job and the Justice Department as well. They range across the spectrum ideologically, politically, and otherwise. Senator Buckley, I think, falls in the same category.

I would not get too caught up in any bar association recommendations. I have seen some of the top minds in this world excluded by the bar and some who have not been very top have been given high ratings. So I do not think they should count too much. I think they are important in the process, but I do not think any bar, New York City Bar or the ABA, should make the decisions here. That is what we are here for.

I think anybody in this body who has served with the distinction Senator Buckley has and has served in the executive branch with the same distinction has a right to serve in the judiciary branch. I think he will do a good job.

I hope all our colleagues will support our former colleague and let him know that we expect him to do a good job, and get him on this bench, where we can replace a very good judge and keep this process moving.

I thank my colleague from South Carolina for his leadership in this matter.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

Who yields time?

Mr. THURMOND. Mr. President, I yield such time as may be required by the able Senator from Kentucky [Mr. McCONNELL], a member of the Judiciary Committee.

Mr. McCONNELL. I thank the Senator.

Mr. President, I rise in support of this nomination.

I did not have the privilege of serving with Senator Buckley when he was a Member of this body but I have observed his career over the years and find him to be outstanding in a number of different ways. As everybody knows, he was a graduate of Yale University and of Yale Law School. He is a member of the U.S. Naval Reserve, Under Secretary of State for Security Assistance and counselor to that office. Of course, he was U.S. Senator from New York from 1971 until 1977. He has also been president of Radio Free Europe and Radio Liberty since 1982.

Senator Buckley has served with distinction, with integrity, with dedication in every position he has held. He is well qualified by education, experience, and temperament for the position he has been nominated to. I am proud to be here today to support his nomination and look forward to the wisdom and insight he will bring to the Federal bench.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN addressed the Chair.

Mr. THURMOND. Mr. President, I yield such time as may be required to the able senior Senator from New York [Mr. MOYNIHAN].

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I thank our distinguished chairman and President pro tempore.

Mr. President, I rise to support the nomination of the Honorable James L. Buckley for the distinguished position of circuit court judge for the District of Columbia. I shall speak not to his career, which is well known to this body and thoroughly set forth in hearings of the Judiciary Committee, where I had the honor to introduce him. If the Senate would not think this a diversion, I would like to speak to the personal qualities of a man against whom I ran for the seat in the U.S. Senate in 1976.

Mr. Buckley was born in New York City and, although he is now a resident of Connecticut, that is a somewhat porous border we have there, and people go back and forth with great advantage to both places.

He had earlier, in 1970, been elected to the Senate as an advocate of views which were thought perhaps unusual at the time, but which we have since seen rise to great levels of public acceptance and endorsement, even, in the decade that began 10 years later, in 1980. In 1976, it fell to me as a Democrat to run against him. Two things come to mind in terms of that campaign. The first is that it would have been the easiest of things for Senator Buckley, as he then was, to question my credentials by introducing what one might call procedural objections to my candidacy, to give the public, the electorate, some thought about what might be the scrupulousness of the person who was his opponent.

Until a bare 5 months before I became a candidate, I had been, a member of the Cabinet of President Ford, a Republican President. I had been that as a Democrat, in a Republican administration. I do not think anybody in this body would hold that against me. But even so, with perfect accuracy, one might have said, "Who is this person who has left President

Ford's Cabinet not 5 months ago suddenly presenting himself as a Democrat?"

Certainly, I was then employed teaching in another State. I was nothing if not a New Yorker, a resident of New York. The home we owned, and still do, is in New York. My wife and I were registered in New York, and I had had a series of Presidential commissions which declare me to be Daniel Patrick Moynihan of New York, as Presidential commissions do. Still, one could have said, "What is this fellow from another State, albeit a bordering State, doing in this campaign?" There could have been a number of automatic responses from a number of persons, but no such response came from Jim Buckley.

It was not his view that such matters were relevant. He knew perfectly well I had served as a Democrat at the request of President Ford, and that this was a respectable thing for an American to do. He knew perfectly well that New York was my home; and that if I was working somewhere else, it was because that is where I could make a living.

But much more important, Mr. President—and I think important to the concerns of the Senate today—is that he and I were persons of pronounced differences of views on a wide range of issues: his being a deeply felt conservative philosophy, as it was generally described in those days and perhaps still is, and mine being more of a New York Democrat with the associations that come from being born and coming of age in the era of Franklin Roosevelt and Harry Truman.

Well, it would be possible for Jim Buckley to have directed against me quite vehement, quite personal, and quite wounding charges of ideological unsoundness. He could have taken his view as one which was truth and suggested that opposing views were untruths.

He could have taken the view of the fanatic, defined by the political satirist Mr. Dooley as "a man who believes that God would agree with him if He knew the facts of the case."

There is a lot of that in our age, and there is a lot of that in this Chamber; yet none of that in Jim Buckley. He understands opinion. He understands disagreement, and he respects disagreement. He is interested in clarifying differences of opinion but not in misrepresenting or denigrating or smearing those who disagree with him. This is an honorable man. This is a man who understands, if I may say once again, the importance of principle. And while he may cleave with great conviction to one side, he is one of those whose conviction is that the other side has rights, too. I do not know what more important personal attribute a Senator might have.

In closing, Mr. President, may I say that he lost that election. It was not an easy thing. I cannot imagine a more painful thing for most of us. He, obviously, loved this place and served with distinction. He was admired here and was able to do many things that mattered to him, even though he was in the minority. I know in what high regard he was held in the Committee on Environment and Public Works, where I in effect succeeded him.

We were practically contemporaries. If he went to Yale and I went to City College, that was the fortunes of the time, and I may have had the better education. But what did he do to the man who succeeded him? Did he break off communications? Did he let this personal setback become a personal matter between the two of us? He did not. One of his first acts upon leaving the Senate—the next day after I had, in effect, come into the Senate—was to send me a copy of his book, "If Men Were Angels." I believe it is a line from the Federalist Papers; it is the position of Senator Buckley that men are not, and in that matter he cleaves closely to the views of the Founding Fathers. And that among other things, shows that he is a man capable of using precedent to the advantage of contemporaries, and that, too, is a quality of judicial temperament which I commend to this body.

Mr. President, I yield the floor. I thank the distinguished chairman for giving me time to address the body.

The PRESIDING OFFICER. Who yields time? The Senator from Connecticut.

Mr. DODD. How much time remains?

The PRESIDING OFFICER. Eighteen minutes for the Senator from Connecticut, 9 minutes for the Senator from South Carolina.

Mr. DODD. I yield to the Senator from Connecticut such time as he may desire.

Mr. WEICKER. I thank my good colleague from Connecticut.

Mr. President, let me state at the outset that political philosophy is not an issue here. That has already been determined rather conclusively with Mr. Buckley's sound defeat at the polls in New York State in 1976 and again his sound defeat at the polls in Connecticut in 1980. So those issues were resolved outside this Chamber, as indeed they should, and they are not a matter for concern vis-a-vis this nomination.

Mr. President, I rise today in opposition to the nomination of James L. Buckley to be a circuit judge for the United States Court of Appeals for the District of Columbia Circuit.

The basis of my opposition is twofold: First, I have serious reservations about Mr. Buckley's legal experience, which in my view, is far from adequate for a lifetime appointment to the Federal bench. Second, I am troubled by Mr. Buckley's response to questions posed to him by the Senate Judiciary Committee, which call into question his objectivity and his judicial temperment regarding certain philosophical issues.

Appellate judges are entrusted by our judicial system with the responsibility of interpreting the U.S. Constitution. This is a job that requires wholly independent thinking tempered by constitutional scholarship. It is in this application of founding principles to the questions of today that judges of the appellate bench are most often tested. This is not the exercise of the quiet, book-lined and paneled study that some may think. It is the most strenuous of processes, the subject of intense debate and the object of intense pressure from very powerful political forces.

We in the Senate with the responsibility of advice and consent can obviate this pressure on the Federal bench in limited fashion. Most importantly, we can approve for appointment those men and women of inner conviction and tested ability in the trenches of the legal system; the trial lawyers of the Nation's courts, judges of lower jurisdictions and even proven arbiters and scholars from the Nation's political and economic community.

Mr. President, on all these scores, Mr. Buckley falls short. Not by a small amount, but by an embarrasing and woefully inadequate amount. Mr. Buckley has never tried a case in court, except, and I quote the nominee himself, "other than representing a few obstreperous Yale students in the New Haven city court."

A man we consider today for perhaps the most active Federal appellate bench in the Nation has never appeared in Federal court, has never argued a case before a jury and indeed, answered "not applicable" when he was asked about the number of cases he tried to verdict or judgement.

Mr. President, the job of the Senate in these matters is not to count the number of jury trials or days in court and approve judges based on the bottom line. The judgment of the Senate concerning a lifetime appointment to the appellate bench must be applied with an understanding of a nominee's principles and probable judicial temperament.

Again I remind my colleagues of the great pressure on the Federal courts to bring their view of the Constitution and the role of the judiciary in line with the passing political majority. This pressure is wrong and, unfortunately, it has the support of the nominee before us today.

Mr. Buckley told the Judiciary Committee he is concerned about judicial activism. He said, "abrupt changes in

the interpretation of constitutional provisions or statutes, and the imposition of novel remedies have the effect of depriving the law of that element of certainty and predictability that should be one of its most important functions."

Mr. President, the approval of Mr. Buckley will inject elements of "certainty and predictability" to the D.C. circuit court of appeals, but it will do so at the expense of insight and experience. We can predict what his rulings will be in cases involving a woman's right to choose an abortion. His ideology is one of strong opposition to this right. And we can be certain from his testimony that he will not recuse himself from such cases. There is no need to recount to my colleagues Mr. Buckley's rigid opposition to civil rights and voting rights legislation. His résumé of political activity is full.

But, Mr. President, his résumé of legal activity is empty and for that reason I urge this nomination be rejected. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I wonder if the distinguished Senator from Connecticut is through.

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

Mr. THURMOND. Mr. President, will the Senator withhold that?

Mr. DODD. I do.

Mr. THURMOND. Are there any other speakers?

Mr. DODD. There may be one other Member on this side I am aware of who may wish to address this matter.

The PRESIDING OFFICER. Time will be charged against both sides.

Mr. DODD. Mr. President, I know of no further requests on this side.

Mr. THURMOND. Mr. President, I will make a brief response.

After Senator Buckley graduated from Yale Law School, he became a member of the bar and has been a member of the bar for 35 years. During this time, he practiced law for a number of years.

He has been connected with business organizations. He has served as U.S. Senator, and he has served in the U.S. Department of State.

He also served his country in uniform in the U.S. Naval Reserve for 3 years.

Mr. Buckley is a well-rounded man. He is a student. He will make an excellent member of the circuit court of appeals, to which he has been appointed.

Mr. Buckley has the highest regard for individualism and individual rights, and I am sure he will stand for the civil rights and humanitarian rights of people everywhere. We are very proud to recommend him to the Senate.

The Senate Judiciary Committee reported his nomination without any objection. He has been appointed by the President of the United States, he has been approved by the Judiciary Committee, and now we ask the Senate to approve him and send this fine man to the circuit court of appeals, where we feel he will make an outstanding record.

Mr. President, if there are no further speakers, I suggest that we yield back the remainder of our time and vote.

The PRESIDING OFFICER. Does the Senator from Connecticut yield back his time?

Mr. DODD. I yield back my time.

Mr. THURMOND. I yield back my time.

The PRESIDING OFFICER. All time have been yielded back, the question is, Will the Senate advise and consent to the nomination of James L. Buckley, of Connecticut, to be U.S. circuit judge for the District of Columbia Circuit? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. EAST] and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

I also announce that the Senator from Maryland [Mr. MATHIAS] is absent on official business.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] is necessarily absent.

I also announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 84, nays 11, as follows:

[Rollcall Vote No. 377 Ex.]

YEAS—84

Abdnor	Goldwater	Melcher
Andrews	Gore	Mitchell
Armstrong	Gorton	Moynihan
Bentsen	Gramm	Nickles
Biden	Grassley	Nunn
Bingaman	Harkin	Packwood
Boschwitz	Hart	Pell
Bradley	Hatch	Pressler
Bumpers	Hatfield	Pryor
Burdick	Hawkins	Quayle
Chafee	Hecht	Rockefeller
Cochran	Heflin	Roth
Cohen	Heinz	Rudman
Cranston	Helms	Sarbanes
D'Amato	Hollings	Sasser
Danforth	Humphrey	Simon
DeConcini	Johnston	Simpson
Denton	Kassebaum	Specter
Dixon	Kasten	Stafford
Dole	Kennedy	Stennis
Domenici	Kerry	Stevens
Durenberger	Laxalt	Symms
Eagleton	Leahy	Thurmond
Evans	Long	Trible
Exon	Lugar	Wallop
Ford	Mattingly	Warner
Garn	McClure	Wilson
Glenn	McConnell	Zorinsky

NAYS—11

Baucus	Lautenberg	Proxmire
Byrd	Levin	Riegle
Dodd	Matsunaga	Weicker
Inouye	Metzenbaum	

NOT VOTING—5

Boren	East	Murkowski
Chiles	Mathias	

So the nomination was confirmed.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

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

RECESS UNTIL 1:30 P.M.

The PRESIDING OFFICER. In accordance with the previous order, the Senate will now stand in recess until 1:30 p.m.

Thereupon, at 12:08 p.m., the Senate recessed until 1:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. PRESSLER).

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

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

BRADFORD MORSE

Mr. MOYNIHAN. Mr. President, in my tenure as U.S. Permanent Representative to the United Nations, I was privileged to work with distinguished and learned diplomats from every part of the world. Among the finest of those was our administrator of the United Nations Development Fund, Bradford Morse. In 13 years at the United Nations, Brad Morse compiled what is probably that organization's most impressive record of achievement. The successes he engineered, particularly in his post at the development fund, are too numerous to list. Suffice it to say that the positive influence of his leadership has been felt in over 150 nations, and in New York, Brad is recognized for helping erase the United Nations' problems with indebtedness.

Mr. President, this year marks the 40th annivesary of the entry into force of the U.N. charter. In that organization's history, many have been quick to criticize its operation, its intent, and indeed its very existence. The career of Bradford Morse, happily, reminds us of the effectiveness and importance of the United Nations in so many areas.

I was especially pleased to read a story about Brad Morse's many accomplishments and his plans for a much-deserved retirement in Tuesday's New York Times. Mr. President, I ask unanimous consent that this article be printed in the RECORD, for Bradford Morse is a man of tremendous ability and exceptionally fine character. He is a credit to his profession and to his country, and he will be greatly missed.

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

[From the New York Times, Nov. 19, 1985]

AMERICAN RETIRING AT U.N.: 13 SATISFYING YEARS

(By Elaine Sciolino)

UNITED NATIONS, N.Y.—Bradford Morse, the highest-ranking American official employed by the United Nations, says that when he retires next year he will be leaving behind one of the most successful agencies in the United Nations system.

"You name it, we did it," Mr. Morse, the head of the United Nations Development Program, which helps finance and administer development projects in more than 150 nations, said in an interview.

From projects in Colombia that have trained 2 million people in 300 different vocations, to investigations into the migration patterns of maize-eating red locusts in Africa, his program's achievements can be described in one word, said Mr. Morse: "Unbelievable."

The high point of his 13-year career at the United Nations was the building of hundreds of miles of secondary roads in Senegal, Mauritania, Mali, Burkina Faso and Gambia, with a locally available material, lignite. "It saves thousands of lives because we were able to get food supplies to people in remote areas during the recent drought," he said.

His "bluest days" came when it seemed impossible for Rwanda to produce a natural pesticide from a homegrown flower petal, a project that eventually succeeded.

Earlier today, in a news conference, Mr. Morse said with pride, "I have been able over these years to persuade the world that the human dimension of development is the critical dimension."

During his tenure at the agency, he has been credited with helping to eliminate the organization's financial deficits, and in recent years, he focused the agency's attention on the problems of debt and obstacles to economic growth in the so-called least-developed countries.

"I leave at a time when the United Nations Development Program—and I can say it with some degree of modest satisfaction—is in excellent shape compared to what it was a few years back when I first took over what was then a bankrupt organization," he said.

Mr. Morse also announced that contributing countries had pledged a record $736 million to the agency's projects for next year, $36 million over the agency's goal.

Mr. Morse, who also heads the United Nations Office for Emergency Operations in Africa, which coordinates relief for famine-stricken nations in Africa, expressed disappointment that donor nations did not pledge more money for nonfood items related to health, water, agricultural development and logistics.

"We would have liked to see a lot more money provided by the donor countries for nonfood needs," he said. "The emergency is not over by any means."

Despite the fact that harvests are better, he said, money will be much more critical next year as many countries begin to tackle the problems of internal economic development. "We have now pretty much overcome the immediate relief aspect of the emergency," he said, but added, "The real problem in Africa has been and continues to be a crisis of development."

Mr. Morse, a former Republican Congressman from Massachusetts who is 64 years old, cited personal reasons for his decision to retire before his mandate was over at the end of 1987.

"It is an appropriate time for change," he said. "I'm not as young as when I started. I have a young daughter that I hardly know and want to get to know."

Upon his retirement, Mr. Morse will become president of the Salzburg Seminar, an American-funded organization based in Cambridge, Mass., that brings together politicians, academics and businessmen from countries in the West, the Soviet bloc and developing countries.

Mr. Morse said he presumed the United States would try to keep his position at the United Nations for an American.

Mr. Morse refused to speculate on who might be a possible successor, but said it should be "a woman or a man who has a very deep concern about the state of the world and who has confidence that something can be done to overcome the imbalances that exist."●

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

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

Mr. McCLURE. Mr. President, the Senate is in executive session. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

DEPARTMENT OF THE INTERIOR

NOMINATION OF J. STEVEN GRILES TO BE AN ASSISTANT SECRETARY OF THE INTERIOR

Mr. McCLURE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 582, the nomination of J. Steven Griles, of Virginia, to be an Assistant Secretary of the Interior.

The PRESIDING OFFICER. Is there objection to the present consideration of the nomination?

Mr. BYRD. Mr. President, reserving the right to object—and I will not object—this nomination has been cleared on this side of the aisle.

The PRESIDING OFFICER. The nomination will be stated.

The bill clerk read as follows:

J. Steven Griles, of Virginia, to be an Assistant Secretary of the Interior.

There being no objection, the Senate proceeded to consider the nomination.

Mr. McCLURE. Mr. President, I strongly support the nomination of J. Steven Griles to be Assistant Secretary of the Interior. This is an outstanding nomination by the President which will bring a man of demonstrated abilities to one of the most difficult and thankless positions in the Department. Mr. Griles has complied with all requirements of the Senate and the Committee on Energy and Natural Resources. He has appeared before the committee in hearings on December 4, 1985, and responded fully and forthrightly to all questions asked of him. The committee considered his nomination in an open business meeting on December 11, and ordered the nomination favorably reported to the Senate.

Mr. President there has been an enormous amount of controversy surrounding the activities of the Office of Surface Mining and the Minerals Management Service. Mr. Griles has, I believe, done an outstanding job during his service at the Department to improve the activities of those two agencies. He has worked with the Congress and has always been responsive to questions and concerns. Under his leadership, the Congress has received several option analyses to assist us rather than just a take it or leave it approach. I deeply regret that some wish to vent their frustrations at the almost impossible task of managing OSM and MMS on Mr. Griles. He is far and away our best hope of seeing improvements.

Mr. President, there has been considerable discussion, debate, allegations, innuendo, and outright accusations directed at Mr. Steven Griles relative to his activities during his brief tenure as Deputy Director of the Office of Surface Mining Reclamation and Enforcement [OSMRE] in the Interior Department. While there is no question that there are serious problems with respect to the Office of Surface Mining and its implementation of the Surface Mining Control and Reclamation Act of 1977, I am convinced that Mr. Griles did not create these problems.

Anyone who takes the time to consider that the 1977 act is 87 pages of the most detailed, comprehensive and complex provisions to pass the Congress in recent memory; not to mention the fact that there are over 500 pages of rules currently in the Code of Federal Regulations that have been promulgated to implement the act; not to mention the fact that the act has been, and continues to be litigated, often resulting in regulations being modified and reissued; not to mention the fact that more rulemaking is in the offing; not to mention that there have been several changes in the leadership and staffing of OSM since its inception in 1978.

Consider, also, that for those of us in Congress and the executive branch who labored with the drafting of this act over several years it is still difficult to comprehend most of its provisions. I can't fathom what the various coal producing States must have thought when this law began to be implemented within their boundaries in the early days following its enactment, let alone the small coal operators who had to comply with its provisions. More importantly, the Federal inspectors who were hired to enforce the law at that time were too few and many of them inexperienced. At its peak size, the Office of Surface Mining employed approximately 220 inspectors, the majority of which were located in Appalachia. At the same time, the agency was charged with inspecting approximately 15,000 mines.

The Office of Surface Mining has never had sufficient inspection and enforcement personnel and resources to meet its statutory mandate to conduct an annual, fixed number of inspectors of each mine site. What does this mean? It means that some abuses were occurring unobserved by OSM. Was this the fault of the Director of OSM in charge at that time or was it the fault of Congress for not providing the manpower and money to effectively implement the law? Did those problems go away with the subsequent appointment of a new Director? The answer is that some were rectified but others were not. Those that were not were inherited by subsequent Directors. The Energy and Natural Resources Committee expects to confirm yet another Director of OSM early next session. Will he be blamed for the problems of the past? I certainly hope not.

As I pointed out earlier, considerable criticism was lodged against Mr. Griles during this confirmation hearing before my committee with respect to problems allegedly created by him during his tenure with OSM as Deputy Director. These critics dwelled only on the perceived negatives of Mr. Griles' tenure at OSM and conveniently omitted any of the positives so as to suggest that his entire tenure was one of undermining or circumventing the effective implementation of the 1977 act. In an effort to bring some balance to an otherwise negative hearing report, I asked Mr. Griles to provide for the record a list of positive or significant accomplishments that were achieved during his tenure at OSM.

Mr. President, I ask unanimous consent to have printed in the RECORD the question I put to Mr. Griles and his response.

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

Q. During your testimony, your role at the Office of Surface Mining (OSM) was called into question. Didn't OSM have a number of significant accomplishments during your tenure as Deputy Director and since that time? What were some of these accomplishments and what role have you played?

A. I believe that OSM has had several notable accomplishments since 1981. Major improvements have been made in the State and Federal regulatory programs, regulatory reform, enforcement, the AML program, and the administration of the agency.

STATE AND FEDERAL REGULATORY PROGRAMS

In early 1981, more than three years after the creation of OSM, only 12 percent of the coal mines in the country were subject to the full requirements of the Surface Mining Act's permanent program. 88 percent were still under the weaker interim program standards. By the end of my tenure at OSM in 1983, all coal mines in the major coal producing States were subject to the more stringent requirements of the law by virtue of approval of State programs for those States.

In a number of instances, the State programs were approved subject to conditions. Since 1981, the States have met 272 of the 296 conditions imposed, thus assuring that national standards are incorporated in State programs and imposed on all mining operations.

Another important accomplishment is the approval of seven cooperative agreements for the regulation and control of surface coal mining by States on Federal lands within those States' borders. No cooperative agreements existed prior to 1981. These agreements minimize duplication of State and Federal regulatory efforts and provide uniformity in the areas of intermingled State, Federal and private land ownership.

Another significant accomplishment was the implementation of Federal programs for nine States which did not choose to implement State programs, but which do have coal reserves. This major policy decision and accomplishment assures the public that all coal mining is controlled under SMCRA and provides full knowledge to the private sector of the regulatory requirements for coal mining. OSM has also promulgated a Federal program for Tennessee and taken direct responsibility for enforcement of part of the Oklahoma State program. These actions have proved that this Administration will require primacy States to enforce the law.

REGULATORY REFORM

In 1981, a regulatory rewrite was undertaken, partly as a result of rulings in litigation over OSM's 1979 regulations. Under these earlier rulings, a substantial number of regulations had been remanded by Judge Flannery, and many others were voluntarily withdrawn. The regulatory gaps which resulted had to be filled. In other instances, the 1979 rules were too rigid and burdensome and did not recognize important differences among the various regions and States where coal is mined.

The success of this effort is evident in that the more than two-thirds of the rule changes adopted in 1983 form a vital part of OSM's regulatory program and remain in place today. Many of these gave the States more involvement and flexibility in designing and administering their regulatory programs, thus carrying out Congress' stated aim to establish a national program that could be tailored to particular local conditions. Other changes curbed program abuses such as those associated with the two-acre exemption. These, too, remain in effect today. In addition, a number of standards adopted by OSM were more workable than their predecessors, benefiting OSM, the States, coal operators and the environment.

ENFORCEMENT

When I arrived at OSM in 1981, I found numerous problems. Enforcement records were in shambles. For example, no policy existed for assessing, processing or collecting the "megabuck" enforcement cases. All of the "megabuck" violations were issued between 1977 and 1980; they now total as much as one-third of the total outstanding debt of OSM. In addition, the "megabuck" enforcement cases and other violations resulting in huge civil penalties owed to the agency were written in confusing and inconsistent ways, and the records were disorganized and located haphazardly in regional offices and the Washington office.

Since that time, substantial progress has been made in the management of OSM's enforcement responsibilities. In 1982, OSM adopted a rule authorizing the agency to issue an immediate cessation order to coal mine operations mining without a permit. These operations are better known as "wildcat" mines. Prior to adoption of that rule, OSM had to go through the long administrative process of issuing a notice of violation before issuing a cessation order.

In 1982, I established a task force and hired a criminal investigator to address wildcat mining. Through that effort, we provided expert advice and personnel to key Kentucky State officials. Our efforts led to the indictment of 12 illegal operators and the confiscation of more than $900,000 in equipment from illegal operators.

Also in 1982, I assisted in drafting a rule to limit the scope of the two-acre exemption so as to curb that abuse. That rule was successfully defended in litigation which resulted in a landmark Court of Appeals decision preserving OSM's entire regulatory scheme controlling abuses of the two-acre exemption. In 1985, although I was not then directly responsible for OSM, I recommended to the Secretary settlement of the two-acre exemption litigation. That agreement established a rational method for correcting the environmental degradation caused by two-acre abuses, so that we were able to avoid the possible necessity of opening up SMCRA to amendment.

In 1984, although, again, I was not directly responsible for OSM, I recommended to the Secretary settlement of the "Parker" and "Gasch" "megabucks" cases. As a result of those settlements, it is my understanding that OSM has prioritized its enforcement efforts by first pursuing those who are responsible for correcting unabated cessation orders. These gross abusers and all operators who owe civil penalty or abandoned mine land fees are being placed on a computerized list, which OSM will use to prevent those persons from obtaining surface mining permits until they have corrected previous violations and paid the fees or penalties. In addition, OSM is also pursuing injunctive actions and some criminal prosecutions against those who appear to have adequate resources to correct violations. Moreover, OSM is promulgating several crucial enforcement-related rules, including rules concerning permit conditions, individual civil penalties, and the definition of "ownership and control." Additionally, OSM entered into a Memorandum of Understanding with the Tennessee Valley Authority (TVA) under which TVA has agreed not to purchase coal from mine operators who fail to abate violations.

ABANDONED MINE LANDS (AML)

In order to begin immediate correction of the past abuses of surface mining, we established a process in 1981 to shorten the time for approval of State AML programs. Prior to that time, the AML program was virtually nonexistent. Since that time, OSM has awarded almost $750 million in AML grants to the States. 85 percent of all emergency AML projects have been started since 1980.

Another accomplishment was the development and approval of the Centralia mine fire project. That project has resulted in 175 homeowners being relocated. 167 more have gone through closing procedures which will assure their personal safety and, hopefully, a better future.

ADMINISTRATION

In 1982, OSM entered into what I believe to be the first contract in the Federal Government under the Debt Collection Act for debt collection by a private contractor. This contract was intended to supplement OSM's workforce with private sector experts and to provide information on companies to maximize our ability to collect overdue AML funds.

In 1981, the Secretary authorized the establishment of a network of 13 State liaison officers and two technical centers to replace cumbersome regional operations. Since each State primacy program is unique and requires specialized knowledge and understanding of local and regional conditions, this realignment allowed OSM to have top agency officials and staff in each major coal-producing State—not only to provide State assistance, but also to assure proper enforcement of the Act.

In 1982, OSM assumed control over its own accounting systems and operations. Prior to that time, another Federal agency had provided those services. During 1981, I discovered that the accounting information being generated was inaccurate and outdated. The new system corrected these problems. In 1984, OSM implemented the Treasury electronic funds transfer system for letter of credit payments, reducing State needs for cash on hand. OSM now also operates this service for two other Bureaus with grant programs.

Mr. McCLURE. Mr. President, all is not well with the enforcement of the 1977 act but I believe that progress is being made. I recognize and abhor the fact that there continue to be some coal operators who continually and flagrantly violate the law. It is my hope that these habitual violators can be identified and dealt with expeditiously and with the full force and effect of the law. I am confident that Secretary Hodel is committed to that end and I am equally confident that Mr. Griles is as well. Therefore, Mr. President, I urge my colleagues to join me in supporting the confirmation of his nomination.

Mr. WARNER. Mr. President, I rise in support of the nomination of J. Steven Griles, whom the President has nominated to be Assistant Secretary of Interior for Land and Minerals Management.

I have known Steve since 1979 when I began my service in the Senate.

He is an outstanding Virginian who brings to the position a wealth of experience in both State and Federal Government.

After graduating from the University of Richmond, Steve began his career in Virginia's Department of Conservation and Economic Development where he supervised the successful implementation of 14 major State programs.

In 1981 with my strong support, Steve came to Washington where he seved as Deputy Director of the Office of Surface Mining for 2 years.

In 1983 he was promoted to Deputy Assistant Secretary of Interior for Land and Minerals Management.

Steve has been Acting Assistant Secretary for Land and Minerals Management for the past year, the position for which he has been nominated by the President.

Mr. President, Steve Griles is a man of unquestioned integrity, super judgment, and exceptional knowledge.

I know he will do a good job for the American people, and I urge the Senate to confirm his nomination.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of J. Steven Griles, of Virginia, to be an Assistant Secretary of the Interior?

The nomination was confirmed.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination.

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

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

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

SENATE SCHEDULE

Mr. DOLE. Mr. President, I have just talked to the distinguished chairman of the Appropriations Committee, and he has asked that we withhold any action on the short-term continuing resolution for a couple of hours, and I am certainly prepared to do that. I think the Government is functioning fairly well. I believe that by 5 or 6 o'clock we will have resolved that short-term continuing resolution, to carry us until either tomorrow night or Thursday evening.

It is also my hope that the House will pass the farm bill after they have disposed of the tax reform bill one way or the other and that we will be able to take action on the farm bill conference report tomorrow; also, that there will be a later conference today on the continuing resolution, and that we will complete it tomorrow.

I am advised by the Senator from New Mexico, Senator DOMENICI, that the reconciliation bill could be completed by late this evening and there is hope we could act on that tomorrow.

That leaves the farm credit matter which I had hoped to have disposed of by now, but there is still some minor disagreement over one or two provisions.

What I do not want to do, if at all possible, is to bring up the House bill and then have a free-for-all on the floor and reargue the entire matter on farm credit. So hopefully we can reach some agreement. There will be an amendment by Senators HELMS and ZORINSKY and an amendment by Senators BENTSEN and GRASSLEY. We will have a unanimous-consent agreement that we will propound later on this afternoon.

As to the nomination of Mr. Scanlon, I understand there are discussions going on between Senators PACKWOOD and DANFORTH. Perhaps that matter can be resolved by late this evening or tomorrow morning.

We are still hopeful that we can act on the Angola resolution, a resolution on the effective date of the tax bill in the event one should pass the House of Representatives, a resolution on Liberia, the so-called Medvid resolution, and maybe others that are in process that we do not know about.

RECESS UNTIL 4:15 P.M.

Mr. DOLE. Mr. President, since we do not have anything else to do, I move the Senate stand in recess until 4:15 p.m. today.

The motion was agreed to, and at 3:22 p.m., the Senate recessed until 4:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ANDREWS].

Mr. DOLE. 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. COHEN and Mr. HECHT occupied the chair during the quorum call.)

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

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

FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 1986

Mr. HATFIELD. Mr. President, we are in the situation of trying to extend the activities of the Government for a brief term, until midnight Thursday night as one continuing resolution has been passed by the House. We are also in the process of trying to get a reconvening of the regular conference dealing with the big continuing resolution which was defeated in the House of Representatives last night.

The House of Representatives has appointed conferees, and in this instance they have reduced the number of conferees from 47, the number that came to the first conference.

I have cleared with the Senator from Mississippi, the ranking Democrat of the Appropriations Committee, a list of conferees to meet with the House, hopefully tomorrow morning, in order to resolve some of the differences that the House has identified to cause defeat of the continuing resolution last night.

That is basically the situation we are in. I will soon propound a unanimous-consent request to respond to the House to their call for a conference, along with a list of the conferees that will represent the Senate.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. HATFIELD. I am happy to yield.

Mr. METZENBAUM. Mr. President, this is not my issue and I am not here objecting to it. However, I see no other members on my party on the floor. I do see one other Senator.

Mr. HATFIELD. And he is a member of the Appropriations Committee.

Mr. METZENBAUM. Mr. President, I am advised by staff that the question of the conferees has not as yet been resolved. I know the staff has indicated to me that they were trying to resolve who those conferees were. I would appreciate my colleague's withholding action temporarily until I can obtain the answers.

Mr. HATFIELD. Mr. President, I will be very happy to acquiesce to the request of the Senator from Ohio. Just to make the record clear, I would not want any reflection upon the Senator from Mississippi, the ranking member of our committee, that somehow he has not cleared or has not handled this case properly.

Let me assure the Senator concerning the Democratic member of our committee whom we all revere, Senator STENNIS, that there should be no implication by the Senator's remarks that he has not performed his duties fully and completely and with integrity.

Mr. President, let me say again that the Senator from Mississippi, the ranking Democrat of our committee, has cleared this proposed list of conferees.

Mr. METZENBAUM. I fully understand. I am not on the floor to in any way question the representations concerning the Senator from Mississippi. I do not know anything at all about the facts. The staff came to my desk and indicated there was some problem. I am merely attempting to suggest to the manager of the bill that in making his unanimous-consent request that he withhold temporarily until the Senator from Ohio can see to it that Senator BYRD, Senator STENNIS, or someone familiar with the facts in this issue can come to the floor.

That is the reason I am on the floor making this statement. I am not questioning the chairman's representations, Senator STENNIS' representations, or those of anyone else.

Mr. HATFIELD. 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. HATFIELD. 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. HATFIELD. Mr. President, I ask unanimous consent that we proceed as if in legislative business.

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

Mr. HATFIELD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Joint Resolution 465.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its disagreement to the amendments of the Senate to the resolution (H.J. Res. 465) entitled "Joint resolution making further continuing appropriations for the fiscal year 1986, and for other purposes", and ask a further conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. WHITTEN, Mr. BOLAND, Mr. NATCHER, Mr. SMITH of Iowa, Mr. ADDABBO, Mr. YATES, Mr. OBEY, Mr. ROYBAL, Mr. BEVILL, Mr. CHAPPELL, Mr. LEHMAN of Florida, Mr. DIXON, Mr. FAZIO, Mr. HEFNER, Mr. CONTE, Mr. MCDADE, Mr. MYERS of Indiana, Mr. COUGHLIN, Mr. KEMP, Mr. REGULA, Mrs. SMITH of Nebraska, and Mr. SKEEN be the managers of the conference on the part of the House.

Mr. HATFIELD. Mr. President, I observe that I wish we could proceed as orderly on the floor as the desk proceeds.

Mr. President, I ask unanimous consent that the Senate further insist on its amendments to House Joint Resolution 465, agree to the conference requested by the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate. This has been cleared on both sides.

The motion was agreed to, and the Chair (Mr. HECHT) appointed Mr. HATFIELD, Mr. STEVENS, Mr. WEICKER, Mr. MCCLURE, Mr. GARN, Mr. COCHRAN, Mr. ANDREWS, Mr. STENNIS, Mr. BYRD, Mr. PROXMIRE, Mr. JOHNSTON, Mr. BURDICK, and Mr. LAUTENBERG conferees on the part of the Senate.

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

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

SCHEDULE

Mr. DOLE. Mr. President, I have had inquiries on both sides of the aisle as to the program for the remainder of the evening. I wish I could indicate that we could leave here very quickly, and I think we can, if we could bring up the farm credit legislation. I think it is worked out with all the people who have an interest in it. I am not certain that there would be a rollcall on that measure. There could be, if someone demanded a rollcall. Then the short extension of the continuing resolution could be disposed of.

So far as this Senator is concerned, that is all we need to do, if it can be worked out. It might require debate.

We have asked the principals in the farm credit matter to come to the floor; and if we cannot get a unanimous-consent agreement, I think we can start on the bill itself, and it could be completed within 10 minutes.

Mr. METZENBAUM. Mr. President, will the distinguished majority leader yield for a question?

Mr. DOLE. I yield.

Mr. METZENBAUM. Mr. President, I think the leader is aware of the fact that the House of Representatives in the continuing resolution has indicated its intent to terminate the activities of the Synthetic Fuels Corporation.

There is a rumor around this body, and I do not know where else, that we are not moving in connection with the continuing resolution because a meeting is being held either at this moment or shortly by the Synthetic Fuels Corporation in order to authorize two projects which would amount to something around $700 million.

I rise to inquire of the majority leader whether or not (a) he is familiar with that; and, (b) whether or not he could not move promptly with the continuing resolution so that we could cut off this expenditure of $680 million, or whatever the amount is, before that occurs.

The leader is aware of the fact that the White House has indicated it wants to terminate the Synthetic Fuels Corporation, and now the rumor

suggests that the White House is blinking its eyes and agreeing to these two particular projects.

I do not think the Senate should be a party to it, and knowing of the leader's role on this whole issue in the past, and I am not at all suggesting he is a party to it, I wish to know whether we cannot move with dispatch and dispose of the continuing resolution and the Synthetic Fuels Corporation and save $700 million.

Mr. DOLE. I have not been a party to any discussion in that area.

But I think as soon as the chairman of the Appropriations Committee can work out a few details he is prepared to move on the short extension, as I understand it, and has been for some time. We are almost prepared to do that, as I understand it.

I am just indicating that if we can do that and the farm credit legislation, and anything else that might be done very quickly, and the wrap-up, that does not require extended debate or rollcall, we could do that this evening. I am also advised that the farm bill will not be taken up until tomorrow. The conference in the House of Representatives will be held tomorrow morning, and if there cannot be a conference on the continuing resolution until tomorrow morning there is no need to hang around here tonight unless people just do not have anything else to do.

Mr. METZENBAUM. Mr. President, will the majority leader be willing to consider and accept a sense-of-the-Senate resolution that might be brought up promptly saying in so many words that the Synthetic Fuels Corporation should not be finalizing or acting in connection with any pending matters in view of the fact that the House of Representatives has already indicated its intent to terminate, the Senate has indicated its willingness to go along with respect to termination, there is an agreement in the conference committee on that issue, and the White House has indicated they are opposed to it.

I think sitting by and letting $684 million go out the back door while we are meeting really would be a reflection upon our own efforts in this respect. We are all working hard to balance budgets and save dollars, and I would be willing to have the majority leader or someone else indicate by a sense-of-the-Senate resolution that no hurry-up meeting should occur at 7 p.m. at night at the Synthetic Fuels Corporation in order to expend the taxpayers' dollars, or absent that I would hope that he might see fit to pick up the telephone and say to those who might be involved that this would be a rather negative reflection upon the Senate and Congress.

Mr. DOLE. I do not intend to move to it at this time. We have not even advised all the principals yet. So I will suggest the absence of a quorum here just momentarily. I want Members to know that I am being asked why are we here. I am not certain there is any good reason. We are here because for some reason we cannot get an agreement on farm credit, and I guess there is still some problem with the continuing resolution.

I am going to suggest the absence of a quorum and see if we can resolve those two matters. Then I would hope we could dispose of both by 7:30 p.m.

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

The PRESIDING OFFICER (Mr. TRIBLE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. 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. HATFIELD. Mr. President, I ask unanimous consent to proceed as if in legislative session.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. Again, I say I am not trying to evade the question.

Mr. METZENBAUM. I understand.

Mr. DOLE. I think it might be better addressed to the chairman of the Appropriations Committee.

Mr. METZENBAUM. I just saw him leave for a moment. I think he is in the cloakroom.

Mr. DOLE. He is not hiding.

Mr. METZENBAUM. I know he would not do that.

Mr. DOLE. Let me suggest, first, if we can, we would like to move to farm credit. We again advise the principals we are prepared to do that. I would hope that we would be permitted to proceed on that matter as soon as the distinguished Senator from Nebraska [Mr. ZORINSKY] and the Senator from North Carolina, [Mr. HELMS], and appropriate staff and other Senators are present. Senator BENTSEN has an interest in that, as does Senator GRASSLEY.

So, we tried to indicate to all the parties who have expressed interest that we would be taking it up shortly.

Mr. METZENBAUM. Mr. President, I certainly do not have any intention of standing in the way of orderly proceeding of the Senate, but I am very anxious to try to cut this matter off at the pass, if anyone has such a devious—and that is what it would be, a devious idea.

I certainly will yield the floor, but I would hope that the chairman of the Appropriations Committee might return to the Chamber so we might inquire of him as to why we are delaying action in connection with this continuing resolution.

May I ask the majority leader, would he be willing to have some understanding that just as soon as the chairman of the Appropriations Committee is ready to proceed, we would set aside the farm credit bill in order to take up this measure?

Mr. DOLE. Excuse me.

Mr. METZENBAUM. I was asking whether or not he would be willing to work out an arrangement where once we get on to the farm credit bill—it is the farm credit bill—that it would be set aside just as promptly as the chairman of the Appropriations Committee is ready to proceed. In fact, if the majority leader would not find it impertinent, I wish to suggest the absence of a quorum in order that I may inquire of Senator HATFIELD as to whether or not he is ready to proceed at this moment.

FURTHER CONTINUING APPROPRIATIONS—1986

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 491, making further continuing appropriations for fiscal year 1986.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 491) making further continuing appropriations for fiscal year 1986.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Oregon?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. HATFIELD. Mr. President, this is a simple extension of the expiration date of the last continuing resolution, Public Law 99-179, until midnight, Thursday, December 19, to allow time for the House and Senate to draft a new continuing resolution for the full year. Our first attempt was defeated last night.

This joint resolution also includes language adopted by the House prohibiting the Synfuels Corporation from expending funds in this or any other act up to midnight Thursday or to award financial assistance or payments with respect to projects or modules under the U.S. Synthetic Fuels Corporation Act of 1980.

Mr. President, this is a matter that I would like to have had done much earlier today but, in order to try to get a clearance on both sides of the aisle, it has taken up time. And I am afraid, even at this moment, we do not have clearance on the other side of the aisle. So I just wish to make it very clear and make the record that the Appropriations Committee has been ready to act, with the support of Senator STENNIS, the ranking Democrat of the committee, and myself, as chairman of the committee, for many hours.

I only apologize at this time to the Membership that we have not been able to get it to the floor until this hour of 7:07 p.m. As soon as we get a further clearance on the Democratic side of the aisle—we are now cleared on this side—we will be ready to act on the continuing resolution.

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. METZENBAUM. 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. METZENBAUM. Mr. President, I have a parliamentary inquiry of the Chair. Assuming the Senate concludes its action on this joint resolution, which is a continuing resolution through Thursday, how long would it take for the enrolling clerk to conclude his responsibilities and get this down to the White House?

The PRESIDING OFFICER. This being a joint resolution that originated in the House of Representatives, the joint resolution will be returned to the Enrolling Clerk of the House of Representatives and it is his responsibility to move forward from that point.

Mr. METZENBAUM. I thank the Chair.

Mr. HATFIELD. Mr. President, I move the adoption of the continuing resolution. I have just been informed by the Democratic leader, the Senator from West Virginia, Mr. BYRD, that it is now cleared on the Democrat side of the aisle.

The PRESIDING OFFICER. Is there further debate? If not, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 491) was ordered to a third reading, was read the third time, and passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FARM CREDIT AMENDMENTS ACT OF 1985

Mr. HELMS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1884.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1884) entitled "An Act to amend the Farm Credit Act of 1971, to restructure and reform the Farm Credit System, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Farm Credit Amendments Act of 1985".

TITLE I—PROVISIONS TO STRENGTHEN THE OPERATION OF FARM CREDIT SYSTEM LENDING INSTITUTIONS

CAPITAL AND FINANCING

SEC. 101. Part A of title IV of the Farm Credit Act of 1971 is amended by—

(1) amending section 4.0 to read as follows:

"SEC. 4.0. REVOLVING FUNDS; INVESTMENTS.—The revolving fund established by Public Law 87-343, 75 Stat. 758, as amended, and the revolving fund established by Public Law 87-494, 76 Stat. 109, as amended, and continued by Public Law 96-592, shall be merged and shall be available to the Farm Credit Administration for the purchase, on behalf of the United States, of capital stock of the Capital Corporation. The Farm Credit Administration may make such purchases of stock as the Farm Credit Administration determines, in its discretion, are necessary to achieve the purposes of this Act.";

(2) striking out section 4.1;

(3) in section 4.3—

(A) redesignating subsection (b) as subsection (c); and

(B) by striking out the matter preceding subsection (b) and inserting in lieu thereof the following:

"SEC. 4.3. CAPITAL ADEQUACY OF BANKS AND ASSOCIATIONS.—(a) The Farm Credit Administration shall cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the Farm Credit Administration deems appropriate. The Farm Credit Administration may establish such minimum level of capital for a System institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution.

"(b)(1) Failure of a System institution to maintain capital at or above its minimum level as established under subsection (a) may be deemed by the Farm Credit Administration, in its discretion, to constitute an unsafe and unsound practice within the meaning of this Act.

"(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Farm Credit Administration may issue a directive to a System institution that fails to maintain capital at or above its required level as established under subsection (a). Such directive may require the System institution to submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and timing by which the System institution shall achieve its required capital level, but may not require merger or consolidation without a majority vote of the voting stockholders or the contributors to the guaranty fund of the institution.

"(B) Any directive issued under this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 5.31 of this Act to the same extent as an effective and outstanding order issued under section 5.25 of this Act that has become final.

"(3) The Farm Credit Administration may consider such System institution's progress in adhering to any plan required under paragraph (2) whenever such System institution, or an affiliate thereof, seeks the requisite approval of the Farm Credit Administration for any proposal that would divert earnings, diminish capital, or otherwise impede such System institution's progress in achieving its minimum capital level. The Farm Credit Administration may deny such approval where it determines that such proposal would adversely affect the ability of the System institution to comply with such plan."; and

(4) in section 4.4—

(A) redesignating subsection (c) as subsection (d); and

(B) inserting, after subsection (b), the following:

"(c) For purposes of this part, the term 'bank' shall include the Capital Corporation.".

APPOINTMENT OF CONSERVATOR OR RECEIVER

SEC. 102. Section 4.12 of the Farm Credit Act of 1971 is amended by striking out subsection (b) and inserting in lieu thereof the following:

"(b) The Farm Credit Administration may appoint a conservator or receiver for any System institution on the determination by the Farm Credit Administration that one or more of the following exists, or is occurring, with respect to the institution: (1) insolvency, in that the assets of the institution are less than its obligations to its creditors and others, including its members; (2) substantial dissipation of assets or earnings due to any violation of law, rules, or regulations, or to any unsafe or unsound practice; (3) an unsafe or unsound condition to transact business; (4) willful violation of a cease and desist order that has become final; (5) concealment of books, papers, records, or assets of the institution or refusal to submit books, papers, records, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration. The Farm Credit Administration shall have exclusive power and jurisdiction to appoint a conservator or receiver. If the Farm Credit Administration determines that a ground for the appointment of a conservator or receiver as herein provided exists, the Farm Credit Administration may appoint ex parte and without notice a conservator or receiver for the institution. In the event of such appointment, the institution, within thirty days thereafter, may bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration to remove such conservator or receiver, and the court, shall on the merits, dismiss such action or direct the Farm Credit Administration to remove such conservator or receiver. On the commencement of such an action, the court having jurisdiction of any other action or enforcement proceeding authorized under this Act to which the institution is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.".

FARM CREDIT SYSTEM CAPITAL CORPORATION

SEC. 103. Title IV of the Farm Credit Act of 1971 is amended by inserting, after section 4.28, the following:

"PART D1—FARM CREDIT SYSTEM CAPITAL CORPORATION

"SEC. 4.28A. EXISTENCE OF CORPORATION.—The Farm Credit Administration, not later than 60 days after enactment of the Farm Credit Amendments Act of 1985, shall (1)

charter the Farm Credit System Capital Corporation (referred to in this Act as 'the Capital Corporation'), which, subject to the provisions of this part and the regulations of the Farm Credit Administration, shall be a federally chartered instrumentality of the United States and an institution of the Farm Credit System, and (2) revoke the charter for the Farm Credit System Capital Corporation issued under part D of this title. The charter issued to the Farm Credit System Capital Corporation pursuant to this paragraph shall be reviewed on December 31, 1987. The Farm Credit Administration Board shall submit to Congress by December 31, 1987, a report and analysis of the Capital Corporation together with any recommendations for legislation to extend the charter of the Farm Credit System Capital Corporation.

"SEC. 4.28B. PURPOSES.—For the sole purpose of carrying out a program of financial and technical assistance to institutions within the Farm Credit System (and their borrowers) which are experiencing financial difficulties, the Capital Corporation shall, in accordance with this part—

"(1) carry out a program of financial assistance among institutions of the Farm Credit System;

"(2) acquire from other Farm Credit System institutions and participate with such institutions in nonperforming assets of such institutions;

"(3) hold, restructure, collect, and otherwise administer nonperforming assets acquired from or participated in with other Farm Credit System institutions, and guarantee performing and nonperforming assets held by other Farm Credit institutions;

"(4) provide technical assistance and related services to other Farm Credit System institutions in connection with the administration of their loan portfolios;

"(5) provide assistance and related services to Farm Credit System institutions to assist them in restructuring or refinancing loans of their member-borrowers; and

"(6) receive and administer financial assistance for Farm Credit System institutions that originates outside of the Farm Credit System.

"SEC. 4.28C. BOARD OF DIRECTORS OF THE CAPITAL CORPORATION.—(a) The Board of Directors of the Capital Corporation shall consist of five members, four of whom shall be elected in accordance with guidelines established by the Farm Credit Administration from the contributing farm credit district boards of the banks that own voting stock of the Capital Corporation, and one of whom shall be appointed by the Chairman of the Farm Credit Administration. The person appointed by the Chairman shall be selected from United States citizens who are not borrowers from, shareholders in, or employees of any System institution, and who are experienced in financial services and credit. Members of the board of directors shall serve three-year terms, except that, of the first board of directors, one elected member and one appointed member shall serve initial terms of one year. The board of directors shall elect, on an annual basis, a Chairman from among its members.

"(b) Members of the board may succeed themselves and may serve until their successors are duly seated. Vacancies on the board shall be filled in the same manner as the vacant position was previously filled.

"(c) The bylaws of the Capital Corporation shall prescribe the procedure by which directors of the Capital Corporation shall be nominated and elected by the contributing banks that own voting stock of the Corporation. Each stockholder bank shall be entitled to one vote regardless of the number of shares held by it.

"SEC. 4.28D. COMPENSATION OF BOARD MEMBERS.—Members of the board of directors of the Capital Corporation shall receive compensation, including reasonable allowances for necessary expenses, in attending meetings of the board. The compensation shall not be in excess of the level set by the Farm Credit Administration.

"SEC. 4.28E. BOARD PROCEDURES.—The board of directors of the Capital Corporation shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

"SEC. 4.28F. CHIEF EXECUTIVE OFFICER OF THE CORPORATION.—The chief executive officer of the Capital Corporation shall be selected by the board of directors of the Capital Corporation, subject to the approval of the Farm Credit Administration, and shall serve at the pleasure of the board.

"SEC. 4.28G. GENERAL CORPORATE POWERS.—(a) The Capital Corporation shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have the power to—

"(1) operate under the direction of its board of directors;

"(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

"(3) provide for one or more vice presidents, a secretary, a treasurer, and such other officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

"(4) prescribe by its board of directors its bylaws, not inconsistent with law, which shall provide for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; the manner in which its officers, employees, and agents are selected; its property is acquired, held, and transferred; its loans, commitments, and other financial assistance are made; its general business is conducted; and the privileges granted by law are exercised and enjoyed;

"(5) enter into contracts and make advance, progress, or other payments with respect to such contracts;

"(6) contract with System institutions for local administration, servicing, and restructuring of loan and loan-related assets and management of acquired properties of the Corporation;

"(7) sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal;

"(8) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and guarantee, sell, or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its business;

"(9) authorize, through its board of directors, the issuance and sale of obligations, including notes, bonds, debentures, capital notes, and voting or nonvoting securities, to the Secretary of the Treasury or the Farm Credit Administration, under such terms and conditions as shall be determined;

"(10) obtain insurance against loss;

"(11) modify or consent to modification with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which it is a party or in which it has an interest under this Act;

"(12) borrow from any commercial bank on its own individual responsibility on such terms and conditions as it may determine with the approval of the Farm Credit Administration;

"(13) join with Farm Credit System banks in the issuance of System-wide notes, bonds, debentures, and other similar obligations under section 4.2(d) of this Act, or assume liability with respect to outstanding System-wide obligations. If it satisfies the requirements applicable to banks under section 4.3(c) of this Act, it shall be jointly and severally liable with the System banks for the payment of principal and interest on such obligations, and pay on such obligations any sums as may be called on by the Farm Credit Administration to make payments of principal or interest that any bank or banks primarily liable therefor are unable to make;

"(14) require other institutions of the Farm Credit System, through purchase of stock in, or obligations of, the Capital Corporation, to make funds available to the Capital Corporation to enable it to make financial assistance available to institutions of the Farm Credit System as provided in paragraph (15). The Capital Corporation may also assess at such times and under such circumstances as it deems appropriate, System Institutions for the purpose of covering its operating expenses not to include interest costs. The guidelines to be used by the Capital Corporation in obtaining funds from other institutions of the Farm Credit System for the purpose of aggregating resources to assist System institutions, to the extent practicable, shall give priority to obtaining funds through the use of transactions that require the Capital Corporation, on reasonable terms, to repay the contributed funds from surpluses accumulated by the Capital Corporation, and otherwise shall be in conformity with regulations issued by the Farm Credit Administration;

"(15) administer financial assistance under regulations of the Farm Credit Administration which shall—

"(A) include standards to ensure that, consistent with sound business practices and subject to the criteria established under subparagraph (B) of this paragraph, the available capital and reserves of System institutions are committed to providing financial assistance to those institutions of the Farm Credit System eligible therefor. The term 'available capital and reserves', as used in this subparagraph, shall not include capital stock, participation certificates and allocated equities held by borrowers that are not associations chartered under this Act;

"(B) establish criteria pursuant to which the Capital Corporation shall require other institutions of the Farm Credit System, through the purchase of stock in, or obligations of, the Capital Corporation to make funds available to the Capital Corporation under paragraph (14). Such criteria shall—

"(i) provide for an equitable sharing of the burden of such assessments or purchases, taking into account (I) the relative financial strength and ability to pay of the contributing institutions; (II) the effect, including the effect on loan interest rates, on current borrowers and members of each System institution of the loss of the use of the accumulated net worth of their institution; and (III) the effect on lending rates of financial assistance already provided to other System institutions; and

"(ii) be designed to ensure that (I) the capital strength, earning capacity, loanable

funds and overall financial viability of each System institution providing funds to the Capital Corporation are maintained at such a level that credit shall continue to be available to eligible borrowers on reasonable and competitive terms taking into account the relative rates and terms available to them prior to investments in the Capital Corporation, (II) each bank shall continue to have access to funds in the public financial markets, and (III) each bank is able to maintain adequate financial resources to satisfy its liability on its own obligations and on that portion of systemwide notes, bonds, debentures, or other obligations for which it is primarily liable; and

"(C) establish criteria to be used in determining eligibility of System institutions for financial assistance from the Capital Corporation and the types and amounts of financial assistance that can be obtained from the Corporation. Such regulations shall provide that an institution shall be eligible to receive financial assistance when its financial condition has deteriorated to a point where its continued operation is jeopardized and the provision of such financial assistance is necessary to ensure that farm credit services will continue to be available to borrowers in the institution's territory;

"(16) purchase at fair market value from any other System institution, on the request of such institution, loans (or interests in loans) that have been placed in nonaccrual status and assets (or interests in assets) in the account for acquired properties;

"(17) require System institutions to sell to the Capital Corporation loans, assets, and interests described in paragraph (16) as a condition to receiving financial assistance from the Capital Corporation;

"(18) exercise all the rights and privileges of any System institution with respect to any loan which it has acquired or in which it has participated, including the adjustment of interest rates, compromise of indebtedness, waiver of default, and other such rights and privileges;

"(19) assume debt or other liabilities from System institutions in connection with the acquisition of loans or interests therein or other assets from such institutions;

"(20) refinance, reamortize, guarantee, or compromise indebtedness, and otherwise provide debt adjustment assistance, with respect to any loan to a borrower of a System institution purchased under paragraph (16) or participated in by the Capital Corporation, and, after a determination by the Capital Corporation that the borrower could not reasonably be anticipated to meet loan servicing charges under a refinanced, reamortized, or otherwise restructured loan under reasonable terms and conditions acceptable to the Capital Corporation, liquidate any such loan;

"(21) purchase from associations undergoing liquidation all assets which are performing loans not voluntarily purchased by other associations;

"(22) adopt a salary scale for officers and employees of the Capital Corporation, in accordance with the directives of the board of directors; and

"(23) deposit its securities and its current funds with any member of the Federal Reserve System or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act and pay fees therefor and receive interest thereon as may be agreed.

The Capital Corporation shall have such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this Act.

"(b) The powers of the Capital Corporation set forth in subsection (a) of this section, to the extent they authorize the financial assistance of any type to borrowers and System institutions, shall be limited after December 31, 1990, as provided in this subsection. The powers of the Capital Corporation to directly or indirectly increase the level of such financial assistance to a borrower or institution or to provide directly or indirectly any such financial assistance to a borrower or institution not receiving such assistance on December 31, 1990, shall terminate on that date. All other powers, including those necessary for management and orderly liquidation of commitments made and obligations incurred in providing such assistance to borrowers and institutions on or before December 31, 1990, shall remain in effect thereafter.

"(c) Officers or employees of the Capital Corporation, like other Farm Credit System employees, shall not be considered officers or employees of the Federal Government. Funds held by the Capital Corporation shall not be construed to be Government funds or appropriated moneys.

"SEC. 4.28H. SUCCESSION OF THE CORPORATION.—On the issuance by the Farm Credit Administration of the new charter for the Capital Corporation under this part, the Capital Corporation shall succeed to the assets of and be liable for and assume all debts, obligations, contracts, and other liabilities of the Farm Credit System Capital Corporation chartered under part D of this title (referred to in this section as 'the predecessor corporation'), matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the predecessor corporation. The stock of the predecessor corporation shall be converted into stock of the Capital Corporation. The existing contractual obligations, security instruments, and title instruments of the predecessor corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Capital Corporation chartered under this part. To the extent that, on the extinguishing of liabilities assumed by the Capital Corporation under this section, and full performance or other final disposition of contract obligations under contracts assumed by the Capital Corporation under this section, there remain surplus funds attributable to such obligations or contracts, the Capital Corporation shall distribute such surplus funds among the System institutions that contributed funds to the predecessor corporation on the basis of the relative amount of funds so contributed by each institution.

"SEC. 4.28I. LIMITATION OF POWERS.—(a) The powers of the Capital Corporation under this part shall be exercised only for the purposes specified in this part and shall not be exercised in a manner that would result in the Capital Corporation supplanting the Farm Credit System institutions operating under titles I through III of this Act as the primary providers of credit and other financial services to farmers, ranchers, and their cooperatives.

"(b) Sales by the Capital Corporation of real property formerly securing a liquidated loan shall be conducted pursuant to guidelines adopted by the Capital Corporation that are compatible with the following criteria:

"(1) Notice of pending sales shall be made public.

"(2) Previous owners shall be advised of the pending sale and shall not be precluded from purchasing their former property.

"(3) The sale of real property acquired by the Corporation in large tracts shall be discouraged.

"SEC. 4.28J. AUTHORITY OF THE SECRETARY OF THE TREASURY.—(a) On certification by the Farm Credit Administration that (1) the Farm Credit System is in need of financial assistance to address financial stress of System institutions, (2) the System has committed its available capital surplus and reserves to address such financial stress of System institutions, (3) officers of System institutions have frozen their salaries and benefits, such freeze to remain in effect until the earlier of five years after the freeze begins or such time as the Secretary no longer holds any obligations issued by the Capital Corporation, and (4) the System has used such capital surplus and reserves to the extent that further contributions from, or losses incurred by, System institutions likely will preclude such institutions from making credit available to eligible borrowers on reasonable terms, the Secretary of the Treasury, in the Secretary's discretion, may purchase any obligations issued by the Capital Corporation under this part, as heretofore, now, or hereafter in force; and for such purpose the Secretary of the Treasury may use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include such purchases. The authorities provided to the Secretary of the Treasury by the preceding sentence shall be effective only to such extent or in such amounts as provided in advance in appropriation Acts. The Secretary of the Treasury, at any time, may sell, on such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public-debt transactions of the United States. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be on terms and conditions as shall be determined by the Secretary of the Treasury, taking into consideration the objectives that System institutions retain the ability to make credit available to eligible borrowers on reasonable terms and that banks of the System continue to have access to funds in the public financial markets.

"(b) The Farm Credit Administration promptly shall submit a copy of any certification made under subsection (a) to Congress, and the Secretary of the Treasury shall, not later than forty-five days after such certification is made, make known to the Congress and the Farm Credit Administration the Secretary's decision as to exercising the authority under subsection (a) and the reasons and documentation therefor, if that decision is not to purchase obligations of the Capital Corporation.

"SEC. 4.28K. INITIAL CAPITALIZATION.—The Farm Credit Administration shall provide for the initial capitalization of the Capital Corporation by requiring, in accordance with section 4.28G, institutions of the System to contribute capital to the Capital Corporation in such amounts and under

such terms and conditions as the Farm Credit Administration, in consultation with System institutions, may prescribe.".

CONFORMING AMENDMENT

SEC. 104. Title IV of the Farm Credit Act of 1971 is further amended by inserting before section 4.2 the following:

"SEC. 4.1. REQUIREMENTS TO PURCHASE STOCK AND PAY ASSESSMENTS AND CONTRIBUTE CAPITAL TO CAPITAL CORPORATION.—The Federal land banks, the Federal intermediate credit banks, the banks for cooperatives, the Federal land bank associations, and the production credit associations shall purchase stock in, or obligations of, the Capital Corporation, pay assessments, make capital contributions, and take such other related actions as required by the Capital Corporation in the exercise of its powers under this Act. Any payment for retirement of stock so purchased, or repayment of obligations so purchased, by the Capital Corporation shall be distributed among all holders of such stock or obligations on the basis of the book value of the stock or obligations held by each such holder at the time of the distribution.".

CENTRAL RESERVE

SEC. 105. Part A of title IV of the Farm Credit Act of 1971 (12 U.S.C. 2151 et seq.) is amended by inserting after section 4.9 the following:

"SEC. 4.9A. CENTRAL RESERVE FOR FARM CREDIT SYSTEM.—(a) The Farm Credit Administration may, effective January 1, 1991, establish and maintain a central reserve for the Farm Credit System.

"(b) Such central reserve shall be held in the form of Treasury securities and demand deposits.

"(c) The Farm Credit Administration may use the reserve to make temporary deposits and temporary investments in financially troubled banks or associations of the Farm Credit System.

"(d)(1) The Farm Credit Administration may order payments into such central reserve of one-tenth of 1 percent of the proceeds of each individual, consolidated, or System-wide note, bond, debenture, or other obligation issued by the Farm Credit System, or any part thereof, under this Act.

"(2) Such payments under paragraph (1) may be ordered during any period when such central reserve contains the unobligated sum the Farm Credit Administration deems inadequate to achieve the purposes of such central reserve, but not more than a sum equal to 3 percent of the total of loans outstanding on December 31 of the last preceding calendar year from institutions in the Farm Credit System to persons other than other such institutions.

"(e) The Farm Credit Administration shall require a bank or association to repay in whole or in part a temporary deposit or retire in whole or in part a temporary investment, made in such bank or association under this section, at such time as in the opinion of the Farm Credit Administration such bank or association has resources available therefor and the need for such temporary deposit or temporary investment is reduced or no longer exists.

"(f) The Farm Credit Administration shall issue rules and regulations implementing this section.".

TITLE II—REGULATION OF THE FARM CREDIT SYSTEM

RESTRUCTURE OF THE FARM CREDIT ADMINISTRATION

SEC. 201. Part B of title V of the Farm Credit Act of 1971 is amended by—

(1) amending sections 5.7 through 5.12 to read as follows:

"SEC. 5.7. THE FARM CREDIT ADMINISTRATION.—The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this Act.

"SEC. 5.8. THE FARM CREDIT ADMINISTRATION BOARD; APPOINTMENT; TERM OF OFFICE; ORGANIZATION AND COMPENSATION.—(a) The management of the Farm Credit Administration shall be vested in a Farm Credit Administration Board (referred to in this part as 'the Board'). The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party. Of the persons thus appointed, one shall be designated by the President to serve as Chairman of the Board for the duration of the member's term. The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

"(b) The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, first appointed under subsection (a) shall expire, one on the expiration of two years after the date of appointment, and one on the expiration of four years after the date of appointment. Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) for a term of less than six years may be reappointed for a full six-year term and members appointed to fill unexpired terms of three years or less may be reappointed for a full six-year term. Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as such after the expiration of the member's term until a successor has been appointed and qualified.

"(c) Each member of the Board, within fifteen days after notice of appointment, shall subscribe to the oath of office. The Board may transact business if a vacancy exists, provided a quorum is present. A quorum shall consist of two members of the Board. The Board shall hold at least one meeting each month and such additional meetings at such times and places as it may fix and determine. Such meetings shall be held on the call of the Chairman or any two Board members. The Board shall adopt such rules as it deems appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

"(d) The members of the Board shall devote their full time and attention to the business of the Board. The Chairman of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5 of the United States Code. Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code. Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the member's official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. This subsection shall be subject to the provisions of section 5.11 of this Act.

"SEC. 5.9. POWERS OF THE BOARD; CIVIL PROCEEDINGS.—The Board shall manage and administer, and establish policies for, the Farm Credit Administration. It—

"(1) shall approve the rules and regulations for the implementation of this Act not inconsistent with its provisions;

"(2) shall provide for the examination of the condition of, and general regulation of the performance of the powers, functions, and duties vested in, each institution of the Farm Credit System;

"(3) shall provide for the performance of all the powers and duties vested in the Farm Credit Administration; and

"(4) may require such reports as it deems necessary from the institutions of the Farm Credit System.

"SEC. 5.10. CHAIRMAN; RESPONSIBILITIES; GOVERNING STANDARDS.—(a) The Chairman of the Board shall be the executive officer of the Board and the chief executive officer of the Farm Credit Administration. The Chairman shall be responsible for directing the implementation of the policies and regulations adopted by the Board and the execution of all of the administrative functions and duties of the Farm Credit Administration. The Chairman shall be the spokesman for the Board and the Farm Credit Administration and shall represent the Board and the Farm Credit Administration in their official relations within the Government. Under policies adopted by the Board, the Chairman shall consult on a regular basis with the Secretary of the Treasury in connection with the exercise by the System of the powers conferred under section 4.2 of this Act, with the Board of Governors of the Federal Reserve System in connection with the effect of System lending activities on national monetary policy, and with the Secretary of Agriculture in connection with the effect of System policies on farmers and the agricultural economy.

"(b) In carrying out responsibilities under this Act, the Chairman of the Board shall be governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make and, as to third persons, all acts of the Chairman of the Board shall be conclusively presumed to be in compliance with such general policies and regulatory decisions, findings, and determinations.

"(c) The Chairman of the Board shall enforce the rules, regulations, and orders of the Board. Except as provided in section 518 of title 28 of the United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman shall represent the Farm Credit Administration in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships. Attorneys designated by the Chairman may represent the Farm Credit Administration in any other civil proceedings or civil action when so authorized by the Attorney General under provisions of title 28.

"SEC. 5.11. ORGANIZATION OF THE FARM CREDIT ADMINISTRATION.—The Chairman of the Board, in carrying out the powers and duties now or hereafter vested in the Chairman by this Act and acts supplementary thereto, may establish and fix the powers and the duties of such divisions or other units as the Chairman may deem necessary to the efficient functioning of the Farm

Credit Administration and the successful execution of the powers and duties vested in the Board and the Farm Credit Administration. The Chairman of the Board shall appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. Officers and employees of the Farm Credit Administration shall be subject to the Ethics in Government Act of 1978 and shall be considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18 of the United States Code. Officers and employees of the Farm Credit Administration shall be subject to section 5373 of title 5 of the United States Code. The powers of the Chairman as chief executive officer of the Farm Credit Administration may be exercised and performed by the Chairman through such other officers and employees of the Farm Credit Administration as the Chairman shall designate. The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 5.15 of this Act.

"SEC. 5.12. ADVISORY COMMITTEES.—The Chairman of the Board may establish one or more advisory committees in accordance with the Federal Advisory Committee Act and may appoint to such committee or committees individuals who are members of the Federal Farm Credit Board when such Board is terminated by the Farm Credit Amendments Act of 1985.";

(2) striking out section 5.13;

(3) redesignating section 5.14 as section 5.13, and, in section 5.13, as so redesignated, striking out "Governor" and inserting in lieu thereof "Board";

(4) redesignating section 5.15 as section 5.14, and, in the second sentence of section 5.14, as so redesignated, striking out "section 5.16(b)" and "section 5.16(a)" and inserting in lieu thereof "section 5.15(b)" and "section 5.15(a)", respectively;

(5) redesignating section 5.16 as section 5.15;

(6) redesignating section 5.17 as section 5.16, and, in section 5.16, as so redesignated—

(A) striking out "section 5.15" in the first sentence and inserting in lieu thereof "section 5.14";

(B) striking out "Federal Farm Credit" in paragraph (2) of the first sentence; and

(C) striking out "section 5.16" and inserting in lieu thereof "section 5.15"; and

(7) redesignating section 5.18 as section 5.17 and amending subsection (a) thereof to read as follows:

"(a) The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this Act:

"(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, as approved by the Board, with the concurrence of the district boards involved.

"(2) Where necessary or appropriate to carry out the policy and objectives of this Act, issue and amend or modify Federal charters of institutions of the System; approve change in names of banks operating under this Act; approve the merger of districts when agreed to by the boards of the districts involved and by a majority vote of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts, voting in the same manner as is provided in section 4.10 of this Act; approve mergers of banks operating under the same title of this Act, merger of Federal land bank associations, merger of production credit associations, and the consolidation or division of the territories that they serve when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved; and approve consolidations of boards of directors or management agreements when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved. In issuing charters for district-wide mergers of associations where stockholders of one or more associations did not approve the merger, the charter of the new or merged association shall not include the territory of the disagreeing association or associations; charters issued during calendar year 1985 for district-wide new or merged associations which included the territory of a disagreeing association shall be revoked and reissued to exclude such territory; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. The Chairman of the Farm Credit Administration Board, after consultation with the respective district board or boards and the board of directors of the Capital Corporation may require two or more banks of the Farm Credit System (other than Central Banks for Cooperatives) operating under the same title to merge if the Chairman determines that one of such banks has failed to meet outstanding obligations of such bank.

"(3) Make annual reports directly to Congress on the condition of the System and its institutions, based on the examinations carried out under section 5.19 of this Act, and on the manner and extent to which the purposes and objectives of this Act are being carried out and, from time to time, recommend directly legislative changes. The annual reports shall include a summary and analysis of the reports submitted to the Farm Credit Administration by the Federal land banks and Federal intermediate credit banks under section 4.19(b) of this Act relating to programs for serving young, beginning, and small farmers and ranchers.

"(4) Approve the issuance of obligations of the System under subsections (c) and (d) of section 4.2 of this Act for the purpose of funding the authorized operations of the institutions of the System, and prescribe collateral therefor.

"(5) Grant approvals provided for under this Act either on a case-by-case basis or through regulations that confer approval on actions of Farm Credit System institutions that meet standards and criteria established by the Farm Credit Administration, including standards and criteria with respect to (A) interest rates on obligations of Farm Credit System institutions and on loans made or discounted by such institutions, and (B) the payment of dividends or patronage refunds by Farm Credit System institutions.

"(6) Establish standards for the System institutions with respect to loan security requirements and the borrowing, repayment, and transfer of funds and equities between institutions of the System.

"(7) Conduct loan and collateral security review.

"(8) Make investments in stock of the Capital Corporation out of the revolving fund referred to in section 4.0, and require the retirement of such stock.

"(9) Regulate the preparation by System institutions and the dissemination to stockholders and investors of information on the financial condition and operations of such institutions.

"(10) Prescribe rules and regulations necessary or appropriate for carrying out this Act.

"(11) Exercise the powers conferred on it under part C of this title for the purpose of ensuring the safety and soundness of System institutions.

"(12) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this Act.

"(13) Sue and be sued, complain and defend in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Farm Credit Administration shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount of the controversy; and the Farm Credit Administration may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect. Service of process on the Farm Credit Administration shall be in accordance with provisions of title 28 of the United States Code and rules adopted under title 28 for suits in which an agency of the United States is a party. The Farm Credit Administration shall designate an agent at its principal office to accept service of process.

"(14) Require surety bonds or other provisions for protection of the assets of the institutions of the System against losses occasioned by employees.".

DELEGATIONS

SEC. 202. (a) Section 5.19 of the Farm Credit Act of 1971 is repealed.

(b) Part B of title V of the Farm Credit Act of 1971 is further amended by inserting, after section 5.17, as so redesignated by section 201 of this title, the following:

"SEC. 5.18. PRIOR DELEGATIONS.—Any delegations by the Farm Credit Administration and redelegations thereof made in accordance with section 5.19 of the Farm Credit Act of 1971 as in effect prior to the effective date of the Farm Credit Amendments Act of 1985 may continue in full force and effect, at the discretion of the Farm Credit Administration, for the period ending twelve months after the date of enactment of such Act.".

FARM CREDIT ADMINISTRATION EXAMINATIONS; CONFORMING AMENDMENT

SEC. 203. (a) Section 5.20 of the Farm Credit Act of 1971 is redesignated as section 5.19 and amended to read as follows:

"SEC. 5.19. EXAMINATIONS.—(a) Each institution of the System shall be examined by Farm Credit Administration examiners at such times as the Chairman of the Board may determine, but in no event less than once each year. Such examinations shall include, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and appraisals of the effectiveness of the institution's management and application of policies governing the carrying out of this Act and regulations of the Farm Credit Administration and servicing all eligible borrowers. At the direction of the Chairman of the Board, Farm Credit

Administration examiners also shall make examinations of the condition of any organization, other than national banks, to, for, or with which any institution of the System contemplates making a loan or discounting paper. For the purposes of this Act, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act, the Federal Reserve Act, and Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

"(b) Each institution of the System shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration by regulation may require. Such financial statements of System institutions shall be audited by an independent public accountant.

"(c) The Farm Credit Administration may publish the report of examination of any System institution that does not, before the end of the 120th day after the date of notification of the recommendations and suggestions of the Farm Credit Administration, based on such examination, comply with such recommendations and suggestions to the satisfaction of the Farm Credit Administration. The Farm Credit Administration shall give notice of intention to publish in the event of such noncompliance at least 90 days before such publication. Such notice of intention may be given any time after such notification of recommendations and suggestions.".

(b) Sections 5.21, 5.22, 5.23, 5.24, and 5.25 of the Farm Credit Act of 1971 are redesignated as sections 5.20, 5.21, 5.22, 5.23, and 5.24, respectively.

ENFORCEMENT POWERS

SEC. 204. Title V of the Farm Credit Act of 1971 is amended by inserting after section 5.24, as so redesignated by section 203(b), the following:

"PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

"SEC. 5.25. CEASE AND DESIST PROCEEDINGS.—(a) If, in the opinion of the Farm Credit Administration, any institution in the Farm Credit System, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such an institution is engaging or has engaged, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Farm Credit Administration in connection with the granting of any application or other request by the institution or any written agreement entered into with the Farm Credit Administration, the Farm Credit Administration may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Farm Credit Administration at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the Farm Credit Administration shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Farm Credit Administration may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order may, by provisions that may be mandatory or otherwise, require the institution or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

"(b) A cease and desist order shall become effective at the expiration of thirty days after the service of such order upon the institution or other person concerned (except in the case of a cease and desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein except to such extent as it is stayed, modified, terminated, or set aside by action of the Farm Credit Administration or a reviewing court.

"SEC. 5.26. TEMPORARY CEASE AND DESIST ORDERS.—(a) Whenever the Farm Credit Administration shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution under section 5.25, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the investors in Farm Credit System obligations or shareholders in the institution prior to the completion of the proceedings conducted under section 5.25, the Farm Credit Administration may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the institution or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (b), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the institution or such director, officer, employee, agent, or other person, until effective date of such order.

"(b) Within ten days after the institution concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution has been served with a temporary cease and desist order, the institution or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or such director, officer, employee, agent, or other person under section 5.25, and such court shall have jurisdiction to issue such injunction.

"SEC. 5.27. ENFORCEMENT OF TEMPORARY CEASE AND DESIST ORDERS.—In the case of violation or threatened violation of, or failure to obey, a temporary cease and desist order issued under section 5.26, the Farm Credit Administration may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"SEC. 5.28. SUSPENSION OR REMOVAL OF DIRECTOR OR OFFICER.—Whenever, in the opinion of the Farm Credit Administration, any director or officer of any institution in the Farm Credit System has committed any violation of law, rule, or regulation or of a cease and desist order that has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of a fiduciary duty as such director or officer, and the Farm Credit Administration determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its shareholders or investors in Farm Credit System obligations could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one that demonstrates a willful or continuing disregard for the safety or soundness of the System institution, the Farm Credit Administration may serve upon such director or officer a written notice of its intention to remove him from office.

"(b) Whenever, in the opinion of the Farm Credit Administration, any director or officer of an institution in the Farm Credit System, by conduct or practice with respect to another institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other

damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to continue as a director or officer, and whenever, in the opinion of the Farm Credit Administration, any other person participating in the conduct of the affairs of an institution in the Farm Credit System, by the conduct or practice with respect to such institution or other institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such institution, the Farm Credit Administration may serve upon such director, officer, or other person a written notice of its intention to remove that director, officer, or other person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

"(c) In respect to any director or officer of an institution in the Farm Credit System or any other person referred to in subsection (a) or (b) of this section, the Farm Credit Administration may, if it deems it necessary for the protection of the institution or the interests of its shareholders and the investors in the Farm Credit System obligations, by written notice to such effect served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (e) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) or (b) and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

"(d) A notice of intention to remove a director, officer, or other person from office or to prohibit such director's, officer's, or other person's participation in the conduct of the affairs of an institution in the Farm Credit System, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Farm Credit Administration at the request of (1) such director or officer or other person, and for good cause shown, or (2) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, such director, officer, or other person shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Farm Credit Administration shall find that any of the grounds specified in such notice have been established, the Farm Credit Administration may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. A copy of an order issued under this subsection shall be served upon the institution concerned. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

"(e) Within ten days after any director, officer, or other person has been suspended from office or prohibited from participation in the conduct of the affairs of a System institution under subsection (d)(3) of this section, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for a stay of either such suspension or prohibition, or both, pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subsection (a) or (b), and such court shall have jurisdiction to stay either such suspension or prohibition, or both.

"SEC. 5.29. SUSPENSION OR REMOVAL OF DIRECTOR OR OFFICER CHARGED WITH FELONY.—(a) Whenever any director or officer of an institution in the Farm Credit System, or other person participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interest of the institution's shareholders or the investors in the Farm Credit System obligations or may threaten to impair public confidence in the institution or Farm Credit System, by written notice served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Farm Credit Administration. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System, issue and serve upon such director, officer, or other person an order removing such director, officer, or other person from office or prohibiting such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Farm Credit Administration. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Farm Credit Administration from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in Farm Credit System affairs under section 5.28. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subsection (b) unless terminated by the Farm Credit Administration.

"(b) Within thirty days from service of any notice of suspension or order of removal issued under subsection (a), the director, officer, or other person concerned may request in writing an opportunity to appear before the Farm Credit Administration to show that the continued service to or participation in the conduct of the affairs of the institution by such individual does not, or is not likely to, pose a threat to the interest in Farm Credit System obligations. Upon receipt of any such request, the Farm Credit Administration shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before the Chairman of the Farm Credit Administration or designated employees of the Farm Credit Administration to submit written materials (or, at the discretion of the Farm Credit Administration, oral testimony) and oral argument. Within sixty days of such hearing, the Farm Credit Administration shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the institution will be continued, terminated, or otherwise modified, or whether the order removing such director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Farm Credit Administration's decision, if adverse to the director, officer or other person. The Farm Credit Administration may prescribe such rules as may be necessary to effectuate the purposes of this subsection.

"SEC. 5.30. HEARINGS AND JUDICIAL REVIEW.—(a) Any hearing provided for in this part (other than the hearing provided for in section 5.29) shall be held in the Federal judicial district or in the territory in which the home office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. Such hearing shall be private, unless the Farm Credit Administration, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Farm Credit Administration has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an

order or orders consistent with the provisions of this part. Judicial review of any such order shall be exclusively as provided in this subsection (g). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subsection (b), and thereafter until the record in the proceeding has been filed as so provided, the Farm Credit Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Farm Credit Administration may modify, terminate, or set aside any such order with permission of the court.

"(b) Any party to the proceeding, or any person required by an order issued under this part to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served under subsection (a) (other than an order issued with the consent of the System institution or the director or officer or other person concerned, or an order issued under section 5.29) by the filing in the court of appeals of the United States for the circuit in which the home office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Farm Credit Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Farm Credit Administration, and thereupon the Farm Credit Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of subsection (a) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Farm Credit Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

"(c) The commencement of proceedings for judicial review under subsection (b) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Farm Credit Administration.

"SEC. 5.31. JURISDICTION AND ENFORCEMENT.—The Farm Credit Administration may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for the enforcement of any effective and outstanding notice or order issued under this part, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this part no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this part, or to review, modify, suspend, terminate, or set aside any such notice or order.

"SEC. 5.32. PENALTY.—(a) Any institution in the System that violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the terms of any order that has become final and was issued under section 5.25 or 5.26 of this Act, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues, but the Farm Credit Administration may, in its discretion, compromise, modify, or remit any civil money penalty that is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Farm Credit Administration by written notice.

"(b) In determining the amount of the penalty, the Farm Credit Administration shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the System institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

"(c) The System institution or person assessed shall be afforded an opportunity for a hearing by the Farm Credit Administration, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5 of the United States Code. The Farm Credit Administration determination shall be made by final order which may be reviewed only as provided in subsection (d). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

"(d) Any System institution or person against whom an order imposing a civil money penalty has been entered after a Farm Credit Administration hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the System institution is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days after the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Farm Credit Administration. The Farm Credit Administration shall promptly certify and file in such Court the record upon which the penalty was imposed, as provided in section 2112 of title 28 of the United States Code. The findings of the Farm Credit Administration shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5 of the United States Code.

"(e) If any System institution or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Farm Credit Administration, the Farm Credit Administration shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

"(f) The Farm Credit Administration shall promulgate regulations establishing procedures necessary to implement sections 5.31 and 5.32.

"(g) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

"SEC. 5.33. FURTHER PENALTIES.—Any director or officer, or former director or officer of a System institution, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under section 5.28 or 5.29 of this Act, and who (1) participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such institution, or (2) without the prior written approval of the Farm Credit Administration, votes for a director, serves or acts as a director, officer, or employee of any System institution, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

"SEC. 5.34. REPLACEMENT OF SUSPENDED OR REMOVED DIRECTORS.—If at any time, because of the suspension or removal of one or more directors pursuant to section 5.28 or 5.29 of this Act, there shall be on the board of directors of a System institution less than a quorum of directors not so suspended, the Chairman shall appoint persons to serve temporarily as directors in their place and stead so as to establish a quorum until such time as those who have been removed are reinstated or their respective successors are duly elected and take office.

"SEC. 5.35. DEFINITIONS.—As used in this part—

"(1) the terms 'cease and desist order that has become final' and 'order which has become final' mean a cease and desist order, or an order, issued by the Farm Credit Administration with the consent of the System institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Farm Credit administration has been filed and perfected in a court of appeals as specified in section 5.30(b) of this Act, or with respect to which the action of the court in which such petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in section 5.30(b) of this Act, or an order issued under section 5.29 of this Act;

"(2) the term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation;

"(3) the terms 'institution in the System', 'System institution', and 'institution' mean all institutions enumerated in section 1.2 of this Act, any service organization chartered under part D of title IV of this Act, and the Capital Corporation; and

"(4) the term 'unsafe or unsound practice' shall have the meaning given to it by the Farm Credit Administration by regulations, rule, or order.

"SEC. 5.36. NOTICE OF SERVICE.—Any service required or authorized to be made by the Farm Credit Administration under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Farm Credit Administration may by regulation or otherwise provide. Any such service by mail is complete upon mailing. Copies of any notice or order served by the Farm Credit Administration on any association or any director or officer thereof or other person participating in the conduct of its affairs, under the provisions of this part, shall also be sent to the supervisory bank.

"SEC. 5.37. ANCILLARY PROVISIONS; SUBPENA POWER; ETC.—In the course of or in connection with any proceeding under this part or any examination or investigation under this Act, the Farm Credit Administration or any designated representative thereof, including any person designated to conduct any hearing under this part, shall have the power to administer oaths and affirmations,

to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Farm Credit Administration is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. The Farm Credit Administration or any party to proceedings under this part may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this part, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this part by a System institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the System institution or from its assets. Any person who willfully shall fail or refuse to attend or testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpena of the Farm Credit Administration, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 205. (a)(1) Title V of the Farm Credit Act of 1971 is further amended by inserting after section 5.37, as added by section 204, the following heading:

"PART D—MISCELLANEOUS".

(2) Sections 5.26, 5.27, 5.28, 5.29, and 5.30 of the Farm Credit Act of 1971 are redesignated as sections 5.40, 5.41, 5.42, 5.43, and 5.44, respectively.

(b) Section 2.15 of the Farm Credit Act of 1971 is amended by—

(1) in the first sentence of subsection (a)—

(A) striking out "rules and regulations" and inserting in lieu thereof "standards"; and

(B) striking out "and approved by the Farm Credit Administration";

(2) in the first sentence of subsection (b)—

(A) striking out "regulations" and inserting in lieu thereof "standards"; and

(B) striking out "with the approval of the Farm Credit Administration as provided in" and inserting in lieu thereof "subject to the provisions of"; and

(3) in the last sentence of subsection (b)—

(A) striking out "regulations" and inserting in lieu thereof "standards"; and

(B) striking out "or of Farm Credit Administration".

(c) Section 1.2 of the Farm Credit Act of 1971 is amended by striking out "supervision of" and inserting "regulation by" in lieu thereof.

(d) Title I of the Farm Credit Act of 1971 is amended by—

(1) in section 1.4—

(A) striking out "supervision" in the matter preceding paragraph (1) and inserting in lieu thereof "regulation";

(B) in paragraph (17), striking out "vested in or delegated to the bank";

(C) striking out paragraph (19); and

(D) redesignating paragraphs (20), (21), (22), and (23) as paragraphs (19), (20), (21), and (22), respectively;

(2) in section 1.5(d), striking out "to the Governor of the Farm Credit Administration,";

(3) in section 1.5(e)—

(A) striking out the first sentence; and

(B) striking out "other" in the second sentence;

(4) in section 1.13—

(A) striking out "GOVERNOR" in the section heading and inserting in lieu thereof "FARM CREDIT ADMINISTRATION";

(B) striking out "the Governor of" in the seventh sentence;

(C) striking out "Governor" each place that word appears in the eighth, ninth, and tenth sentences and inserting in lieu thereof "Farm Credit Administration"; and

(D) striking out "him" and "he" in the tenth sentence and inserting in lieu thereof, in both instances, "the Farm Credit Administration";

(5) in section 1.15—

(A) inserting "the regulation" before "of the Farm Credit Administration" in the matter preceding paragraph (1); and

(B) striking out "or delegated to" in paragraph (12);

(6) in section 1.17(b)—

(A) striking out paragraph (2); and

(B) redesignating paragraph (3) as paragraph (2); and

(7) in section 1.20, striking out "the Governor of the Farm Credit Administration".

(e) Title II of the Farm Credit Act of 1971 is amended by—

(1) in section 2.1—

(A) striking out "supervision of" in the matter preceding paragraph (1) and inserting in lieu thereof "regulation by";

(B) striking out "vested in or delegated to the intermediate credit bank" in paragraph (14); and

(C) striking out paragraph (21);

(2) in the first sentence of section 2.2(d), striking out "the Governor of the Farm Credit Administration, and may";

(3) in section 2.2(f)—

(A) striking out "Dividends" and all that follows through "noncumulative" and inserting "Noncumulative" in lieu thereof in the first sentence; and

(B) striking out ", when the Governor of the Farm Credit Administration holds no stock in the bank," in the second sentence;

(4) in section 2.2(g), striking out "After all stock held" and all that follows through "other stock" and inserting in lieu thereof "The bank may retire stock";

(5) in section 2.2(h), striking out "Governor" and inserting in lieu thereof "Farm Credit Administration";

(6) in the first sentence of section 2.3(c)—

(A) striking out "(a)(1) and (2)" and inserting in lieu thereof "(a)(2)"; and

(B) striking out "(in the case of financing institutions under subsection (a)(2) of this section)";

(7) striking out subsections (a) and (b) of section 2.6;

(8) in section 2.6(c), by striking out "If, at" and all that follows through "the net earnings of such bank" and inserting in lieu thereof "At the end of each fiscal year, the net earnings of each Federal intermediate credit bank";

(9) in the first sentence of section 2.7, striking out ", of all the stock held by the Governor of the Farm Credit Administration at par; third";

(10) in section 2.10—

(A) striking out "the Governor of" in the sixth sentence;

(B) striking out "Governor" in the seventh sentence and inserting in lieu thereof "Farm Credit Administration";

(C) striking out "Governor" in the eighth sentence and inserting in lieu thereof "Farm Credit Administration"; and

(D) in the ninth sentence—

(i) striking out "Governor" and inserting in lieu thereof "Farm Credit Administration"; and

(ii) striking out "him" and "he" and inserting in lieu thereof in both places "Farm Credit Administration";

(11) in section 2.12—

(A) in the matter preceding paragraph (1), inserting "regulation by" before "the Farm Credit Administration"; and

(B) striking out "or the Farm Credit Administration" in paragraph (19);

(12) in section 2.13(c), striking out "the Governor of the Farm Credit Administration and";

(13) in section 2.13(d)—

(A) striking out "to the Governor and"; and

(B) striking out ", except that all" and all that follows through "voting hereunder".

(14) in section 2.13(j), striking out "the Governor or";

(15) in section 2.14(b), striking out ", except that when the Governor" and all that follows through "Administration"; and

(16) striking out the last two sentences of section 2.17.

(e) Title III of the Farm Credit Act of 1971 is amended by—

(1) in section 3.1—

(A) in the matter preceding paragraph (1), striking out "supervision" and inserting in lieu thereof "regulation";

(B) in paragraph (13)(A), inserting "under regulations issued" after "authorized";

(C) striking out paragraph (16); and

(D) redesignating paragraphs (17), (18), and (19) as paragraphs (16), (17), and (18), respectively;

(2) in section 3.2(a), striking out "Governor with the advice and consent of the Federal Farm Credit Board"; and inserting in lieu thereof "Farm Credit Administration";

(3) in section 3.3(d), inserting "under regulations issued by" after "authorized";

(4) in section 3.3(e), striking out ", except for stock held by the Governor,".

(5) in section 3.4, striking out "the Governor of";

(6) in section 3.5—

(A) striking out the first sentence and all that follows through "nonvoting" in the second sentence and inserting "Nonvoting" in lieu thereof; and

(B) in the fourth sentence, striking out "When the requirements of section 4.0(b) have been met, voting" inserting in lieu thereof "Voting";

(7) striking out subsection (a) of section 3.11;

(8) in section 3.11—

(A) in subsection (b), striking out "Whenever" and all that follows through "Administration, the net" and inserting in lieu thereof "At the end of each fiscal year, the net"; and

(B)(i) in subsection (c), striking out "subsection (a) or (b)" and inserting "subsection (b)" in lieu thereof; and

(ii) in subsection (d), striking out "subsection (a) or (b)" and inserting "subsection (b)" in lieu thereof;

(9) in section 3.12—

(A) striking out ", any stock held by the Governor of the Farm Credit Administration at par"; and

(B) striking out "stock held by the Governor of the Farm Credit Administration,"; and

(10) striking out the last two sentences of section 3.13.

(f) Title IV of the Farm Credit Act of 1971 is further amended by—

(1) in section 4.2—

(A) in the matter preceding subsection (a), striking out "supervision of" and inserting in lieu thereof "regulation by";

(B) in subsection (b)—

(i) striking out "4.3(b)" and inserting in lieu thereof "4.3(c)"; and

(ii) striking out "Governor" and inserting in lieu thereof "Farm Credit Administration";

(C) in subsection (c), striking out "Governor" and inserting in lieu thereof "Farm Credit Administration"; and

(D) in subsection (d)—

(i) striking out "Governor" in the first sentence and inserting in lieu thereof "Farm Credit Administration"; and

(ii) in the second sentence, striking out "Governor" each place it appears and inserting in lieu thereof "Farm Credit Administration";

(2) in section 4.4(b)—

(A) striking out "Governor to execute" in the first sentence and inserting in lieu thereof "execution of"; and

(B) striking out "by the Governor" in the second sentence;

(3) in section 4.5, striking out "Governor" in the fourth sentence and inserting in lieu thereof "Farm Credit Administration";

(4) in the second sentence of section 4.11, striking out "Governor with the advice and consent of the Federal Farm Credit Board" and inserting in lieu thereof "Farm Credit Administration";

(5) in section 4.12(a), striking out "Federal Farm Credit Board" in the third sentence and inserting in lieu thereof "Farm Credit Administration";

(6) in the first sentence of section 4.17, inserting ", as provided in section 5.17(a)(5) of this Act," after "with the approval of";

(7) in section 4.18, inserting "under regulations issued" after "authorized";

(8) in section 4.25—

(A) striking out "the Governor of" in the second sentence;

(B) striking out "Governor" in the third sentence and inserting in lieu thereof "Farm Credit Administration"; and

(C) striking out "Governor" in the fourth sentence and inserting in lieu thereof "Farm Credit Administration";

(9) in section 4.26—

(A) striking out "GOVERNOR" in the section heading and inserting in lieu thereof "FARM CREDIT ADMINISTRATION";

(B) striking out "Governor" wherever that word appears in the text and inserting in lieu thereof "Farm Credit Administration";

(C) striking out "he" in the first sentence and inserting in lieu thereof "the Farm Credit Administration"; and

(10) in section 4.27, striking out "supervision" and inserting in lieu thereof "regulation".

(g) Title V of the Farm Credit Act of 1971 is further amended by—

(1) in section 5.0—

(A) striking out "Federal Farm Credit Board" in the first and second sentences and inserting in lieu thereof "Farm Credit Administration"; and

(B) striking out "5.18(2)" in the third sentence and inserting in lieu thereof "5.17(2)";

(2) in section 5.1(b), striking out "Federal Farm Credit Board" and inserting in lieu thereof "Farm Credit Administration Board";

(3) in section 5.2(a), striking out "Governor with the advice and consent of the Federal Farm Credit Board" and inserting in lieu thereof "Farm Credit Administration Board";

(4) in section 5.2(d), striking out "sections 5.1 and 5.2" and inserting in lieu thereof "section 5.1 and this section";

(5) in section 5.6(a), striking out "supervision of" in paragraph (5) and inserting in lieu thereof "regulation by"; and

(6) in section 5.15(b), as so redesignated by section 201(5)—

(A) striking out "said Administration" both places that phrase appears in the first sentence and inserting in lieu thereof "the Farm Credit Administration"; and

(B) striking out "the Administration" and "such Administration" in the second sentence and inserting in lieu thereof "the Farm Credit Administration".

TITLE III—PROTECTION FOR FARMERS AND OTHER FARM CREDIT SYSTEM BORROWERS

DISCLOSURE AND ACCESS TO INFORMATION

SEC. 301. (a) Section 4.13 of the Farm Credit Act of 1971 is redesignated as section 4.13B.

(b) The Farm Credit Act of 1971 is amended by inserting before section 4.13B, as so redesignated by subsection (a), the following:

"SEC. 4.13. DISCLOSURE.—(a) In accordance with regulations of the Farm Credit Administration, System institutions shall provide to their borrowers, for all loans that are not subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.), meaningful and timely disclosure of the following:

"(1) the current rate of interest on the loan;

"(2) in the case of an adjustable or variable rate loan, the amount and frequency by which the interest rate can be increased during the term of the loan or, if there are no such limitations, a statement to that effect, and the factors (including, but not limited to, the cost of funds, operating expenses, and provision for loan losses) that will be taken into account by the lending institution in determining adjustments to the interest rate;

"(3) the effect, as shown by a representative example or examples, of the required purchase of stock or participation certificates in the institution on the effective rate of interest; and

"(4) any change in the interest rate applicable to the borrower's loan.

"(b) In accordance with regulations of the Farm Credit Administration, System institutions shall develop a policy governing forbearance. Each System institution shall provide borrowers with a copy of the institution's policy regarding forbearance at such time or times as the Farm Credit Administration shall prescribe in such regulations.

"SEC. 4.13A. ACCESS TO DOCUMENTS AND INFORMATION.—In accordance with regulations of the Farm Credit Administration, System institutions shall provide their borrowers, at the time of execution of loans, copies of all documents signed by the borrower and at any time thereafter, on a borrower's request, copies of all documents signed or delivered by the borrower and at any time, on request, a copy of the institution's articles of incorporation or charter and bylaws.".

NOTICE ON APPLICATIONS

SEC. 302. Section 4.13B of the Farm Credit Act of 1971, as so redesignated by section 301(a), is amended by (1) inserting "written" before "notice" and (2) inserting, before the period at the end thereof, the following: ", and of the applicant's right to review under section 4.14".

RECONSIDERATION

SEC. 303. Section 4.14 of the Farm Credit Act of 1971 is amended to read as follows:

"SEC. 4.14. RECONSIDERATION OF ACTION ON LOAN APPLICATION.—The board of directors of each Farm Credit System institution shall establish from among such board's members a credit review committee. Any loan applicant who has received written notice, under section 4.13, of a decision to deny or reduce the loan applied for, if the applicant so requests in writing within thirty days after receiving such notice, may obtain a review of such decision in person before the credit review committee. Promptly after any such review, the applicant shall be notified in writing of the credit review committee's decision and the reasons therefor.".

NOTICE WITH RESPECT TO STOCKHOLDERS ON LOAN DEFAULT

SEC. 304. (a) The sixth sentence of section 1.16(a) of the Farm Credit Act of 1971 is amended by inserting, before the period at the end thereof, the following: "and on written notice to the stockholder".

(b) Section 2.13(k) of the Farm Credit Act of 1971 is amended by inserting, before the period at the end thereof, the following: ", on written notice to the borrower and approval by the bank of such retirement".

MINIMIZING THE ADVERSE EFFECT ON BORROWERS OF SYSTEM INSTITUTION INSOLVENCY

SEC. 305. (a) Section 4.12(a) of the Farm Credit Act of 1971 is amended by inserting, immediately after the first sentence, the following: "In the case of a voluntary liquidation of an association, such regulations, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.".

(b) Section 4.12 of the Farm Credit Act of 1971 is amended by inserting after the subsection (b) added by section 102, the following:

"(c) In the case of an involuntary liquidation of an association, regulations of the Farm Credit Administration, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.".

MINERAL RIGHTS LIMITATION

SEC. 306. The Farm Credit Act of 1971 is amended by adding at the end of title IV the following:

"PART F—MISCELLANEOUS

"SEC. 4.35. LIMITATION ON SEPARATE SALE.—If real property is acquired by any institution of the Farm Credit System through foreclosure, no institution of the Farm Credit System shall sell the surface rights to that real property to any person unless the institution also sells all mineral rights to that real property to that person.

"SEC. 4.36. LIMITATION ON SALE OF TRACTS OF REAL ESTATE.—No institution of the Farm Credit System shall sell any real property that previously served as security for a loan in a tract larger than a normal family size

farm in the vicinity of the property for less than the amount it can receive from the Capital Corporation.".

TITLE IV—IMPLEMENTATION PROCEDURES

EFFECTIVE DATE

SEC. 401. The provisions of titles I, II, III, and VI of this Act shall become effective thirty days after enactment.

INTERIM IMPLEMENTATION

SEC. 402. (a) Until the Chairman of the Farm Credit Administration Board provided for under the amendment made by section 201(1) of this Act is appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 as in effect on the day before the date of enactment of this Act, shall perform the functions of the Chairman prescribed for the Chairman by this Act.

(b)(1) Except as provided in paragraph (2), until at least two members of the Farm Credit Administration Board provided under the amendment made by section 201(l) of this Act are appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 as in effect on the day before the date of enactment of this Act, shall perform the functions of the Farm Credit Administration Board prescribed for such Board by this Act.

(2) When the Chairman of such Board is so appointed and confirmed, the Chairman shall assume any responsibilities and powers of the Board being exercised by the Governor under this subsection.

(c) All regulations of the Farm Credit Administration or the institutions of the System, and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Farm Credit Act of 1971, before the date of enactment of this Act, shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act.

SENSE OF CONGRESS

SEC. 403. It is the sense of Congress that the pressing needs of the Farm Credit System and the United States agricultural industry require the implementation of this Act as soon as practicable, and that the President should ensure that the members of the Farm Credit Administration Board constituted under section 201(l) are appointed not later than thirty days after enactment of this Act.

TITLE V—NATIONAL COMMISSION ON AGRICULTURAL FINANCE

SEC. 501. (a) The President shall appoint a National Commission on Agricultural Finance. Such Commission shall be comprised of 15 members, of whom 7 shall be appointed by the President and 4 each by the Speaker of the House of Representatives and the President pro tempore of the Senate. The Commission shall consist of representatives of the financial community, the agricultural sector, and government.

(b) The National Commission on Agricultural Finance shall conduct a study of methods to ensure the availability of adequate credit to agricultural producers and agribusiness, taking into account the long-term financing needs of the agricultural economy; the roles of the commercial banks, the Farm Credit System, and the Farmers Home Administration in meeting those financial needs.

(c) In conducting such study, the National Commission on Agricultural Finance shall—

(1) evaluate the financial circumstances relative to both lenders and borrowers of farm credit;

(2) evaluate the structure, performance, and conduct of private lenders—commercial bankers and the Farm Credit System—and public lenders;

(3) explore the need for long-term assistance in stabilizing the value of agricultural assets; and

(4) evaluate the effect on suppliers, producers, processors, and local communities when financial institutions fail.

(d) Not later than one year after the date of enactment of this Act, the Commission shall submit a report containing the results of the study required by this section, together with comments and recommendations for legislation providing for a sound, reasonable, and primarily self-supporting credit program for farmers and ranchers as the Commission considers appropriate, to Congress.

(e) The Commission shall be comprised of volunteers and no Federal funds shall be expended by the Commission.

TITLE VI—MISCELLANEOUS AMENDMENTS

SEC. 601. Section 1.5 of the Farm Credit Act of 1971 is amended by adding at the end the following:

"(h) Nothing in this section limits the power of the Farm Credit Administration to provide general direction to Federal land banks with regard to the payment of dividends and patronage refunds.".

SEC. 602. Subsection (a) of section 1.17 of the Farm Credit Act of 1971 is amended to read as follows:

"(a) Federal land banks shall be required to carry a reserve account. Such reserve account shall be kept in accordance with standards set by the Farm Credit Administration.".

SEC. 603. Section 1.18 of the Farm Credit Act of 1971 is amended by—

(1) amending subsection (a) to read as follows:

"(a) Federal land bank associations shall be required to carry a reserve account. Such reserve account shall be kept in accordance with standards set by the Farm Credit Administration."; and

(2) adding at the end of subsection (b) the following: "Nothing in this subsection limits the power of the Farm Credit Administration to provide general direction to Federal land bank associations with regard to the payment of dividends and patronage refunds.".

SEC. 604. Subsection (f) of section 2.2 of the Farm Credit Act of 1971 is amended by adding at the end thereof the following: "Federal intermediate credit banks shall be subject to the general direction of the Farm Credit Administration with regard to the payment dividends.".

SEC. 605. Section 2.14 of the Farm Credit Act of 1971 is amended by—

(1) striking out the parenthetical matter in subsection (a) and inserting in lieu thereof the following: "(including provision for valuation reserves against loan assets in an amount equal to one-half of 1 percent of the loans outstanding at the end of the fiscal year to the extent that such earnings in such year in excess of other operating expenses permit, or in such greater amounts as are deemed necessary under generally accepted accounting principles, until such reserves equal or exceed 3½ percent of the loans outstanding at the end of the fiscal year, beyond which 3½ percent further additions to such reserves may be made, if deemed necessary under generally accepted accounting principles)";

(2)(A) in the first sentence of subsection (b), striking out "so provide," and inserting in lieu thereof "so provide and subject to the general directions of the Farm Credit Administration,"; and

(B) in the second sentence of subsection (b), striking out "Any" and inserting in lieu thereof "In accordance with the foregoing, any".

SEC. 606. Section 3.4 of the Farm Credit Act of 1971 is amended by adding before the period at the end thereof the following: ", subject to the general direction of the Farm Credit Administration".

AMENDMENT NO. 1420

(Purpose: To make certain conforming and technical changes to the House amendment to S. 1884)

Mr. HELMS. Mr. President, I move that the Senate concur in the House amendment, with a further Senate amendment, which I send to the desk on behalf of myself and Senator ZORINSKY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself and Mr. ZORINSKY, proposes an amendment numbered 1420.

In the House engrossed amendment—

(1) On page 7, strike out line 24 and all that follows through line 25 on page 8 and insert in lieu thereof the following:

"SEC. 4.28C. BOARD OF DIRECTORS OF THE CAPITAL CORPORATION.—(a)(1) The Board of Directors of the Capital Corporation shall consist of five members, of which—

"(A)(i) three members shall be elected by the farm credit banks that own the voting stock in the Corporation, with—

"(I) one such member being elected from an institution and a district that, at the time of such election, is or is projected to be a net contributor of capital to the Corporation;

"(II) one such member being elected from an institution and a district that, at the time of such election, is or is projected to be a net recipient of capital (other than through the sale of loans or other assets at fair market value) from the Corporation; and

"(III) one such member being elected without regard to the restrictions in clause (i) and (ii).

"(ii) Each such bank shall have the right to cast one vote to fill each such vacancy without regard to the number of voting shares owned by such bank.

"(B) two members shall be appointed by the Chairman of the Farm Credit Administration Board.

"(2) Members appointed by the Chairman under paragraph (1)(B) shall be selected from United States citizens—

"(A) who are not borrowers from, shareholders in, or employees or agents of any institution of the Farm Credit System; and

"(B) who are experienced in financial services and credit.

"(3) The Farm Credit Administration Board shall, in its sole discretion and for purposes of the election of directors to the Capital Corporation only, project whether—

"(A) institutions within a district are or will be a net contributor of capital to the Corporation, or

"(B) the institutions within a district are or are expected to become net recipients of capital from the Corporation.

"(4) The Farm Credit Administration Board shall issue regulations providing for fair and equitable representation of all public and private interests on the Board of Directors of the Capital Corporation. The bylaws of the Corporation shall prescribe the procedures, established pursuant to regulations issued by the Board, under which directors of the Corporation will be nominated and elected.

"(5)(a) Notwithstanding paragraph (1), in the event the Secretary of the Treasury purchases any obligation of the Farm Credit System Capital Corporation under section 4.28J, and for so long as such obligation remains outstanding, the Board of Directors of the Capital Corporation shall be expanded by two members, of which—

"(A) one member shall be appointed by the Secretary of Agriculture; and

"(B) one member shall be selected by the other members of the Board of the Capital Corporation, including the appointee of the Secretary of Agriculture, which member shall not be a—

"(i) borrower from, shareholder in, or employee or agent of any institution of the Farm Credit System; or

"(ii) a government employee.

"(b) Members of the Board of Directors shall serve two-year terms, except that, of the members first elected or appointed to the Board of Directors, one elected member and one appointed member shall serve initial terms of one year.

"(c) The Board of Directors shall elect, on an annual basis, a Chairman from among the members of the Board.

"(d)(1) Members of the Board may succeed themselves and may serve until their successors are duly seated.

"(2) Vacancies on the Board shall be filled in the same manner as the vacant position was previously filled."

(2) On page 21, line 10, strike out "fective only" and insert in lieu thereof "fective for any fiscal year only";

(3) On page 22, between lines 17 and 18, insert a new section 4.28L as follows:

"SEC. 4.28L. TAX STATUS OF CONSOLIDATED OBLIGATIONS.—Consolidated notes, bonds, debentures, or other obligations, the issuance of which is joined in by the Capital Corporation pursuant to paragraph (13) of section 4.28G, shall have the same tax status as provided by this Act with respect to such obligations issued by the banks.";

(4) On page 33—

(A) in line 13, insert "and certificates of territory" after "charters";

(B) in line 21, after "territory", insert ", unless subsequently agreed to by the board of directors of such association or associations"; and

(C) after the period in line 25, insert "Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged other like associations in the district or (ii) discriminated against in the provision of any financial service and assistance (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the association and its member-borrowers.";

(5) On page 35, line 12, insert "regulate" and "and";

(6) On page 37, between lines 5 and 6, insert the following new paragraph:

"(15) Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer of such institutions: *Provided*, That no salary scale or rate of compensation shall be approved under this provision unless determined to be fair and reasonable.";

(7) On page 38, line 11, strike out "other" and all that follows through "banks" on line 12 and insert in lieu thereof "other than federally regulated financial institutions";

(8)(A) On page 76, line 24, strike out "System" and all that follows through "committee" in line 25 and insert in lieu thereof "System institution shall establish one or more credit review committee(s), which shall include farmer board representation";

(B) On page 77, line 4, insert "When a loan applicant requests review of an adverse credit decision, a majority of persons serving on such reviews committee must be persons who were not involved in making the adverse decision." after "committee.";

(9) On page 79, between lines 2 and 3, insert a new section 307 as follows:

"SEC. 307. Each local lending institution of the Farm Credit System established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) shall—

"(1) review each loan that has been placed in non-accrual status by such institution to determine whether such loan may be restructured based on changes in the circumstances of such institution as the result of this Act and the amendments made by this Act; and

"(2) notify in writing the borrower of each such loan of the provisions of this section.";

(10) On page 80—

(A) in line 5, redesignate subsection (c) as subsection (d); and

(B) between lines 4 and 5, insert the following new subsection:

"(c) In carrying out the duties and functions specified in subsections (a) and (b), the Governor of the Farm Credit Administration shall serve at the pleasure of the President."; and

(11) On page 84, after line 14, insert the following new section:

"SEC. 607. Section 5.2 of the Farm Credit Act of 1971 (12 U.S.C. 2223) is amended—

(1) by striking out "; APPOINTMENT" in the caption;

(2) in subsection (a)—

(A) by designating the first and second sentences as paragraphs (1) and (2), respectively; and

(B) by amending paragraph (2) (as so designated) to read as follows:

"(2)(A) The seventh member shall be elected by the borrowers at large in a district.

"(B) For purposes of this section, the term 'borrowers at large in a district' means—

"(i) a voting shareholder of a Federal land bank association and a direct borrower, and a borrower through an agency, from a Federal land bank;

"(ii) a voting shareholder of a production credit association; and

"(iii) a voting shareholder or subscriber to the guaranty fund of a bank for cooperatives.";

(3) in the second sentence of subsection (b)—

(A) by striking out "and" before "in the case"; and

(B) by inserting before the period at the end thereof the following: "; and in the case of an election by the borrowers at large, such notice shall be sent to all borrowers at large in the district"; and

(4) by inserting after the fifth sentence of subsection (c) the following new sentence: "Each borrower at large shall be entitled to cast one vote.".

(12) On page 14, line 10, strike out the following: " of the loss of the use of the accumulated net worth of their institution "

(13) On page 14, line 22, strike out the following: "taking into account the relative rates and terms available to them prior to investments in the Capital Corporation "

On page 20 of the House engrossed amendment, strike out lines 15 and 16, and insert in lieu thereof the following: "System institutions, (3) the salaries and benefits of the senior executive officers of System institutions (except associations) will be frozen, such freeze to remain in".

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the motion of the Senator from North Carolina to concur in the House amendment with a further Senate amendment (No. 1420).

The motion was agreed to.

Mr. HELMS. Mr. President, on December 3, 1985, the Senate passed S. 1884, a bill to restructure and reform the Farm Credit System, by a vote of 57 to 34.

S. 1884 is intended to accomplish three key objectives. First, it tightens and reforms the regulation of the Farm Credit System to assure that it will operate under the same general rules of the road as other lending entities. Second, it enables the Farm Credit System to help itself by establishing a Capital Corporation to move System capital and reserves to those districts in greatest need. Third, it authorizes the Secretary of the Treasury, at the Secretary's sole discretion, to purchase securities from the Capital Corporation to infuse capital into the Farm Credit System—but not unless and until the strengthened regulatory mechanisms and available capital of the System are utilized.

The House has now amended and passed S. 1884. The House's version is substantially similar to the bill passed by the Senate. I recommend that we pass the House bill with an amendment.

This amendment protests interests raised by Senators either in the drafting of S. 1884 or through the adoption of amendments on the Senate floor. All the amendments to S. 1884 that were adopted by the Senate are either included in the House bill or are contained in the amendment I am offering today.

The amendment that I propose would accomplish the following:

First, the amendment would restructure the board of directors for the new capital corporation. Three board members would be elected by the farm credit banks that own stock in the corporation, with each bank having one vote. The three elected members would be selected, one from those districts contributing capital, one from those districts receiving capital, and the last without regard to these restrictions. Two board members would be appointed by the chairman of the FCA Board. In the event the

Secretary of the Treasury infuses funds into the capital corporation, the board of the corporation would be expanded by two members: The Secretary of Agriculture would first appoint an additional member to the board and the six directors together would then select a seventh board member, who would be independent of both the System and the Government.

Second, the amendment conforms the appropriations language to that proposed by Senator DOMENICI.

Third, we add a provision, drawn generally from the Senate bill, to ensure that the tax status of bonds issued collectively by the farm credit system banks will not change if the capital corporation participates in these bond issues.

Fourth, we have included Senator BOREN's amendment on mergers, to ensure that the House amendment addresses this issue in the same fashion as the Senate bill.

Fifth, we have restated current law, as did the Senate bill, concerning FCA's power to regulate fund transfers by adding one word inadvertently omitted in the House amendment and have inserted a clarification on the establishment and operation of institutional credit review committees.

Sixth, we have included another Boren amendment authorizing FCA to approve FCS salary scales. The House bill already includes a freeze on FCS officer compensation which is triggered in the event the Secretary of the Treasury is asked to infuse funds.

Seventh, we have included Senator GARN's technical amendment limiting the scope of FCA's examination powers as they concern federally regulated financial institutions.

Eighth, we have included language from the Senate bill proposed by Senator GRASSLEY concerning reviews of non-accrual loans to determine whether they may be restructured.

Ninth, we have included language providing that the Governor of the Farm Credit Administration serves at the pleasure of the President during the transition period in which the Governor exercises the authority of the Farm Credit Administration Board and the Chairman of such Board.

Tenth, we have inserted language from the Senate bill dealing with the selection of the seventh director on district boards. This provision authorizes district borrowers to elect the seventh director, this director was formerly appointed by FCA.

Finally, I should note that we checked to ensure that the House language fully addresses the issues raised in the other amendments offered by Senators DOMENICI, HARKIN, HAWKINS, and MELCHER.

Time is running short. The Farm Credit System and our Nation's farmers need this bill before we go home. I urge my colleagues to adopt this amendment and pass the House amendment to S. 1884.

Mr. ZORINSKY. Mr. President, I join the distinguished chairman of the Agriculture Committee in urging the Senate to approve the pending measure—S. 1884. I was pleased to join Senator HELMS in introducing S. 1884 on November 23. That legislation, although modified by the House, remains similar to the measure that we introduced and that the Senate approved about 1 week ago.

I want to emphasize the necessity for enacting this legislation this session of Congress. We are quickly approaching what will almost certainly be one of the most difficult lending seasons ever for agriculture. The financial condition of the agricultural economy and of agriculture's most important lender, the Farm Credit System, can be described as severely stressed.

This legislation will help ensure that the System will remain viable and continue to serve American agriculture. Congressional approval of this measure will send a clear message to the financial markets that the Federal Government will not allow the Farm Credit System to default on its bonds. This, in itself, will reduce the risk premium investors have been demanding from the System. A reduction in the System's cost of funds will have a positive effect on the cost of credit for farmers—saving them millions of dollars in interest expenses.

Today, the Senate will be considering several amendments designed to incorporate into the House-passed version of S. 1884, certain proposals that were adopted when the Senate first acted on this measure. I hope these amendments are acceptable to the House leadership and the House approves the bill before adjourning.

The amendments being offered today include the following:

An amendment providing that the Board of Directors of the Capital Corporation shall have five members, three elected by System banks—with equitable representation from banks that will be receiving assistance as well as representation from contributing banks—and two appointed by the Farm Credit Administration, until Federal financial assistance is made available. At such time, the Board will be expanded to seven members. Of the two additional members, one will be appointed by the Secretary of Agriculture and the other will be selected by the other six members of the Board. The seventh Director cannot be a Government employee or associated with any System institution.

An amendment that would provide an exception to the overchartering provision of the House-passed measure. The exception would allow overchartering of territories served by associations with the concurrence of the board of directors of the association that has declined to merge. In addition, if an association chooses not to merge, it will not be discriminated against—with regard to interet rates charged by a district farm credit bank.

An amendment retaining the Farm Credit Administration's authority to approve the salary scale for employees of System institutions, except for associations, and the compensation of the chief executive officer.

An amendment that makes it clear that the board of directors of each Farm Credit System institution shall establish one or more credit review committees that will include farmer-board representation. The purpose of this is to provide borrowers with an opportunity for administratively feasible review of adverse credit decisions by a committee that will include participation by persons who were not involved in the original adverse credit decision.

An amendment that requires the Farm Credit System to review each loan in nonaccrual status to determine whether such loan can be restructured based on changed circumstances resulting from enactment of this legislation.

In addition, there will be several technical and conforming amendments that will:

Make it clear that the Farm Credit Administration may not examine any federally regulated financial institution;

Make is clear that systemwide bonds, notes, debentures, or other obligations joined in by the Capital Corporation shall have the same tax status as provided in the Farm Credit Act with respect to obligations issued by the banks; and

Provide for the at-large election of the seventh director of district farm credit boards by the borrower-stockholders.

Provide that the Governor of the Farm Credit Administration will serve at the pleasure of the President during the transition to the new regulatory structure.

The amendments I have outlined will significantly strengthen the legislation. It is important to note that about 1 million Farm Credit System borrowers are looking to Congress to take action to address the System's problems.

The pending measure will restructure the Farm Credit Administration into a stronger, more effective arm's-length regulator. The bill will better enable the System to use its resources to resolve its problems, and it provides a mechanism by which Federal financial assistance can be made available in a responsible manner.

The legislation will provide significant assistance—in the form of lower than what could otherwise be expected interest rates—to Federal Land Bank Association and Production Credit Association borrowers. In addition, the measure will provide assurances and similar interest rate benefits to the farm and rural utility cooperatives, and agricultural exporters that rely on the Farm Credit System's banks for cooperatives for their credit needs.

Because it is important that this measure be enacted as soon as possi-

ble, I urge my colleagues to join me in supporting the amendments I have outlined and refrain from offering amendments that could jeopardize this essential legislation.

REFORMING THE FEDERAL FARM CREDIT SYSTEM

Mr. DOLE. Mr. President, I am pleased to add my support to the amendment of the distinguished chairman of the Agriculture Committee, Senator HELMS, and its distinguished ranking member, Senator ZORINSKY, to the pending legislation to reform the Federal Farm Credit System. I am hopeful that passage of this measure will be equally swift in the House of Representatives, and that the President will add his signature soon after the bill reaches his desk.

In brief, Mr. President, this legislation makes three critical changes in the Farm Credit System. It restructures the Farm Credit Administration, converting it to an effective arms-length regulator. A three-member Board of Directors, appointed by the President and confirmed by the Senate, will have strengthened management and oversight responsibilities.

Second, the bill facilitates much-needed self-help measures by member institutions of the System, enabling them to respond to the capital shortages of some members by redistributing the reserves and capital surpluses of others. This was the original intent of earlier reform legislation which made the System's districts and member banks interdependent and responsible for coordinating support for their securities in the financial markets. This key role will now be carried out through a temporary capital corporation, which will transfer reserves and, if necessary, distribute Federal assistance among System members.

The third element of this package is the contingency for providing Federal financial assistance, as needed, to assure the continued viability of the Farm Credit System as the linchpin for lending to U.S. agriculture. The level of such aid is left deliberately undefined, both because it may not be required and because the amount is not as important as the firm commitment that the Government will stand behind the System.

But first, Mr. President, the System must fully commit its resources in an effort to end erosion in the quality of its member bank portfolios, declining liquidity of its reserves, and the rising cost of new borrowing. These steps will not be easy, particularly at first. And they will need conviction on the part of those who want to see a revitalized system that the only way to long-term stability is through serious retrenchment and joint sacrifice.

One feature which I had a hand in shaping is in the composition of membership on the Capital Corporation Board of Directors. During the period in which the Corporation will essentially be working with the System's own assets, System Directors will have a 3-to-2 majority on the board over appointees of the Farm Credit Administration. If and when Federal funds are introduced, however, the Secretary of Agriculture will appoint one new member, and the six Directors will then select a seventh member from outside the System, the FCA, and the Government.

This method may not be perfect, Mr. President, but it will give the Capital Corporation some additional independence in carrying out its responsibility of managing Federal funds. It will also make the Board more of a buffer between the System and the FCA, avoiding some confrontation during the next crucial years of adjustment and reform.

I hope the House of Representatives will act quickly on this legislation, and that we can send a strong signal to farmers and investors that this vital element of the agricultural lending system will remain healthy. I commend my colleagues who have worked so hard on this bill and hope that, in conjunction with the 1985 farm bill, to be acted on by both Houses tomorrow, Congress will restore some hope in the future of American farm families during the coming new year.

Thank you, Mr. President.

Mr. BENTSEN. Mr. President, the bill now before the Senate is an improvement in many respects over the bill which originally passed the Senate. A number of needed improvements were made in the House Agriculture Committee. However, this is still a bad bill. It will not necessarily provide any financial assistance to the Farm Credit System. It will not provide any protection to the districts which have been prudent, fortunate, good managers, or for some other reason are not in financial trouble. It will drain them as dry as the bankrupt districts—in effect, rewarding those troubled districts.

Aside from the fact that this is a bad bill, there are a number of concerns which have not yet been resolved. A great deal of time and effort has been spent in seeking a resolution of certain concerns with regard to the membership of the board of the new Capital Corporation.

Mr. President, I regret that there appears to have been a misunderstanding with regard to this bill and to this package of Senate amendments. That is quite understandable considering the extreme pressures that are being placed on the Senate Agriculture Committee at this time as they race to complete a farm bill. Many of the committee staff members and other staff members involved in the farm bill were up all night last night drafting the conference report.

An attempt was made to avoid conference on this farm credit bill. A compromise was worked out between the House and Senate leadership on the bill. This would allow the Senate to pass the bill in a form acceptable to the House so that it could be enacted into law before Christmas. The compromise involved taking the House bill language, adding on the amendments adopted on the Senate floor, and adding on a new Senate amendment regarding the number of seats on the Board of the Capital Corporation.

It was my understanding, and the understanding of the chairman of the House Agriculture Committee, Congressman KIKA DE LA GARZA of Texas, that amendments offered by Congressman STENHOLM of Texas and passed as part of the House bill would be included in the package. The sole exception would be deletion of the word "contributing" as it relates to qualifications for voting for the Capital Corporation Board members, so that all banks could vote.

The proposed amendment which I received on Saturday went beyond the scope of that agreement in several ways. It took out an additional House provision. That provision required the Capital Corporation board members to come from contributing districts. I was told by Chairman DE LA GARZA that he was deeply concerned about that language assuring contributing districts some voice in these proceedings, and I share those concerns.

I discussed that with Chairman DE LA GARZA and with Congressman STENHOLM. We all felt that an equitable compromise should recognize that both contributing and receiving districts have concerns, that these concerns may be opposite, and that both should have a voice on the board. We discussed a compromise that would split the three elected board members one and one between contributing and receiving districts, with the third elected at large. We agreed to that compromise. This 1-1-1 split was a significant compromise from the House bill language which specified that all three elected members would come from contributing districts. I ask unanimous consent that a letter from the House on this issue be printed in the RECORD at this point.

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

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

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, December 17, 1985.

HON. ROBERT DOLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: We understand that today the Senate will consider legislation to address the problems facing the Farm Credit System. We applaud your efforts in this regard.

On December 6, the House of Representatives approved, by an overwhelming margin, an amended version of S. 1884. This legislation was approved by the House after the Committee on Agriculture held a complete series of subcommittee and full committee hearings and markup sessions that allowed for the development of a balanced, equitable measure to restore financial strength to the Farm Credit System.

As amended by the House, Section 4.28C of S. 1884 would establish a five member board of directors to govern the newly formed Farm Credit System Capital Corporation. The House amendment provided that there be representation on the board from farm credit districts that contribute financial assistance to the Capital Corporation. In our view, net contributing farm credit districts, those which contribute more funds to the Capital Corporation than they receive, should be assured of representation on the board. We would like to reiterate our support for the House position on this issue.

Providing board representation to contributing districts is critical to the success of this legislation. We hope that the Senate will give close consideration to the concerns expressed by the House of Representatives in this regard.

Thanking you for your concern, we remain

Sincerely,

E. (KIKA) DE LA GARZA,
Chairman.

CHARLES W. STENHOLM,
Member of Congress.

Mr. BENTSEN. However, Mr. President, to make the compromise workable it is necessary to define "contributing" in such a way that the healthy districts would be represented on the Board. It is only fair that those who are going to pay most of the assessments should have a voice on the Board. If this were being done in the private sector those districts making the largest financial contributions would control the entire board. Those are also the districts that are not having problems and that are not pulling down the Farm Credit System.

This afternoon we tried and failed to reach a compromise on this definition. The amendment which I have would take care of those concerns.

I saw the effective effects of the majority leader and the chairman of the Senate Agriculture Committee when this bill passed the Senate on December 3. I saw all amendments tabled that were not accepted by the leadership. I believe that they can do that again, and I will not waste the Senate's time with a losing amendment.

I understand that language has been included in the proposed leadership amendment which will address somewhat the concerns which Texas and other healthy districts have. I appreciate that gesture.

However, this language is not adequate by itself to ensure that those who pay the most will have an adequate voice on the board of the Capital Corporation. Such arrangements can be made informally within the Farm Credit System itself, and I would hope that such arrangements would be made. They would do much to restore peace and harmony to the System.

The amendment which I had worked on would not just take care of a concern of Texas, Springfield, and other contributing districts. The amendment would have guaranteed that the bill would receive expeditious consideration in the House. There are a number of changes in the House bill made by the leadership amendment, and those will have to be reviewed before it can be accepted.

It is my understanding that the leadership is following this unusual procedure to allow the bill to be enacted before Christmas. Many of my colleagues feel strongly that this bill must be passed immediately. I do not share those concerns. But it is obvious the supporters of this bill have the majority of votes necessary for passage.

This bill will provide a lot of regulation and very little actual help. It will effectively eliminate the concept of local control on which the Farm Credit System was founded. It will wind up giving political appointees control of the System. And it will not even guarantee the stockholders who will pay the most for the Capital Corporation a voice in its management. I will vote against its passage; it is bad legislation.

Mr. CRANSTON. Mr. President, I am pleased to support this farm credit legislation.

The Farm Credit System is the Nation's largest farm lender, with about $74 billion in outstanding loans. But today the System is in trouble. Some $9.8 billion worth of loans are listed as nonperforming and in recent months we have seen an increase in System borrowing costs and borrower flight from the System. Serious efforts must be made to ensure that the Farm Credit System remains secure and to bolster public confidence in it so bondholders will be willing to purchase the System's debt at a reasonable price.

As my colleagues know, I did not vote for S. 1884 which passed the Senate on December 3. I was concerned that that bill did not provide sufficient protection for the healthy banks, such as those in the Sacramento district serving my State, from having their resources drained to shore up troubled banks elsewhere in the Nation.

I was also concerned about the effects financing the Capital Corporation would have on interest rates charged at the healthier banks. Moreover, the earlier bill threatened local control which has been the essence of the Farm Credit System. By giving the administration a majority of the appointments to new Capital Corporation, the original legislation severely limited input from local banks, their farmer-borrowers and stockholders. And it gave too much power to the Capital Corporation to draw on the resources of local banks.

The bill before us today is a substantial improvement over the earlier bill and addresses many of my concerns. It includes criteria to ensure that healthy banks do not have their resources drained without limit and it restores some measure of local control, ensuring that the local banks have more input regarding mergers and acquisitions.

Further, by providing that three members of the Capital Corporation board are elected by the Farm Credit System, and only two by the Governor of the Farm Credit Administration, majority control is given to the Farm Credit System, at least until Treasury money is infused into the System.

With these improvements, the legislation now has my support. I urge my colleagues to approve this bill to provide much needed financial assistance to the Farm Credit System.

Mr. QUAYLE. Mr. President, today, the Senate will finish work on and send to the House for final passage a package of legislative reform designed to assist the Farm Credit System in dealing with the difficult financial problems it now faces.

As I stated during debate on this matter on December 3, this legislation is now appropriate both in terms of timing and structure.

While this assistance is predominantly in the form of regulatory changes, it also sets forth a contingency plan for more direct Federal assistance. This approach should return confidence to the System's borrower/stockholders and to the financial markets as well, where instability has resulted in increased costs to the System.

I applaud the Congress' willingness to address this important problem in a gradual and determined way, while at the same time acting to deal with the causes of the System's weaknesses before more serious and permanent erosion of the System's balance sheet could occur.

By setting forth additional regulatory authorities for the Farm Credit Administration, the System's regulator, we help ensure a stronger future for the System itself. In addition, knowing that the current state of our farm economy may demand more direct financial assistance, this legislation authorizes the Secretary of the Treasury to provide assistance when he determines, in cooperation with the Farm Credit Administration and Congress, that it is in fact needed.

Of course, this piece of legislation alone will address only one of the many factors contributing to the financial deterioration of our rural lenders. If a long-term answer to the situation is to be truly effective, it must be coupled with continued efforts to im-

prove the condition of our overall farm economy. This can only be accomplished by a combination of efforts, including export promotion, immediate progress toward a balanced Federal budget, and a more economically sound farm bill.

Again, Mr. President, I support this specific action because it attempts to address a difficult problem in a responsible and gradual way, by encouraging the Farm Credit System to utilize its own resources, by strengthening regulatory oversight powers and finally by providing a blueprint for Federal financial assistance. While this alone may not be enough, it is certainly a foundation, a beginning, if a reluctant one, which will send a firm message to the public that the Congress is not willing to allow the Nation's largest banking system to falter. I encourage my colleagues to vote in support of final passage of this measure.

Mr. BURDICK. Mr. President, I did not support this legislation when it was first considered by the Senate because I found it lacking. At that time, several amendments were offered which would have improved the legislation, but each of them was tabled. The Senate version did not provide direct assistance to farmers. It did not give priority to former landowners to rebuy the land they had lost. It did not provide for local control of the System and centralized the power in Washington.

The House greatly improved on that measure by requiring that three of the five Capital Corporation Board members be elected by farmers, as opposed to the Senate version which had two of the five elected by farmers. Furthermore, the House required that the original owner of an acquired property have first right of refusal when that property is resold. These changes are significant and I now feel comfortable in supporting this legislation.

Above all, this legislation keeps the Farm Credit System afloat and ensures that the System will be operating next spring when our farmers will be putting the crop in the ground. Many of our farmers are at the brink of disaster and this bill will enable the Farm Credit System to save some of our best farmers.

Mr. President, I support this legislation. I am concerned that it is not enough and that we will need to address the farm credit issue again next year, however. I want my colleagues to be prepared for that.

Mr. McCONNELL. Mr. President, I will not kid anybody; I wish this Farm Credit System Conference Report more adequately addressed the acute financial needs facing the Farm Credit System. But given the circumstances and environment under which this legislation is being considered, it is obvious to this Senator that broader changes in this proposal are not possible. I, therefore, plan to support this conference report and urge my colleagues to do so.

The reason for this fast track legislation, I think, is obvious. Unless dramatic action is taken soon to shore up the troubled Farm Credit System, thousands of farmers will drown in a pool of red ink and the taxpayers will be forced to pick up the tab for billions of dollars in losses. This conference report contains some important features which I believe will allow the Farm Credit System to regain its formerly sound financial footing.

Mr. President, I wholeheartedly concur with the distinguished chairman of the Agriculture Committee, Senator HELMS, that the Farm Credit System must use its own reserves before any Federal appropriation can be expected. This measure provides the tools for the System to do that, specifically that earnings from one part of the System can be used by another district within the System. I know that Senators from various States do not want their farm borrowers to be forced to share their earnings with Kentucky Farm Credit System borrowers, but I submit Mr. President, that is the nature of a cooperative venture. All Farm Credit System borrowers have benefited from low interest rates in the good times and I do not think it is unfair for borrowers to share in the not so good times.

I think that another outstanding feature of this proposal is the strengthening of the Farm Credit Administration's oversight powers. For too long, individual PCA's and FLB's have been encouraged to loan money to farmers with little regard for repayment ability. The overriding concern seemed to have been "Do you have enough collateral?" I am not criticizing the loan policies of local Farm Credit System officers, Mr. President, I am just saying that such policies should have undergone a little closer scrutiny. I know first hand that the officers of the Fourth Farm Credit District Bank in Louisville are anxious and willing to entertain closer inspection of lending policies within their district. I view this as positive proof that the System recognizes the need for some internal reforms and I applaud the willingness of the officers of the Fourth Farm Credit System Bank to accept the changes that are inevitable.

Finally, Mr. President, I am pleased that the administration is willing to tacitly recognize the serious financial problems of the Farm Credit System. Though the funding of the Capital Corporation is discretionary, this legislation provides the tools to make the Capital Corporation an important, functioning entity. I hope we never have to use it, but I see the day just on the horizon where the Secretary of the Treasury will announce that he is coming to the Hill to seek an appropriation to fund the Capital Corporation. I am glad, Mr. President, the mechanism is in place if and when we need it.

In conclusion, I support this measure Mr. President. My only hope is that it is not too little, too late.

Mr. McCLURE. Mr. President, I seek clarification by the chairman of one provision in the House passed version of S. 1884. My question pertains to section 201 as it amends section 5.17(a)(2) of the Farm Credit Act. As I understand this portion of the bill, it comes into play when one or more association in a district has rejected a proposed district-wide merger of PCA's or FLBA's in that district. Mr. Chairman, this is an issue of particular and immediate concern to farmers in my State. I have made a good faith effort with concerned PCA and FLBA borrower members in Idaho to work out an equitable arrangement between the new merged Interstate PCA and the Eastern Idaho PCA, which voted not to merge.

In our district there was one PCA that rejected the merger. If enacted, this provision which would prevent the new merged association from overchartering this one association. This is part of an amendment which I cosponsored. My concern now is whether there is anything about the provision that would invalidate the merger which was approved by all the other associations now that the territory of their merged association cannot include the territory of this one association that did not vote to merge.

Mr. HELMS. Mr. President, I thank the distinguished Senator from Idaho for inquiring. We certainly do not intend to invalidate the disclosures upon which the merger votes were based on the actions of the farmer/stockholders who have approved their association's participation in these district-wide mergers. Under this provision, the Farm Credit Administration would be precluded merely from issuing to the merged association, a charter which would include the territory served by those associations which did not approve the merger unless subsequently agreed to by the Board of Directors of such association or associations. It must not be read to also invalidate a merger that was approved by the other associations whose territories comprise the balance of the district.

MR. DOLE. Mr. President, we have completed action on that measure. Is that correct?

THE PRESIDING OFFICER. That is correct.

MR. DOLE. Mr. President, I want to thank my colleagues, the distinguished Senator from North Carolina [Mr. HELMS], and the distinguished Senator from Nebraska [Mr. ZORIN-

SKY]. I also want to thank the staff, the administration, Senator GRASSLEY, Senator BENTSEN, Senator HAWKINS, and there have been a number of Senators involved throughout this process.

My view is that we have taken the first step to assist the rural American farmers and rural America insofar as the Farm Credit System is concerned.

We will follow this up tomorrow by passing the farm bill conference report. That will be the second step. Maybe we have to take another step next year. But at least we are taking steps, and moving in the right direction.

Much of the credit goes to the distinguished chairman of the committee, Senator HELMS, and to the distinguished ranking member, Senator ZORINSKY, to the members of the staff, Frank Naylor, of the Department, and all others who participated in the farm credit debate.

I think the RECORD should reflect that we have acted, that we have taken the House bill, and amended it.

I hope now that we can move on to the farm bill conference tomorrow.

Mr. HELMS. Mr. President, I certainly want to associate myself with the remarks of the distinguished majority leader. However, I have one person to add to the list, and that is the majority leader himself.

He has been most patient, diligent, and he has been extremely helpful. Also I want to pay my respects to Senator ZORINSKY. I have never worked with anyone who is more cooperative, helpful, and understanding in the production of legislation. I want to thank Senator ZORINSKY for that.

Mr. President, I wish I had the words to thank the staff for the enormous amount of work they have done. I do not think Members of the Senate really understand the sacrifice that the staff makes. They have worked all night for the past 3 nights on the farm bill, and the farm credit bill.

They are dedicated young people, and I am very, very proud of them.

I thank the Chair.

Mr. ZORINSKY. Mr. President, I would like to add my comments to those of the chairman of the Senate Agriculture Committee, and in addition to say that it has been a fascinating experience, an educational experience, working with the chairman, his staff, and our staff on the minority side.

I would like to thank very, very much the Democratic leader, Senator BYRD, for his support, his help, and for this continued diligence in helping move the bill forward, and for his ever-present parliamentary recommendations to me on behalf of the minority on this side of the aisle.

He has been exemplary and outstanding. I cannot find enough adjectives to use for Senator BYRD's support of this very emotional issue, and one which was highly controversial.

Also, I would like to thank Senator DOLE, the majority leader, for all of his devotion to this duty. There were many occasions when, if I were a betting person, I would have had to look elsewhere for a farm bill, but with his perseverance and continued dedication to the bill, quite obviously we were able to reach that end of the tunnel. I am pleased that the Senate has completed action on the Farm Credit System bill and is to consider the conference report in the 1985 farm bill tomorrow.

I thank him for his support, and cooperation also.

Also I thank the staffs for their work day in and day out. When we became tired, left, and adjourned the conferences, they were still there to pick up the pieces, and put things back together even though we tore them asunder for the evening.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. ZORINSKY. I yield.

Mr. BYRD. Mr. President, the distinguished Senator has already used far more adjectives than I know. I am very grateful for his kind words. He is overly charitable toward me.

Mr. ZORINSKY. I thank the minority leader.

I yield the floor.

MESSAGES FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1728. An act to authorize the Cherokee Nation of Oklahoma to lease certain lands held in trust for up to 99 years.

The message also announced that the House insists upon its disagreement to the amendments of the Senate to the joint resolution (H.J. Res. 465) making further continuing appropriations for the fiscal year 1986, and for other purposes; it asks a further conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. WHITTEN, Mr. BOLAND, Mr. NATCHER, Mr. SMITH of Iowa, Mr. ADDABBO, Mr. YATES, Mr. OBEY, Mr. ROYBAL, Mr. BEVILL, Mr. CHAPPELL, Mr. LEHMAN of Florida, Mr. DIXON, Mr. FAZIO, Mr. HEFNER, Mr. CONTE, Mr. MCDADE, Mr. MYERS of Indiana, Mr. COUGHLIN, Mr. KEMP, Mr. REGULA, Mr. SMITH of Nebraska, and Mr. SKEEN as managers of the conference on the part of the House.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 3914) to preserve the authority of the Supreme Court Police to provide protective services for Justices and Court personnel.

The message also announced that the House has agreed to the amendments of the Senate numbered 1, 2, 4, 5, 6, 8, 9, and 11 to the bill (H.R. 1890) to provide for an equitable waiver in the compromise and collection of Federal claims; and that it agrees to the amendments of the Senate numbered 3, 7, and 10 to the bill, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3363. An act for the relief of Hamilton Jordan; and

H.J. Res. 491. Joint resolution making further continuing appropriations for fiscal year 1986.

ENROLLED BILLS SIGNED

At 5:10 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1621. An act to amend title 25, United States Code, relating to Indian education programs; and

H.R. 3003. An act to authorize the Secretary of the Interior to convey certain land located in the State of Maryland to the Maryland National Capital Park and Planning Commission.

The enrolled bills were subsequently signed by the President pro tempore [Mr. THURMOND].

MEASURE HELD AT THE DESK

The following bill was held at the desk by unanimous consent pending further disposition:

H.R. 3363. An act for the relief of Hamilton Jordan.

ENROLLED JOINT RESOLUTIONS SIGNED

The Vice President announced that on today, December 17, 1985, he signed the following enrolled joint resolutions, which had previously been signed by the Speaker of the House of Representatives:

S.J. Res. 32. Joint resolution to authorize and request the President to designate September 21, 1986, as "Ethnic American Day";

S.J. Res. 70. Joint resolution to proclaim March 20, 1986, as "National Agriculture Day"; and

S.J. Res. 213. Joint resolution to designate January 19 through January 25, 1986, as "National Jaycee Week."

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, December 17, 1985, she had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 32. Joint resolution to authorize and request the President to designate September 21, 1986, as "Ethnic American Day";

S.J. Res. 70. Joint resolution to proclaim March 20, 1986, as "National Agriculture Day"; and

S.J. Res. 213. Joint resolution to designate January 19 through January 25, 1986, as "National Jaycee Week."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources:

Gerald Ralph Riso, of New York, to be an Assistant Secretary of the Interior;

James R. Richards, of Virginia, to be Inspector General, Department of the Interior; and

C. Dale Duvall, of Washington, to be Commissioner of Reclamation.

(The above nominations were reported from the Committee on Energy and Natural Resources with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. HATCH, from the Committee on Labor and Human Resources:

Sidney Lovett, of Connecticut, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 2 years expiring January 19, 1987;

John Norton Moore, of Virginia, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 4 years expiring January 19, 1989;

Richard John Neuhaus, of New York, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 2 years expiring January 19, 1987;

W. Bruce Weinrod, of the District of Columbia, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 2 years expiring January 19, 1987;

Dennis L. Bark, of California, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 4 years expiring January 19, 1989;

Evron M. Kirkpatrick, of Maryland, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 4 years expiring January 19, 1989;

W. Scott Thompson, of New Hampshire, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 4 years expiring January 19, 1989;

Allen Weinstein, of the District of Columbia, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 4 years expiring January 19, 1989;

William R. Kintner, of Pennsylvania, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term of 2 years, expiring January 19, 1987.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' 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 time by unanimous consent, and referred as indicated:

By Mr. PRYOR:

S. 1953. A bill to clarify certain restrictions from a parcel of land in Baxter County, AR; to the Committee on Armed Services.

By Mr. KENNEDY:

S. 1954. A bill to amend title 5, United States Code, to authorize temporary family housing for certain dependents of deceased members of the Armed Forces; and to amend title 37, United States Code, to authorize temporary payment of a basic allowance for quarters for certain dependents of deceased members of the Armed Forces; to the Committee on Armed Services.

By Mr. DODD:

S. 1955. A bill to authorize the importation of lottery materials for use in State lotteries; to the Committee on Finance.

By Mr. THURMOND (for himself, Mr. DOLE, Mr. WILSON, Mr. WARNER, Mr. KENNEDY, Mr. HELMS, Mr. McCONNELL, Mr. HECHT, Mr. STENNIS, Mr. TRIBLE, Mr. LEAHY, Mr. BENTSEN, Mr. RUDMAN, Mr. HUMPHREY, Mr. EXON, and Mr. SASSER):

S. 1956. A bill to amend title 5, United States Code, to authorize temporary family housing for certain dependents of deceased members of the Armed Forces; and to amend title 37, United States Code, to authorize temporary payment of an allowance for quarters for certain dependents of deceased members of the uniformed services; ordered held at the desk.

By Mr. MOYNIHAN:

S. 1957. A bill for the relief of Lynne Cleaver and her child, Leigh Alison Cleaver; to the Committee on the Judiciary.

By Mr. DECONCINI:

S. 1958. A bill to prohibit the Department of Defense from obligating or expending any funds for the procurement of certain toilet cover shrouds; to the Committee on Armed Services.

By Mr. CHAFEE:

S. 1959. A bill to clarify the tax treatment of certain mortgage related securities, to authorize the ownership of certain mortgage loans in multiple class arrangements, and for other purposes; to the Committee on Finance.

By Mr. DURENBERGER (for himself and Mr. DANFORTH):

S. 1960. A bill entitled the "Medical Offer and Recovery Act"; to the Committee on Finance.

By Mr. THURMOND (for himself, Mr. DECONCINI, Mr. ANDREWS, Mr. BURDICK, Mr. D'AMATO, Mr. DIXON, Mr. SIMON, and Mr. WARNER) (by request):

S. 1961. A bill to amend title 28 and title 11 of the United States Code to authorize a new U.S. Trustee System by providing for the appointment of U.S. trustees to supervise the administration of bankruptcy cases in judicial districts throughout the United States and for other purposes; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 1962. A bill for the relief of Walter Chang; to the Committee on the Judiciary.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 1963. A bill to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, NM, to the New Mexico Institute of Mining and Technology; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN:

S. 1964. A bill to extend the revenue sharing program for local governments through fiscal year 1988; to the Committee on Finance.

By Mr. STAFFORD (for himself, Mr. PELL, Mr. QUAYLE, Mr. KENNEDY, Mr. WEICKER, Mr. DODD, Mr. WALLOP, Mr. MATSUNAGA, Mr. SIMON, and Mr. PRESSLER):

S. 1965. A bill to reauthorize and revise the Higher Education Act of 1984, and for other purposes; to the Committee on Labor and Human Resources.

By Mrs. KASSEBAUM (for herself, Mr. DANFORTH, Mr. HOLLINGS, Mr. EXON, Mr. FORD, Mr. ROCKEFELLER, Mr. KASTEN, Mr. GOLDWATER, Mr. PROXMIRE, Mr. METZENBAUM, Mr. ABDNOR, Mr. NUNN, Mr. SIMON, Mr. BURDICK, Mr. LAUTENBERG, and Mr. DECONCINI):

S. 1966. A bill to provide for efficient and equitable use of operating rights at congested airports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DURENBERGER (for himself and Mr. BAUCUS):

S. 1967. A bill to amend the Toxic Substances Control Act to protect the environment and human health from adverse effects caused by the release of genetically engineered microorganisms into the environment, to promote the safe use of genetically engineered microorganisms, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LAUTENBERG (for himself, Mr. DIXON, Mr. SIMON, Mr. BRADLEY, Mr. KERRY, Mr. DODD, and Mr. MOYNIHAN):

S. Res. 276. Resolution expressing the sense of the Senate regarding the Federal air traffic control system; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE:

S. Res. 277. Resolution to refer S. 1962 entitled "A Bill for the Relief of Walter Chang" to the chief judge of the U.S. Claims Court for a report thereon; to the Committee on the Judiciary.

By Mr. BAUCUS (for himself, Mr. BENTSEN, Mr. BURDICK, Mr. CHAFEE, Mr. DODD, Mr. DURENBERGER, Mr. HART, Mr. HUMPHREY, Mr. KERRY, Mr. MITCHELL, Mr. MOYNIHAN, Mr. PELL, Mr. STAFFORD, Mr. LAUTENBERG, Mr. BINGAMAN, and Mr. LEAHY):

S. Con. Res. 97. Concurrent resolution to request the President to negotiate a North American Treaty on Air Pollution; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY:

S. 1954. A bill to amend title 5, United States Code, to authorize temporary family housing for certain de-

pendents of deceased members of the Armed Forces; and to amend title 37, United States Code, to authorize temporary payment of a basic allowance for quarters for certain dependents of deceased members of the armed services.

TEMPORARY MILITARY HOUSING FOR DEPENDENTS OF GANDER, NEWFOUNDLAND CRASH VICTIMS

● Mr. KENNEDY. Mr. President, the recent airline disaster in Gander, Newfoundland, which claimed the lives of 248 American service personnel is a tragedy for the families of those killed and for our country. Our prayers are with the anguished survivors who mourn the loss of their loved ones.

The bill I am introducing will assure that unnecessary financial hardship will not be added to the emotional stress of these families by allowing them to remain temporarily in military quarters without charge. This legislation is urgently needed because existing law requires that a reasonable value be charged for housing civilian employees in the United States. The Office of Management and Budget circular which implements the law allows dependents of deceased service members to remain in Government quarters for up to 60 days and pay either the fair market rental or an amount equivalent to the service members' housing allowance. This policy imposes a financial hardship on the dependents when housing allowances terminate on the death of the military member.

Dependents of military personnel living in the community at the time of the death of the personnel are also faced with financial hardship. In most instances they must continue to make rental or mortgage payments, even though they no longer receive the deceased military member's income.

This legislation will allow dependents of deceased service members to remain in government quarters without charge for 60 days. It will also provide a housing allowance to dependents of deceased military members who are not residing in government housing for a period not to exceed 60 days. This proposal offers dependents an opportunity to find other housing without imposing the additional financial burden and stress of a housing rental or mortgage payment during the period immediately following loss of the military breadwinner.

Any additional cost resulting from the enactment of this proposal will be negligible and will be absorbed in applicable appropriations.

This bill is a small, but significant way to ease the tremendous burdens of the service families who lost loved ones in the Gander crash. I urge my colleagues to adopt this measure quickly.●

By Mr. DODD:

S. 1955. A bill to authorize the importation of lottery materials for use in State lotteries; to the Committee on Finance.

IMPORTATION OF LOTTERY MATERIALS

Mr. DODD. Mr. President, lotteries conducted by State governments are increasingly important source of State revenues. In 1984 22 States and the District of Columbia—including my own State of Connecticut—generated over $8 billion in revenues in this manner. Spurred by shrinking tax bases and shares of Federal funds, several other States have authorized lotteries, although they have not yet commenced operations. Modern computer operations and security techniques ensure avoidance of the scandals that plagued lotteries in the 19th century.

Indeed, the growth in State lotteries is directly attributable to the enactment in 1974 of Public Law No. 93-583, which became 18 U.S.C. 1307. That law created an exception to 18 U.S.C. 1301, which bans the importation or transportation in interstate commerce of equipment, tickets, and other materials for use in a lottery. Under section 1307, the ban on imports does not apply to equipment, tickets, or materials concerning a lottery which is conducted by that State acting under the authority of State law, or which is designed to be used within a foreign country in a lottery which is authorized by the law of that foreign country.

Unfortunately, the drafters of Public Law No. 93-583 did not fully accomplish their intended amendment of Federal law to allow the free operation of State lotteries. The exception to ban on imports of lottery materials in the criminal laws, by oversight was not incorporated in the customs laws. Specifically, section 305 of the Tariff Act of 1930 (19 U.S.C. 1305) enumerates lottery tickets among the immoral articles which it prohibits from importation into the United States. The Customs Service has ruled that the 1974 amendments to the Criminal Code did not extend to title 19; therefore, the import ban remains in effect despite the intent of Congress.

This inadvertent drafting error should be corrected to free the procurement operations of State lotteries from Federal constraint, and to ensure reciprocity in the treatment of U.S. lottery vendors bidding for business in increasingly lucrative foreign markets. The legislation I introduce today is intended to accomplish those goals. It would add a new subsection (b) to 19 U.S.C. 1305 that parallels 18 U.S.C. 1307(b), thus allowing the importation of lottery materials in specifically limited circumstances; like 18 U.S.C. 1307(b), the exception is confined to materials used in authorized State lotteries. The legislation would complete the job Congress intended to accomplish over a decade ago, and benefit the State lotteries in their efforts to operate secure and efficient games. I ask unanimous consent that the text of the bill be printed in the RECORD following my remarks.

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

S. 1955

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

SECTION 1. STATE-CONDUCTED LOTTERIES.

Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305) is amended by adding at the end thereof the following new subsection:

"(b)(1) This section shall not apply to printed paper that may be used as tickets, advertisements, or other materials concerning a lottery which—

"(A) is conducted by a State under the authority of State law, or

"(B) is designed to be used in a foreign country in a lottery authorized by the law of that foreign country.

"(2) For purposes of this section—

"(A) The term 'State' means a State of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

"(B) The term 'foreign country' means any foreign country, empire, dominion, colony, protectorate, or any subdivision thereof.

"(C) The term 'lottery' means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds, or parts thereof, by chance to one or more chance takers or ticket purchasers. Such term does not include the placing or accepting of bets or wagers on sporting events or contests.".

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act shall take effect on the date that is 15 days after the date of enactment of this Act.

By Mr. MOYNIHAN:

S. 1957. A bill for the relief of Lynne Cleaver and her child, Leigh Alison Cleaver; to the Committee on the Judiciary.

RELIEF OF LYNNE CLEAVER AND HER CHILD LEIGH ALISON CLEAVER

Mr. MOYNIHAN. Mr. President, I rise to introduce a private bill for the relief of Lynne Cleaver and her child, Leigh Alison Cleaver.

The situation of Mrs. Cleaver, who is an Australian national, and her child is one that commends itself to me as ordinary decency in the treatment of persons at work in this country who have supported themselves and have made themselves invaluable members of the community, but who have also found themselves in the situation where through no fault of their own, they are likely to have their children separated one from the other if they are required to return to Australia.

It is my great hope that the Committee on the Judiciary might expedite the consideration of this matter and that the Immigration and Naturalization Service will, in the meantime, stay its deportation, which would

serve no useful purpose, and which would jeopardize children in a way that none of us would wish to have happen.

By Mr. DECONCINI:

S. 1958. A bill to prohibit the Department of Defense from obligating or expending any funds for the procurement of certain toilet cover shrouds; to the Committee on Armed Services.

TO CURB ABUSE IN DEFENSE PROCUREMENT SYSTEM

● Mr. DECONCINI. Mr. President, I am introducing legislation today aimed at curbing waste in the Department of Defense procurement system.

Ten months ago the weapons procurement reformers and concerned American taxpayers read about the $640 custom-made toilet seat covers built for Navy planes by the Lockheed Corp. After the ensuing public outcry and swirling controversy the company decided in February to lower the price to $100 each for 54 of the toilet parts. However, hoping to cap the controversy, the company invited 30 small plastics products firms to bid for the next lot of 10 covers. These companies have declined to bid on such a small quantity and Lockheed has thus decided to continue to supply covers to the Navy at their lowest possible price—$544 each. This type of arrogance by defense contractors cannot and should not be tolerated.

My bill, Mr. President, would not permit more than $125 to be obligated or expended by the Department of Defense during fiscal year 1986 for each plastic toilet cover shroud referred to as toilet assembly 941673-101. The $125 figure was arrived at by using the lowest bid offered by a private firm before the quantity was limited to 10.

My staff has spent time researching the cost of "civilian" toilet seats. Local drug stores and plumbing suppliers enumerated prices for fancy oak-stained seats and covers at $23.99; heavily padded, no-tear, and automatic return-to-form cushioned (guaranteed not to indent) at $25; regular generic plastic seats and cover at $7.99; and even your favorite college or professional team logo inscribed for $25 as you lift up the seat.

Many of my esteemed colleagues will consider this legislation frivolous and light-hearted. They might say this is an insignificant and paltry amount of money in comparison to high cost ticket items such as the B-1 bomber, the MX missile, or star wars. When Pentagon programs have a $302 billion military budget for this year—$827 million a day—the potential savings of $419 per toilet cover seems trivial. This amendment seeks to address the underlying problem of over-runs, waste and abuse. The growing publicity about the excesses—the $7,622 coffeemakers, the $439 hammers, and the $544 toilet covers—is symptomatic of this widespread perception of a gluttonous industry. If we allow the military contractors to continue this spectacular run of fraud, waste, and overcharge on spare parts—what hope do we have to keep them honest in their bids on weapons, aircraft and engines?

This bill is not intended to be humorous. My effort to flush this costly and flawed program into the open is a serious attempt to hold contractors to goals and targets and keep the military budget within prudent spending limits. The potential for public furor and condemnation increases dramatically if we cannot control and account for the small items in the procurement process. Contractors must realize we Senators are genuinely serious about controlling gross inefficiency and reckless use of taxpayers' money. Vigorous fact-checking and congressional oversight now will save us millions in future contracts.

Not long ago General Dynamics Corp. was indicted when three of its top officials were charged with defrauding the government on a weapons contract. The indictment alleges that General Dynamics tried to hide the cost overruns on the Division Air Defense antiaircraft gun project known as Divad. This involved shifting $7.5 million in excess costs to two other company accounts that were also funded by the Defense Department. In addition, General Dynamics did not pay any taxes between 1981 and 1984.

My amendment cannot be called ridiculous or outrageous if it intends to discourage waste and inefficiency. Whether it involves $500 or $7.5 million, we have to send a firm and resounding message to companies which overtly attempt to flush taxpayers' money down the drain. There were 72 suspensions and debarments of contractors abusing Government policy and procedure in 1980. This has dramatically proliferated to 402 in 1984 and 457 so far in 1985. This incredible increase can be attributed to better enforcement methods, more available money for defense programs, eroding ethical practices on the part of defense industries, and less concern voiced by the U.S. Congress. We cannot afford to let this continue.

Mr. President, it took Government much too long to uncover the abuse and overruns on spare parts. History cannot repeat itself on costly weapons including cruise missiles, fighter planes and laser systems in star wars. Cost overruns in these systems will eventually bust the budget. American taxpayers need to know that the expenditure of these tax dollars have been rigorously scrutinized. After all, Mr. President, if it costs over $500 to cover a toilet in an airplane, how much will it cost in space?

Mr. President, I ask unanimous consent that an editorial from the Los Angeles Times concerning the potential for abuse in the highly classified "black project areas" of the Pentagon be printed at the end of my statement. These programs are hidden from public view and have grown from $742 million in research and development in 1980 to $5.7 billion in 1985.

Mr. President, I also ask unanimous consent that the bill be printed in the CONGRESSIONAL RECORD.

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

[From the Los Angeles Times, Nov. 17, 1985]

DEFENSE DEPARTMENT ABUSES NEED FOR WEAPONS SECRECY

(By Richard C. Barnard)

Once again, the Defense Department is tip-toeing backward into the tar pits of public condemnation. The Public furor over spare parts pricing will pale by comparison with a second public backlash against defense spending that is likely to arrive soon.

In the coming months, the taxpayers gradually will realize that too many weapons projects and too many billions of dollars are hidden from public view in the rats' maze of highly "black" programs nurtured by the Pentagon. Those digging into their pockets to pay for an ample defense will grow resentful that so much is needlessly kept from them.

A wide range of costly weapons including a fighter plane, a bomber and a variety of cruise missiles are called black projects because they are both highly classified and compartmentalized. Money for the black programs is disguised by tucking it away in a number of public budget lines items. The black funds there are placed in what Pentagon officials call pockets. Few people know where the pockets are or how much is in them.

One black project, the Stealth bomber, is reported to be one of the most costly in the nation's history. Information about black projects is circulated to a comparatively tiny number of government and congressional officials.

Despite their cost and diversity, black projects are exempt from much of the fact-checking and congressional oversight common to billion-dollar weapons developed in plain view.

Major policy and budget decisions are made without benefit of the discussion and debate that are a normal part of decision-making in Washington.

The number and diversity of black projects once were controlled to keep the nation's real secrets secret. Since 1980, however, the Pentagon's use of black stamps has become a bureaucratic cancer. By unofficial count, black projects in 1980 totaled $742 million, or 6% of the Pentagon's $12.4 billion in research and development accounts.

By 1985 that figure had risen almost eightfold to at least $5.7 billion or 17% of the R&D total. That is what can be estimated with a calculator and common sense. Old hands in the Pentagon place the actual R&D figure closer to $9 billion. Procurement dollars push the total even higher.

The likelihood of bureaucratic abuse rises right along with the dollar amounts. "We need secrecy," says an industry official who has run black projects for years, "but a lot

of the programs are black because the people involved want to protect themselves. There has to be an end to it."

Cost overruns and system failures are easier to handle far from the spotlight's hot glare. It is simple to begin a new venture—needed or not—under the protective cover of a black stamp. Eventually, the security officer's power becomes a convenience.

When appropriate, secrecy is synonymous with defense. Survelliance and intelligence programs should be kept far from prying eyes. That is vital. But is it necessary that all aspects of the $47 billion Stealth bomber project be black? American taxpayer have never been asked. The Pentagon should release the budget, in general terms, and protect the technology.

Only months ago, senior Air Force officials rejected an internal plan to declassify much of the bomber project. With the exception of engine design and mounting, there is little about the Air Force Joint Tactical Missile that need by highly classifed.

It is only a matter of time before the public gets a peek inside the rats' maze and is repelled by what is there. A huge systems failure? Another crash of a black plane? A billion dollars squandered? What will be the equivalent of the infamous $650 hammer within the black system? It certainly is there somewhere. And it will be used for the same purpose as was the scandal over spare parts pricing: to damage public faith in the Pentagon and in the defense industry.

There are even larger reasons why the number and cost of black projects must be reduced. Our is an open society. We remain a free people partly because of our adversarial system of government. We normally choose the marketplace of ideas over the government censor.

There is a need for secrecy. But the Defense Department is abusing its broad authority for short-term gains.

Government and industry awakened far too late to the political implications of the horror stories about spare parts. Let us hope that sad performance is not repeated.

S. 1958

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, no funds appropriated to or for the use of the Department of Defense may be obligated or expended for the procurement of any plastic toilet cover shrouds, identified as toilet assembly number 941673-101, at a unit cost in excess of $125.●

By Mr. CHAFEE:

S. 1959. A bill to clarify the tax treatment of certain mortgage related securities, to authorize the ownership of certain mortgage loans in multiple class arrangements, and for other purposes; to the Committee on Finance.

SECONDARY MARKET TAX AMENDMENTS

● Mr. CHAFEE. Mr. President, I am today introducing the Secondary Market Tax Amendments of 1986 [SECTA]. This bill is designed to clarify and modernize the tax treatment of the instruments issued in the growing secondary mortgage market. Currently, securities in this market are issued and traded under a set of anachronistic tax rules that are causing inefficiencies in the market and creating confusion for investors as to the proper tax treatment of earnings on these securities.

The legislation is expected to reduce mortgage interest costs for homeowners by facilitating investments in mortgages, and to provide greater flexibility, higher yields, and reduced transaction costs to financial institutions seeking to liquidate portions of their portfolio of seasoned mortgages. The legislation is intended to be revenue neutral. Indeed, I hope there may be some revenue gains from improved taxpayer compliance.

In 1983 about $200 billion in home mortgage loans were originated by thrift institutions, mortgage bankers, commercial banks, and other lenders. Although most of these loans were made to be held in the portfolio of the original lender, more than a third of the loans—about $70 billion—were sold to investors in the form of securities backed by mortgage loans. An additional $15 billion of seasoned mortgage loans, originated some years earlier and initially held in the lender's portfolio, were also sold to investors in the form of mortgage backed securities. The market in which these mortgage loans are pooled, turned into securities, and sold to investors is known as the secondary mortgage market.

The existence of an efficient secondary market for both new loans and older seasoned mortgage loans is of critical importance to mortgage lenders of all types. And, since the secondary market can help lower mortgage interest rates for the consumer, improvements in the efficiency of the secondary market can also spur greater home construction and home ownership.

The secondary mortgage market is not only of concern to the housing sector. It is a large and important part of the financial and credit markets. By the end of 1984 the total amount of outstanding publicly issued mortgage backed securities was about $300 billion. In comparison, outstanding publicly issued corporate securities totaled slightly over $400 billion.

Despite its importance to the housing industry, and its significant size in relation to the rest of the credit markets, the secondary mortgage operates under a set of tax rules that are at best ambiguous and uncertain, and at worst simply ill-suited to the unique characteristics of the market. In almost all cases, the inadequacy of these rules does not result from an intentional decision to tax mortgage-backed securities in a particular way to serve some competing policy goal. Rather, the inadequacy results from the rapid growth of the secondary market in the last 15 years, and the concomitant failure to focus on the problems arising from applying existing rules to these transactions.

A fundamental feature of any successful mortgage-backed security is the imposition of tax liability arising from mortgage payments on the investors in the security, rather than the issuer of the security. Under current law this can be accomplished in two ways. The most common way is to use a so-called pass-through investment vehicle, in which the mortgages are legally owned by the trustee of a grantor trust, and beneficially owned by the investors. Cash payments on the underlying mortgages, as well as all tax consequences of the ownership of such mortgages are passed through to the investors as beneficiaries of the trust. The second way is to create a taxable entity that issues bonds—backed by mortgage loans—called collateralized mortgage obligations [CMO's]. In this situation, the bond issuer recognizes income arising from ownership of the mortgages and deducts interest on the obligation issued to the bondholders, who in turn report the interest as income on their tax returns.

Unfortunately, the tax rules governing both of these investment vehicles were not designed with mortgage-backed securities in mind. The grantor trust rules were written principally to deal with family trusts, and the rules governing corporate obligations were written with traditional corporate securities in mind.

Current law permits investors to acquire direct interests in a pool of mortgage loans by acquiring ownership interests in a grantor trust. Under the grantor trust rules, the trust is not treated as a taxable entity. The trust investors, who as beneficiaries are entitled to receive all net income from the trust assets, are instead required to pay taxes on their allocable portion of the trust's income. This method of taxation is commonly referred to as pass-through treatment. It is similar to the treatment afforded to partnerships and S corporations.

Under longstanding principles of case law and Treasury regulations, an investment trust qualifying for pass-through treatment must provide terms of investment that are essentially fixed when the trust is created. Thus, mortgages generally cannot be bought and sold or replaced with other investments without losing the benefits of pass-through treatment. If a trust provides for such powers of active investment management it will be characterized as an association taxable as a corporation. The imposition of a separate corporate income tax on the income of the trust, in addition to the shareholder level income taxes would more than offset the financial advantages of pooling mortgages into an investment vehicle.

Under proposed Treasury regulations, pass-through treatment is denied to certain trusts with a fixed portfolio of investments where the trust provides for multiple classes of

beneficial ownership. Under the proposed regulations, such trusts are entitled to pass-through treatment only if the different classes of ownership represent ownership in specifically identified stripped coupons or stripped bonds that are subject to the rules of code section 1286. The regulations deny pass-through treatment of so-called fast-pay/slow-pay trusts that entitle different classes to receive different payments of interest and principal that are not specifically identified, but identified by reference to the timing of the receipt of cash payments by the trust—that is, the cash-flows at the trust level).

Despite the fact that CMO's and pass-through trust arrangements are similar, there are a number of advantages to the trust format. In the trust format, the thrift institution, mortgage banker, commercial bank, or other institution sells the mortgages to the trust. In the CMO format, the institution retains ownership of the mortgages and issues bonds secured by the mortgages.

The advantages of selling mortgages to a trust include the following:

First, selling mortgages, instead of issuing debt backed by mortgages, means that added debt does not need to be carried on an institutions's balance sheet. Balance sheet concerns now effectively preclude many mortgage bankers, thrifts, and other financial institutions from participating in the CMO market to any significant extent.

Second, in a CMO issue that is classified as debt for tax purposes, the issuer may be required to retain an equity interest in the mortgages. In other words, the issuer cannot fully borrow against the value of the mortgages, and must retain a residual interest in the mortgages. With less cash received up front, the CMO is less useful as a financial liquidity device for thrifts seeking to restructure their portfolios. This equity requirement also imposes additional legal, accounting and capital costs on the issuer. In part, this is attributable to the fact that current law is unclear as to whether any equity at all is required. These transaction costs may reduce the financial advantages of the CMO.

Third, investments in CMO's, as opposed to investments in a grantor trust containing mortgages, do not technically qualify as mortgage investments. This is of concern to thrifts and other entities that are required by various tax rules to invest in mortgages.

Fourth, the technical tax rules for CMO's are uncertain and may impose taxes on an issuer despite the fact that it has not truly received any economic gain. This phantom income problem of income without gain can be quite serious where the collateral is seasoned mortgages that bear less tha.. current market interest rates.

The bill I am introducing today is based on the technical recommendations of a group of distinguished tax practitioners and financial experts who have been meeting to study the tax problems of the secondary mortgage market transactions for almost a year now. Their efforts to suggest helpful legislative changes in this area will be the first step in a legislative process that I am sure will involve further refinements of this proposal. I welcome the comments and suggestions of the Treasury Department and other interested parties in the private sector, such as the tax bar and mortgage finance experts. In that regard, Mr. President, I also wish to announce that as chairman of the Senate Finance Subcommittee on Taxation and Debt Management I intend to schedule a hearing early next year on the provisions of this bill, and other possible approaches to the tax issues facing the secondary mortgage market.

The legislation has four major provisions:

First, the bill permits CMO-like investment arrangements to be structured as ownership interests in a passive, multiple class entity—referred to as a collateralized mortgage security or CMS—with strict rules designed to ensure that the amount, timing, and character of income realized by the investors is not reduced, slowed down or otherwise modified so as to be adverse to the revenues of the Treasury.

Second, the bill clarifies the precise method of computing original issue discount on CMS's, in a manner that reduces inappropriate phantom income taxable to issuers.

Third, the bill provides that investments in the newly authorized CMS are treated as investments in mortgages under the Tax Code. This would enable thrift institutions and real estate investment trusts to invest in the new instrument and retain the tax advantages of investing in mortgages.

Fourth, the bill provides for expanded information reporting on mortgage related securities.

The tax rules and principle which the bill applies to mortgage backed securities were written with residential mortgages in mind, principally because that is the area where there is the greatest volume of secondary market transactions and thus the greatest need for clarification of the Tax Code. Residential mortgages are generally obligations of individuals, and generally self-amortizing loans. This contrasts with the traditional bonds and debentures traded in the capital markets, which tend to be corporate obligations with balloon payments of principal.

The focus of the bill is on mortgages for another reason. There is much more data, and better understanding, of how mortgages and mortgage backed securities behave than there is of other asset-based securities. However, it is my understanding and expectation that as this bill is considered, one of the issues that will arise is whether the bill's proposed tax rules should be extended to other types of asset-based securities, such as car loans or consumer credit loans.

It is my expectation that if the Congress concludes that these rules make sense for mortgage backed securities, and we come to more fully understand how they would apply to other asset-based securities, then it may be sensible to extend these rules to a broader category of asset-based securities. I welcome the support and comments of my colleagues in trying to establish clearer tax rules which could eventually apply to many types of asset-based securities.

Finally, there is one important point I would like to make about the scope of this bill. The major impetus for this legislation, in my view, is the need to clarify and rationalize the tax rules governing a large and important segment of the capital markets, the secondary mortgage market. There is an existing industry with existing financing mechanisms that are in need of sensible and neutral tax rules, that reflect the true economic substance of the transactions involved. This bill is strictly a tax bill that does not address any credit policy issues, or differentiate among different types of securities on the basis of any credit policy concerns, and consequently debate on the bill should be confined to tax policy issues.

At this point, Mr. President, I would ask unanimous consent to include in the RECORD the text of the bill and a technical explanation of the bill.

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

S. 1959

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 Secondary Market Tax Amendments of 1986."

SEC. 2. AMENDMENTS TO ORIGINAL ISSUE DISCOUNT RULES.

Section 1272(a) of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new paragraphs:

"(7) If the schedule of amounts payable on any debt instrument is subject to acceleration under a formula based principally on the extent of prepayments of qualified obligations owned by the issuer, then

"(A) the increase described in paragraph (3) shall be determined under paragraph (8), and

"(B) the issuer may elect, subject to such conditions as may be prescribed by the Secretary, to apply this section using a regular accrual period shorter than that required by paragraph (5).

For purposes of this paragraph, a qualified obligation includes any obligation or interest described in section 1290(e) (1) or (2) (without regard to any requirement of assignment to an issue).

"(8) In the case of an instrument to which this paragraph applies, the increase described in paragraph (3) for an accrual period shall be the excess (if any) of—

"(A) the sum of—

"(i) any payments during the accrual period of amounts included in the stated redemption price at maturity of the instrument, and

"(ii) the present value of the debt instrument at the beginning of the following accrual period, determined using as the discount rate the original yield to maturity of the debt instrument (within the meaning of paragraph (3)), over

"(B) the adjusted issue price of the instrument at the beginning of the accrual period.

In the case of any debt instrument to which this paragraph applies, no prepayments on qualified obligations (other than those guaranteed to occur) shall be anticipated in determining the instrument's original yield to maturity under this section, or in determining the instrument's present value under this paragraph."

SEC. 3. MULTIPLE CLASS INTERESTS IN CERTAIN DEBT INSTRUMENTS.

Part V of Subchapter P of Chapter 1 of the Internal Revenue Code of 1954 (relating to special rules for bonds and other debt instruments) is amended by adding at the end thereof the following new Subpart:

"SUBPART E. MULTIPLE CLASS INTERESTS IN CERTAIN DEBT INSTRUMENTS.

"Sec. 1290. Definitions.
"Sec. 1291. Consequences of Transferring Assets to Issue.
"Sec. 1292. Taxation of Holders Generally.
"Sec. 1293. Basis Rules and Transfers of Interests.
"Sec. 1294. Outside Discount and Premium.
"Sec. 1295. Special Rules.

"SEC. 1290. DEFINITIONS.

"For purposes of this subpart—

"(a) An 'issue' of collateralized mortgage securities is an arrangement for the division of interests in a portfolio of qualified obligations and permitted investments into one or more classes of interests.

"(b) An 'issuer' is a corporation, partnership, trust, or association availed of to hold one or more portfolios of qualified obligations and permissible investments in one of more issues.

"(c) A 'regular interest' is a registered transferable interest in an issue whose terms are fixed on the first day of the first taxable year of the issue, and which—

"(1) unconditionally entitles the holder to receive specified principal payments or other similar amounts the timing (but not the amount) of which may be contingent upon the extent of prepayments on qualified obligations and the amount of income from permitted investments;

"(2) may provide for interest or similar amounts to be paid or accrued on the outstanding balance of the payments described in the preceding paragraph.

"(d) A 'residual interest' is a registered transferable interest in an issue whose terms are fixed on the first day of the first taxable year of the issue and which entitles the holder only to receive one or more payments the amount and timing of which are wholly contingent upon—

"(1) the extent of prepayments on qualified obligations;

"(2) the extent of income from permitted investments; or

"(3) contingent payments on qualified obligations.

"(e) A 'qualified obligation' includes—

"(1) Any obligation (including any participation or certificate or beneficial ownership therein) that—

"(A) is transferred to the issue on the first day of the first taxable year of the issue, and

"(B) is principally secured, directly or indirectly, by an interest in real property;

"(2) Any interest (including any participation or certificate of beneficial ownership therein) in an issue of collateralized mortgage securities that is transferred to the issue on the first day of the first taxable year of the issue;

"(3) Any interest or obligation substituted for a defective interest or obligation described in paragraph (1) within 2 years of the first day of the first taxable year of the issue;

"(4) Any guaranteed investment contract.

"(5) Any property acquired in connection with the default or imminent default of a qualified obligation described in paragraph (1), (2), (3) or (4).

"(f) A 'permitted investment' includes any cash, cash items, government securities (within the meaning of section 856(c)(5)) or other money market debt instruments that are transferred to the issue on the first day of the first taxable year of the issue or subsequently acquired out of the proceeds of such investments or qualified obligations pursuant to—

"(1) the establishment or maintenance of reasonable reserves incidental to the holding of qualified obligations, or

"(2) the temporary reinvestment of portfolio cash flows.

"(g) A 'holder' is an owner of one or more interests of an issue.

"SEC. 1291. CONSEQUENCES OF TRANSFERRING ASSETS TO ISSUE.

"(a) HOLDERS, NOT ISSUER OR ISSUE, SUBJECT TO TAX.—

"(1) Except as otherwise provided in section 1295(a) (relating to penalty taxes) an issuer electing (in the manner prescribed by regulations) to apply the provisions of this section, and any issue subject to such election, shall not be subject to tax imposed by this subtitle on income attributable to the ownership or disposition of qualified obligations or permitted investments of the issue.

"(2) Notwithstanding the form in which interests are issued, the holders (including the issuer to the extent the issuer is also a holder)—

"(A) shall be subject to taxation on such income in the manner prescribed in this subpart, and

"(B) for purposes of this subtitle shall be treated as the owners of undivided interests in the qualified obligations and permitted investments of the issue (in proportion to the adjusted basis of the holder's interest, divided by the aggregate adjusted basis of all outstanding interests of the issue).

"(b) TRANSFERS OF PROPERTY TO ISSUE.—

"(1) RECOGNITION OF GAINS IN GENERAL.—Upon the transfer of property to an issue, gain shall be recognized to the transferor to the extent such property is transferred in exchange for money and any other property (other than residual interests).

"(2) RECOGNITION OF LOSSES IN GENERAL.—Upon the transfer of property to an issue, loss shall not be recognized to the transferor to the extent such property is transferred in exchange for money and other property (other than regular and residual interests).

"(3) ALLOCATION OF BASIS OF PROPERTY TRANSFERRED.—The amount of gain or loss recognized under paragraphs (1) and (2) shall be determined by allocating the basis of the property transferred in proportion to the amount of money and the fair market value of the other property (including interests) received. For purposes of the preceding sentence, if on the first day of the first taxable year of the issue the fair market value of the residual interests in the issue is less than 1 percent of the fair market value of all interests in the issue, the issuer may elect to treat such residual interests as having a fair market value equal to zero.

"(4) DEFERRED RECOGNITION OF GAINS AND LOSSES.—Any gain (or loss) not recognized to the holder of an interest pursuant to paragraph (1) (or paragraph (2)) shall be treated as outside discount (or outside premium) subject to section 1294.

"(5) DEFERRED RECOGNITION OF GAINS.—The Secretary may prescribe regulations providing for the deferred recognition of gain in a transfer subject to paragraph (1), to the extent the interests received and owned by the transferor are in the aggregate substantially similar to the property transferred.

"(6) ADJUSTED BASIS OF INTERESTS.—The adjusted basis of an interest received in a transfer described in paragraphs (1) or (2) shall be equal to the amount of money and the fair market value of property transferred in exchange for the interest (determined as of the first day of the first taxable year of the issue).

"(c) RECOVERY OF EXPENSES OF ISSUE.—

"(1) GENERAL RULE.—Expenses paid or incurred by any holder, or the withholding of any expenses from amounts otherwise payable to any holder (other than deductions allowable to the beneficial owner of qualified obligations pursuant to the provision's of section 671) shall not be taken into account in determining the holder's income under section 1292 or section 1294. Such expenses shall be recovered in the manner prescribed by this subsection.

"(2) OPERATING EXPENSES.—Expenses paid or incurred by the issuer, any holder, or any other taxpayer in connection with the operation of the issue (whether or not such expenses are subject to being withheld from amounts otherwise payable to the taxpayer as a holder) shall be recovered as if the issue were a debt instrument issued by the taxpayer responsible for such expenses.

"(3) ISSUANCE EXPENSES.—Expenses paid or incurred by the issuer (whether or not such expenses are subject to being withheld from amounts otherwise payable to the issuer as a holder) in connection with the creation of an issue shall be allocated among the interests sold or exchanged and the interests retained by the issuer in proportion to their respective fair market values. Expenses in connection with the sale or exchange of interests shall be allocated to the interests sold or exchanged and shall be recovered as selling expenses. Any expenses allocated under this paragraph to interests retained shall be recovered as if such expenses were outside premium (within the meaning of section 1294).

"SEC. 1292. TAXATION OF HOLDERS.

"(a) REGULAR INTERESTS.—The holder of a regular interest shall include as ordinary interest income—

"(1) the amount of income (including original issue discount) which would be includible by an accrual basis holder if such interest were a debt instrument to which section 1272(a) applied (determined without regard to section 1272(a)(6)), and

"(2) the sum of the daily portions of additional issue income allocable to the interest under subsection (c) for each day during the

taxable year on which such holder holds such interest.

For purposes of this subsection, in determining the amount of original issue discount described in paragraph (1) for any accrual period, an interest shall be considered to have an adjusted issue price at the beginning of the accrual period equal to its adjusted basis at the beginning of the period.

"(b) RESIDUAL INTERESTS.—

"(1) IN GENERAL.—The holder of a residual interest shall include as ordinary interest income the sum of the daily portions of residual income determined under paragraph (2), and the daily portions of additional issue income allocated to the interest under subsection (c) for each day during the taxable year on which such holder holds such interest.

"(2) RESIDUAL INCOME.—For purposes of paragraph (1) the daily portion of residual income shall be determined by allocating to each day in the accrual period its ratable portion of amounts paid or credited with respect to the interest for the period, reduced (but not below zero) by its basis recovery amount.

"(3) BASIS RECOVERY AMOUNT.—The basis recovery amount of an interest for an accrual period is the sum of—

"(A) the unused basis recovery amount carried forward from the preceding accrual period, and

"(B) the allocable portion of the adjusted basis of the interest on its issuance date, determined by allocating such basis ratably over its estimated duration (determined as of its issuance date).

"(4) UNUSED BASIS RECOVERY AMOUNT.—The unused basis recovery amount for an accrual period is the excess of

"(A) basis recovery amount for such period over,

"(B) the amounts paid or credited with respect to the interest for the period.

"(c) ADDITIONAL ISSUE INCOME.—

"(1) DETERMINATION OF AMOUNT OF ADDITIONAL ISSUE INCOME.—For purposes of this subsection, the additional issue income for an accrual period is the excess of—

"(A) the cumulative amount of taxable income which would have been includible with respect to the issue for the term ending with the end of the accrual period, if the issue were a corporation reporting income on the accrual method with a taxable year beginning on the first day of its first taxable year, over

"(B) the sum of—

"(i) the cumulative amount of income includible under this section (determined without regard to section 1294), for the term ending with the end of the prior accrual period, and

"(ii) the income includible under subsections (a) and (b) (determined without regard to section 1294) for the period.

"(2) SPECIAL RULES.—For purposes of subparagraph (A) of the preceding paragraph—

"(A) All gains and losses on the sale, exchange, or redemption of qualified obligations and permitted investments shall be treated as giving rise to ordinary income and loss;

"(B) No deductions shall be allowed for any expenses other than expenses allowable to the beneficial owner of a qualified obligation under section 671;

"(C) The basis of property transferred to an issue shall be its fair market value on the first day of the first taxable year of the issue; and

"(D) The Secretary may prescribe such additional exceptions and rules as may be necessary to implement the purposes of this subsection.

"(3) ALLOCATION RULES.—

"(A) GENERAL RULE OF ALLOCATION.—Additional issue income for an accrual period shall be allocated among all regular interests outstanding at the end of the period in proportion to the amount of original issue discount described in section 1292(a)(1) with respect to such interests for the period.

"(B) LIMITATION TO UNTAXED DISCOUNT.—If the application of paragraph (A) would result in the allocation of additional issue income to any interest in excess of its untaxed discount (determined as of the beginning of the accrual period), then additional issue income shall be allocated to such interest only to the extent of such untaxed discount. Any additional issue income not allocated by the application of the preceding sentence shall then be allocated by applying paragraph (A) and this paragraph as if such interest was not outstanding.

"(C) UNTAXED DISCOUNT.—For purposes of this section, the untaxed discount of a regular interest at the beginning of an accrual period is the excess of:

"(1) the original issue discount of such interest determined as if it were a debt instrument to which section 1272(a) applied over,

"(2) the sum of the adjustments to the adjusted basis of such interest under section 1293(a) for all prior accrual periods.

"(D) ALLOCATION TO RESIDUAL HOLDERS.—Any additional issue income not allocated to regular interests for an accrual period shall be allocated among all residual interests outstanding at the end of the period, in proportion to the amount of income includible with respect to each such interest for the period under subsection (b).

"SEC. 1293. BASIS RULES AND TRANSFERS OF INTERESTS.

"(a) BASIS ADJUSTMENTS.—The adjusted basis of an interest in the hands of any holder shall be equal to its adjusted basis on the first day of the first taxable year of the issue—

"(1) increased by the amount of income includible with respect to the interest under section 1292 (determined without regard to section 1294), and

"(2) decreased (but not below zero) by any amounts distributed with respect to the interest.

"(b) TRANSFERS OF INTERESTS.—If a holder transfers an interest in a sale or other disposition, gain or loss shall be recognized to the transferor as if the interest were a debt instrument with a basis in the hands of the transferor equal to the adjusted basis of the interest on the date of the transfer.

"(c) PARTIAL OR COMPLETE WORTHLESSNESS OF INTERESTS.—A holder of an interest shall be entitled to a deduction for losses attributable to the partial or total worthlessness of an interest (but only to the extent such worthlessness is attributable to the partial or total worthlessness of a qualifying obligation or permitted investment of an issue) to the same extent as if the interest were a debt instrument with a basis in the hands of the owner of such instrument equal to the adjusted basis of the interest on the date the loss arises (increased by the amount of any outside premium (or decreased by the amount of any outside discount) not accounted for under section 1294 as of the date the loss arises).

"SEC. 1294. OUTSIDE DISCOUNT AND PREMIUM.

"(a) DEFINITIONS.—

"(1) A holder's outside premium is the excess (if any) of the holder's cost for the interest, over the adjusted basis of the interest on the date of acquisition by the holder.

"(2) A holder's outside discount is the excess (if any) of the adjusted basis of the interest on the date of acquisition by the holder over the holder's cost for the interest.

"(b) REGULAR INTERESTS.—

"(1) RECOVERY OF OUTSIDE PREMIUM IN GENERAL.—Outside premium with respect to a holder's regular interest that does not exceed the untaxed discount of the interest on the date of acquisition by the holder shall be recovered as a deduction amortized in proportion to the inclusion of amounts treated as original issue discount and additional issue income with respect to the interest. The excess outside premium, if any, shall be recovered as a deduction amortized in proportion to the recovery of principal or similar amounts.

"(2) INCLUSION OF OUTSIDE DISCOUNT IN GENERAL.—Outside discount with respect to a holder's regular interest shall be includible in income in the same manner as if the interest were an obligation acquired with market discount equal to the holder's outside discount.

"(3) SALES OF INTERESTS.—Any outside premium not accounted for under paragraph (1) (or outside discount not accounted for under paragraph (2)) before an interest is sold or exchanged in a transaction in which gain or loss is recognized shall be treated as if attributable to an increase (or decrease in the case of outside discount) in the adjusted basis of the interest immediately before such sale or exchange.

"(4) CHARACTER OF GAIN OR LOSS, ETC.—The character of gain or loss attributable to paragraphs (2) or (3) of this subsection (whether attributable to the holding of an interest or to its retirement or sale or exchange) shall be determined by treating the interest as an obligation of the same type as the qualified obligations and permitted investments comprising the portfolio of the issue. If the portfolio is comprised of assets of different types of issuers, this paragraph shall be applied by allocating such gain or loss among the different types of assets in proportion to their adjusted basis in the hands of the issue (except to the extent the Secretary prescribes a different allocation method). If 85 percent or more of the aggregate adjusted basis of such assets is attributable to one type of asset, all of the assets shall be treated as of that type.

"(c) RESIDUAL INTERESTS.—

"(1) OUTSIDE PREMIUM.—Outside premium with respect to a residual interest shall be recovered by the holder as if a ratable portion of such premium were added to the basis recovery amounts of such interest for the period (if any) beginning with the date of acquisition of the interest and ending with the end of the estimated duration of the interest (within the meaning of section 1292(b)(3)).

"(2) OUTSIDE DISCOUNT.—A holder's outside discount on a residual interest shall be included in income as if a ratable portion of the discount were subtracted from the basis recovery amounts of such interest for the period (if any) beginning with the date of acquisition of the interest and ending with the end of the estimated duration of the interest (within the meaning of section 1292(b)(3)).

"(3) SALES OF INTERESTS.—Any premium not accounted for under paragraph (1) (or discount not accounted for under paragraph (2)) before an interest is sold or exchanged in a transaction in which gain or loss is rec-

ognized shall be treated as if attributable to an increase (or decrease, in the case of discount) in the adjusted basis of such interest immediately before such sale or exchange.

"(4) CHARACTER OF GAIN OR LOSS, ETC.—The character of gain or loss attributable to paragraphs (2) or (3) of this subsection (whether attributable to the holding of an interest or to its retirement or sale or exchange) shall be determined by treating the interest as an obligation of the same type as the qualified obligations and permitted investments comprising the portfolio of the issue. If the portfolio is comprised of assets of different types, this paragraph shall be applied by allocating such gain or loss among the different types of assets in proportion to their adjusted basis in the hands of the issue (except to the extent the Secretary prescribes a different allocation method). If 85 percent or more of the aggregate adjusted basis of such assets is attributable to one type of asset, all of the assets shall be treated as of that type.

"SEC. 1295. SPECIAL RULES.

"(a) TAXES ON PROHIBITED TRANSACTIONS.—There is hereby imposed on the issuer a tax of 100% of the net income derived from the following prohibited transactions (determined in a manner similar to that prescribed in section 857(b)(6):

"(1) the sale or other disposition of any qualified obligation transferred to an issue, other than pursuant to—

"(A) the substitution of a defective obligation within 2 years of the first day of the first taxable year of the issue;

"(B) the bankruptcy or insolvency of the issuer or the issue;

"(C) a qualifying complete liquidation described in subsection (b).

"(D) dispositions incident to the foreclosure, default, or imminent default of an obligation;

"(2) the receipt of any income attributable to any assets transferred to an issue other then qualified obligations and permitted investments;

"(3) the receipt of any income from the sale or operation of property described in section 1290(e)(5) more than 1 year after its acquisition by the issue; and

"(4) the receipt or retention by the issue of amounts representing fees or other compensation for services.

"(b) RULES FOR COMPLETE LIQUIDATIONS.—

"(1) REQUIREMENTS FOR COMPLETE LIQUIDATION.—If the issuer adopts a plan of complete liquidation and,

"(A) all of the assets of the issue (other than cash) are sold within a 90-day liquidation period ending no later than 90 days after the adoption of the plan, and

"(B) all of the cash proceeds of the liquidation are credited or distributed to holders on the last day of such liquidation period, then the provisions of paragraph (2) of this subsection shall apply.

"(2) TREATMENT OF COMPLETE LIQUIDATION.—Except as otherwise provided in regulations consistent with the purposes of this subsection, in the case of a complete liquidation to which this paragraph applies—

(A) no gain or loss shall be recognized to the issue for purposes of section 1292(c)(1) on the sale of any qualified obligations during the liquidation period, and

(B) amounts credited or distributed to holders (other than amounts representing interest or similar amounts) shall be treated as amounts received upon the sale or exchange of an interest.

"(c) PROCEDURAL PROVISION.—

"(1) ANNUAL RETURNS.—Every issuer shall file an annual return for each issue providing such information as the Secretary may require for the purpose of carrying out the provisions of this subpart. Each failure to comply with this requirement shall be treated as a failure to comply with this section 1275(c)(2) with respect to a separate issue.

"(2) TAX TREATMENT OF ISSUE ITEMS.—Under regulations prescribed by the Secretary, provisions similar to those contained in sections 6241, 6242, 6243, 6244, and 6245 shall apply to the issuers and holders of any issue."

"(d) SPECIAL RULES APPLICABLE TO RESIDUAL INTERESTS.—

(1) Any statement in a prospectus subject to the Securities Act of 1933, stating the estimated prepayment rate and estimated reinvestment rate used in determining the estimated lives of interests for purposes of pricing such issue may be relied upon in estimating the duration of a residual interest under section 1292(b), unless such estimated rates are clearly erroneous.

(2) The Secretary may, by regulation, prescribe rules (in place of the provisions of section 1292(b)) applying the principles of section 1286 to—

"(A) residual interests that entitle the holder to payments wholly contingent upon the receipt of contingent payments on qualified obligations (excluding contingencies related to the prepayment of such obligation), and

"(B) residual interests that entitle the holder to receive payments of interest on qualified obligations based on a rate of interest payable on such obligations in excess of the highest coupon rate payable on a substantial portion of interests in the issue."

SEC. 4. TAX COMPLIANCE PROVISIONS.

Section 6049(d) of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new paragraph:

"(7) MULTIPLE CLASS INSTRUMENTS.—

"(A) INTEREST ON COLLATERALIZED MORTGAGE SECURITIES.—For purposes of subsection (a), the term "interest" includes amounts includible as ordinary interest income under section 1292 (determined without regard to sections 1291 and 1294).

"(B) REPORTING OF CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, or interest on any obligation to which section 1272(a)(8) applies, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), and (K).

"(C) ADDITIONAL INFORMATION.—Except as otherwise provided in regulations, any return or statement required to be filed or furnished under this section with respect to interest income described in subparagraph (B) of this paragraph shall also provide information setting forth the adjusted basis of the instrument or interest to which the return or statement relates at the beginning of each accrual period with respect to which interest income is required to be reported on such return or statement."

SEC. 5. EFFECTIVE DATES.

(a) The amendments made by section 2 shall apply to debt instruments issued after the date of enactment of this Act.

(b) The amendments made by section 3 shall apply to property transferred to an issue after the date of enactment of this Act.

(c) The amendments made by section 4 shall apply to all debt instruments and issues to which this Act applies.

(d) Any issuer of a debt instrument or issue of collateralized mortgage securities issued after the date of introduction of this bill may elect (subject to such conditions as the Secretary of the Treasury may prescribe by regulations) to apply the provisions of sections 2, 3, and 4, of this Act to such issue.

TECHNICAL EXPLANATION OF THE SECONDARY MARKET TAX AMENDMENT OF 1986 [SECTA]

OVERVIEW

The bill would clarify the proper method of applying the OID rules of current law to mortgage related debt where the timing of payments by the issuer of the debt obligation is not fixed but is related to the timing of payments received by the issuer on the underlying loans backing the debt obligation.[1]

The bill would also authorize a new multiple class, mortgage related security referred to as a collateralized mortgage security or CMS. For Federal tax purposes, the issuer would be treated as transferring to the security holders beneficial ownership of the underlying loans. Rules would be provided to ensure that security holders are taxed appropriately.[2]

In addition, the bill would require issuers of mortgage related securities to file information returns reporting the security holders' interest income.[3]

The bill is intended to solve a variety of tax problems and anomalies that have arisen in the context of securities backed by mortgage loans. However, the principles underlying the bill's provisions are not industry specific, and could be applied to securities backed by other types of debt instruments similar to mortgages.

1. Clarification of OID Rules

A. Present Law OID Computation

Under present law, the amount of OID required to be accounted for currently is computed under the so-called constant yield method. Under that method, the first step is to compute an obligation's yield assuming that it has a constant yield to maturity.

The OID for the first 6-month accrual period is computed by multiplying the obligation's yield by its initial issue price, and subtracting any amount payable as interest during that period. For the succeeding period, the obligation's new adjusted issue price is computed by adding to its initial issue price the amount of OID previously reported and subtracting any payments of stated redemption price.

The OID for the period is then computed with reference to the new adjusted issue price in the same manner. This method is applied for each succeeding accrual period until the obligation is redeemed.

B. Applying the OID Rules to Mortgage-Backed Debt

In theory, the periodic adjustments to the obligation's issue price should reflect the increase in the obligation's fair market value, as the period within which the discount will be realized is shortened. This mechanism should ensure that there will be no artificial gains or losses on the sale or redemption of an OID obligation prior to maturity.

In the case of mortgage backed debt, prepayments on underlying loans can alter the obligation's payment schedule, rendering the constant yield method less accurate as a method of accounting for interest income and deductions, and as a method of keeping

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Footnotes at the end of article.

track of the obligation's adjusted issue price or adjusted prepayments. Without appropriate adjustments for the effect of prepayments, investors and issuers may be overtaxed or undertaxed in comparison to their economic income. In addition, amounts that in economic terms constitute interest may be converted into capital gains.

Several methods have been proposed as possible ways to take into account the effect of prepayments in applying in OID rules. The method adopted by the bill accelerates the recognition of income attributable to the effect of prepayments on the obligation's payment schedule and substantially diminishes or eliminates the possibility of converting ordinary interest income into capital gains. The issuer's interest deductions are accounted for on the same method as the holder's income.

C. Proposal

Instead of computing OID and determining the obligation's new adjusted issue price by reference to the amount of OID previously recognized, the bill would determine the amount of OID to be reported by reference to changes in the obligation's adjusted issue price.[4] The advantage of this method is that adjusted issue price for any period can be determined with greater accuracy simply by determining the present value of the obligation's scheduled payments, as adjusted to take account of the effect of prior prepayments.

Under the bill, the adjusted issue price of a debt obligation at the beginning of any period is the present value of its outstanding scheduled payments after adjusting the payment schedule to take into account prior prepayments, assuming no further prepayments, and discounting at the obligation's yield to maturity.[5] If the yield curve is level, as assumption embodied in the constant yield method, the adjusted issue prices determined in this manner would closely approximate the obligation's fair market value.

Once adjusted issue prices are determined, OID is derived by applying the formula embodied in current law.* Under this formula, the OID for a given period is equal to the adjusted issue price at the beginning of the succeeding period, minus the adjusted issue price at the beginning of the given period, plus the amount of stated redemption price paid in the given period.[6] Generally, this amount will be a positive number, in which case it will be the amount of OID deductions allowable to the issuer and the amount of OID income recognized by the holder.

In theory, a negative OID amount produced by this formula would reflect premature accrual of OID in prior periods. Such a negative amount should be reflected in a deduction to the holder and income to the issuer. Since the method prescribed by the bill assumes no prepayments, however, and adjusts for actual prepayments periodically, negative OID amounts should not arise normally. Accordingly, the bill does not provide for negative OID deductions or negative OID income in cases where the application of the formula produces a negative number.

*Under current law, the adjusted issue price of an obligation at the beginning of an accrual period is derived by applying the formula:

$$AIP_i + OID_i - SRP_i = AIP_{i+1}$$

In this formula, AIP_i is the adjusted issue price at the beginning of period i, OID_i is the OID accrued in period i, and SRP_i is the amount of any payments of stated redemption price in period i.

Applying the formula to solve for OID produces the formula:

$$OID_i = AIP_{i+1} - AIP_i + SRP_i$$

These rules will apply to any instrument subject to the periodic inclusion (OID) rules of Section 1272 of the Internal Revenue Code, whose payment schedule is subject to acceleration under a formula based principally on the extent of prepayments of qualified obligations owned by the issuer.[7] For this purpose, a qualified obligation includes any interest in a collateralized mortgage security, any debt obligation that is principally secured by an interest in real property, and any participation certificate of beneficial ownership in any such interest or obligation.[8] It is intended that a formula based on the extent of prepayments of qualified obligations and the amount of income from temporary reinvestment of cash flows on such obligations would be within the ambit of this provision.

The bill would also permit the issuer to elect to account for OID on such instruments on the basis of any regular accrual period shorter than the 6-month period generally applicable.[9]

No inference is intended, by the adoption of these rules, regarding the appropriate method of applying the OID rules under current law.

2. Authorization of Multiple Class Ownership Arrangements

A. Overview

The bill would authorize a multiple-class, mortgage related security referred to as a collateralized mortgage security or CMS.[10] The issuance of a CMS would be treated for Federal tax purposes as a sale of the loans backing the security. However, the security could be structured either in the form of a sale of assets or as debt for state law purposes. In this way, the bill would ensure that the substance of the transaction would govern its treatment for tax purposes.[11] At the same time, however, holders of mortgages with below-market coupons, for example, could issue the security in the form of debt to accommodate state law, regulatory, and accounting concerns unrelated to the security's classification for Federal tax purposes.

Treating the security's issuance for Federal tax purposes as a sale of assets to the security holders will ensure that all income attributable to the assets backing the security will be taxed to the security holders who in substance own the collateral, with no "phantom income" (i.e., income in the absence of economic gain) recognized at the entity level.[12] In addition, by avoiding any requirement that the issuer retain a minimum amount of "equity" in the loans backing the security (a requirement that may be applicable in the case of similar securities qualifying as debt for tax purposes) transaction costs and uncertainty now associated with multiple class mortgage backed securities will be substantially reduced.

Investors in a CMS will be treated as owners of the underlying collateral.[13] Thus, thrift institutions, Real Estate Investment Trusts, and other entities required by the tax law to invest in mortgage loans could do so by investing in a CMS.

B. Organizational Requirements in General

An issue of collateralized mortgage securities is an arrangement created by the issuer for the division of ownership interests in a pool of mortgages and related investment assets into multiple classes of ownership interests.[14] A CMS issue can be issued by, or have the form of, a corporation, trust, association, or partnership.[15]

Under the bill, the tax rules applicable to an issue apply only to the mortgages and related investment assets that are transferred to the issue and accounted for as part of that issue. Accordingly, the bill generally does not affect the taxation of activities of the issuer that are unrelated to the issue.[16]

For example, a corporation may be engaged in mortgage servicing activities, and may also pool mortgages into an issue and sell interests in that issue. The bill's provisions treating the holders of interests in the issue as the owners of the assets of the issue would not affect the existing rules governing the taxation of the issuer's activities as a mortgage servicer. Thus, in this example, the issuer would be subject to tax on such servicing activities, but not on the investment income of the issue, which is properly taxed to the holders of interests in the issue. If the issuer were also a holder of an interest in the issue, however, it would be subject to tax on that interest in the same manner as any other holder.[17] This result is essentially similar to the treatment of a corporation or other entity engaged in business activities that also pools mortgages into a fixed investment trust, acts as the trustee, and sells interests in the trust to investors.

An issuer creates an issue by transferring assets to the issue and electing to apply the provisions of the bill to the issue.[18] The transfer of assets to an issue is accomplished by an appropriate accounting entry identifying the assets transferred. Assets that may be transferred and held in the issue are limited to "qualified obligations" and "permitted investments".

Qualified obligations in general include mortgage loans, interests in other CMS issues, participations or certificates of beneficial ownership in such loans or interests, guaranteed investment contracts, and assets that are acquired in connection with the default of a qualified obligation or pursuant to a permitted substitution for a defective qualified obligation.[19] Since an issue is a self-liquidating security, the bill generally requires qualified obligations to be transferred to the issue on the first day of the first taxable year of the issue,[20] and generally prohibits the issue from selling or disposing of qualified obligations.[21] Exceptions to these rules are limited to permitted substitutions for defective qualified obligations, the acquisition of property in connection with the default of a qualified obligation, and the complete liquidation of an issue.[22]

Permitted investments include cash and money market debt instruments that are transferred to the issue on the first day of the first taxable year of the issue, or subsequently acquired pursuant to the establishment or maintenance of reserves incident to the holding of qualified obligations, or the temporary reinvestment of cash flows of the issue.[23]

Consistent with these basis rules, gains and losses are generally recognized upon a transfer of property in exchange for interests. In certain circumstances, however, gains and losses are not recognized to the transferor currently, but are accounted for under the bill's rules for "outside discount" and "outside premium". (See discussion below at page 16.)[30]

In order to prevent the accelerated deduction of built-in losses on transferred property that in substance has not been sold, the bill disallows loss recognition to the extent the transferor transfers property to an issue in exchange for any regular or residual interests in that issue.[31]

A similar non-recognition rule applies with respect to gains on property transferred in exchange for residual interests,

but not in the case of exchanges for regular interests.[32] This limited non-recognition rule is intended to impose a tax on gain where the transferor has received regular interests (which tend to be marketable securities similar to conventional debt instruments) while avoiding the imposition of an immediate tax on the transferor's retention of residual interests in the issue (which are unlike conventional marketable securities because they are contingent and highly speculative). (See discussion below at page 13.)

To prevent transferors from inappropriately accelerating income (e.g., in order to utilize expiring net operating losses) the Treasury Department is authorized to prescribe regulations deferring gain recognition when a transfer of assets and the retention of interests in an issue is tantamount to the retention of ownership of the transferred assets.[33]

For purposes of determining the amount of gains and losses recognized under these rules, the bill provides for an allocation of the basis of transferred property in proportion to the amount of money and the fair market value of interests and other property received in exchange.[34] For example, if mortgages with a basis of $80 and a value of $100 are transferred in exchange for $20 of cash, regular interests worth $80, residual interests worth $10, and other property worth $10, the $80 basis would be allocated 20 percent to the cash, 60 percent to the regular interests, 10 percent to the residual interests and 10 percent to the other property.[35] To simplify the application of this allocation rule, the bill permits an issuer to elect to treat the residual interests in an issue as having a fair market value of zero, if the value of such interests is less than one percent of the value of all interests in the issue.[36] The effect of this election is to allocate all of the basis of transferred property to the money, regular interests, and other property (other than residual interests) received.

C. Taxation of Holders

1. Generally.—Holders of regular interests are taxed in a manner similar to the taxation of holders of debt instruments subject to the OID rules of current law. Holders of residual interests are taxed under statutory rules designed to accommodate the contingent nature of these interests.

2. Taxation of Regular Interests.—Holders of regular interests are taxed under a hybrid method, based on the rules of current law governing debt instruments. Essentially, holders first determine their income as if their interests were debt obligations, subject to the OID rules where applicable.[37] Thus, the OID rules would be applicable to regular interests issued at a discount regardless of whether the underlying mortgage loans in the issue were themselves subject to the OID rules (for example, seasoned mortgage loans with market discount). For purposes of applying the OID rules to regular interests the "issue price" of the interest is its initial basis (i.e., the amount of money and the fair market value of property initially transferred in exchange for the interest).

In addition, holders would be allocated additional income[38] for any accrual period in which the cumulative amount of income recognized by all holders of regular and residual interests (under the OID rules, the normal rules applicable to paid interest, and the special rules for residual interests) is less than the cumulative amount of income that would have been recognized if the assets of the issue had been held continuously by a single taxable entity.[39]

Additional amounts required to be recognized under this allocation rule would first be allocated among the holders of regular interests in proportion to the amount of OID recognized by each holder in the period to which the additional amount is attributable.[40] However, no amount would be allocated to an interest in excess of the interest's unrealized discount.[41] Any remaining amounts would be allocated to the holders of the residual interests in the issue.[42] Additional amounts recognized under this rule would be credited against income required to be recognized in future periods by adding the amounts recognized in prior periods to an interest's adjusted basis and adjusted issue price.[43]

3. Taxation of Residual Interests.—In practice, there are several basic forms of residual interests. In one form, sometimes referred to as "excess servicing," the stated interest rate on the qualified obligations of the issue exceeds the stated interest rate on some or all of the regular interests in the issue. As long as the qualified obligations are not prepaid, the holder of the residual interest will receive this "excess" interest. It is uncertain, however, to what extent prepayments on the qualified obligations will extinguish the residual holder's right to receive this "excess" interest. In the extreme case, if all of the obligations prepay immediately, this form of residual interest will become worthless.

In another form of residual, sometimes referred to as principal-to-principal overcollateralization, the face amount of the qualified obligations of the issue exceeds the face amount of the regular interests, but the stated interest rate on one or more of the regular interests exceeds the stated interest that will be received on the qualified obligations. To the extent there are prepayments, the residual holder will profit because the amount of principal received exceeds the amount required to retire the regular shares. However, it is uncertain to what extent the absence of prepayments will require this "excess" principal to be used to pay interest on the regular interests. In the extreme case, if there are no prepayments for the life of the security, this form of residual will become worthless.

Another form of residual interest is a payment that depends on reinvestment income on funds received prior to required payments to holders. This residual is similar to excess servicing, except that the amount of reinvestment income can be dependent upon market interest rates and other factors.

Another form of residual interest is a payment that is contingent upon the receipt of contingent payments on a qualified obligation (such as contingent interest, equity kickers, etc.)

In general, amounts paid or accrued on a residual interest are included in income as they are paid or credited to the holder.[44] The basis of a residual interest will be recovered as a deduction against amounts includible in income on a straight line method, over the estimated duration of the residual.[45]

Any gain not recognized to an issuer upon the transfer of assets in exchange for a residual interest will be includible in the issuer's income, in addition to amounts actually paid or credited with respect to the interest, on a straight line method over the estimated duration of the interest.[46]

The bill provides that the estimated duration of a residual interest can be computed on the basis of certain estimates used in pricing an issue subject to securities law registration requirements, unless those estimates are clearly erroneous.[47]

The bill's rules for the taxation of residual interests depart somewhat from the so-called "scientific" method for the taxation of debt instruments, embodied in the OID rules and coupon stripping rules of current law. This departure is appropriate inasmuch as these residual interests depart from the characteristics of the traditional debt instruments for which the OID rules and coupon stripping were designed. Nevertheless, the bill also authorizes the Treasury Department to issue regulations adopting different rules, based on the OID and coupon-stripping rules of existing law, to certain residual interests that may be more appropriately taxed under such rules in certain circumstances.[48] The residual interest subject to this grant of regulatory authority include residuals that entitle the holder to receive contingent payments on underlying obligations,[49] and certain residuals that entitle the holder to receive payments of excess servicing (i.e., interest only on a qualified obligation).[50] Excess servicing residuals are subject to these rules only to the extent they are based on a rate of interest paid on a qualifying obligation that exceeds the highest coupon rate payable on a substantial portion of interests in the issue. For example, if the mortgages in an issue pay 12 percent interest, and regular interests are issued with coupon rates of 8 percent, 10 percent, and 13 percent, an excess servicing residual would not be subject to these regulations. However, if the regular interest were issued with coupon rates of 6 percent, 8 percent, and 10 percent, two percentage points of the excess servicing residual would be within the scope of the regulations.

4. Transfer of Interests.—The sale or exchange of an interest will give rise to gain or loss, generally in the same manner as if the interest were a debt obligation.[51]

The amount of gain or loss on a sale or exchange is determined by reference to the adjusted basis of the interest, which is equal to the initial transferor's cost basis (i.e., the amount of money and the value of property transferred in exchange for the interest) increased by the cumulative amount of income includible with respect to the interest, and decreased by the cumulative amount of distributions with respect to the interest.[52] The adjusted basis computed in this manner carries over, without other adjustments, whenever the interest is sold or exchanged.[53] However, the amounts of gain or loss recognized by a holder are appropriately adjusted for cases where an interest is acquired at a premium or discount relative to its adjusted basis.[54] Similar adjustments are provided to account for an issuer's unrecognized gain or loss.[55] These adjustments are referred to as outside discount and outside premium.

In the case of an interest that becomes partially or completely worthless, the holder is entitled to deduct the resulting loss without selling or exchanging the interest, in the same manner as if the interest were a debt instrument.[56] This rule, however, applies only to partial or complete worthlessness attributable to the partial or complete worthlessness of an underlying obligation, and not to the occurrence or nonoccurrence of contingencies related to prepayments or reinvestment income.

5. Adjustments for Outside Premium and Discount.—Outside premiums and discounts arise in two circumstances: where an inter-

est is purchased at a premium or discount from its adjusted basis (as carried over from previous holders), and where there are unrecognized gains and losses arising from the transfer of property in exchange for interests, in transactions subject to the bill's nonrecognition rules. An unrecognized gain is treated as outside discount, and an unrecognized loss is treated as outside premium. Outside premium and discount are accounted for over time, as in interest is held.

Outside premium in the case of a regular interest first reduces the amount of original issue discount and additional issue income required to be included, in proportion to the inclusion of such amounts in income over the interest's life.[57] Any excess outside premium is then recovered as an ordinary deduction, amortized over the life of the interest in proportion to the recovery of principal or similar amounts.[58] Any outside premium not accounted for by the time an interest is sold or exchanged will be treated as an adjustment to the amount of gain or loss recognized on such a sale.[59]

Outside discount with respect to a regular interest is includible in income, as if it were market discount on a debt instrument, over the life of the interest in proportion to the recovery of principal or similar amounts.[60]

The character of gains attributable to the recovery of outside discount is determined by reference to the type of qualified obligations underlying the issue.[61] (Thus, if the qualified obligations are obligations issued before July 19, 1984, amounts received as a recovery of outside discount upon the sale of an interest would be treated as capital gains). In the case of issues with underlying obligations of different types, an appropriate allocation would be made. However, if 85 percent or more of the obligations are of a single type, all of the obligations will be treated as of that type.[62] For purposes of this provision, the type of obligation includes its issuer's status as a corporation or individual, its issuance date, and any other factors that would be relevant to the character of market discount of an underlying obligation.

With respect to residual interests, outside premium and discount are recovered ratably over the estimated duration of the interest by adding a ratable portion of the amount of premium to be recovered to the amounts allocable to basis recovery for the interest (or subtraction a ratable portion of the amount of discount to be included in income).[63] The rules for amounts of premium or discount not accounted for under these rules by the time an interest is sold or exchanged, and the rules for determining the character of market discount, are the same as those provided for regular interests.[64]

6. Rocovery of expenses of Issue.—In general, the bill provides that expense associated with the operation of an issue are not taken into account in determining the income includible by holders of interests in the issue.[65] (Servicing fees that are withheld from amounts payable as interest on pass-through securities, which are accounted for under current law as deductions, rather than reductions of interest income, are an exception from this rule.) Instead, operating expenses are accounted for separately by the taxpayer responsible for such expenses, who may or may not also be a holder of interests in the issue.[66] This rule applies regardless of whether a taxpayer's liability to bear certain expenses requires that such expenses be withheld from the amount of cash payable to the taxpayer with respect to interests held by the taxpayer. It is intended that operating expenses, including trustee fees, legal fees, and accounting fees, will be deductible when paid or incurred, without requirement that such expenses be amortized over the life of the issue.

The bill provides that issuance and sales expenses allocable to interests that are sold are recovered as selling expenses. Any issuance expenses properly allocable to interests retained by an issuer are treated as outside premium.[67]

7. Prohibited Transactions.—In order to ensure that an issue or an issuer does not engage in activities for which the bill's provisions are not designed, the bill imposes a 100 percent tax on the net income from certain prohibited transaction.[68] These include the sale or disposition of qualified obligations (with certain limited exceptions), the receipt of income from assets not permitted to be held in an issue, and the receipt or retention by the issue of amounts representing fees or other compensation for services.[69]

8. Complete Liquidations.—Rules are provided to permit the sale of an issue's assets, and the distribution of cash to holders of interests, in a qualifying complete liquidation without incurring tax at the issue level. The purpose of these rules is to permit holders to obtain similar treatment in a complete liquidation to that which would obtain if they had sold all of their interests in the issue.

D. Tax Compliance and Administrative Provisions

In the case of mortgage backed bonds and other debt obligations subject to the OID rules of the bill, the bill would repeal certain exemptions from the information reporting rules of current law. In particular, the bill would repeal the exemption for payments to corporations, registered securities and commodities dealers, real estate investment trusts, registered investment companies, and common trust funds (other than organizations exempt from taxation).[70] In addition, additional information relevant to the taxation of multiple class debt instruments would be required to be reported.[71]

In the case of CMSs subject to the bill, similar information reporting requirements would be imposed.[72] In addition, CMS issues would be required to file annual information returns, and would be subject to rules similar to the entity level audit rules applicable to partnerships and S corporations.[73] Finally, it is intended that CMS issues would be subject to the registration requirements of current law.[74]

EFFECTIVE DATES

The bill would generally be effective upon enactment, however, issuers could elect to apply the bill to any obligation or CMS issued after the date the legislation is introduced. Such an election would be binding upon the issuer and the holders.[75]

FOOTNOTES

[1] New Code sections 1272(a)(7), 1272(a)(8).
[2] New Code sections 1290–1295.
[3] New Code section 6049(d)(7).
[4] New Code section 1272(a)(7).
[5] New Code section 1272(a)(8).
[6] New Code section 1272(a)(8).
[7] New Code section 1272(a)(7).
[8] New Code sections 1272(a)(7), 1290(e).
[9] New Code section 1272(a)(7)(B).
[10] New Code sections 1290–1295.
[11] New Code section 1291(a)(2).
[12] New Code section 1291(a)(2).
[13] New Code section 1291(a)(2)(b).
[14] New Code section 1290(a).
[15] New Code section 1290(b).
[16] New Code section 1291(a)(1).
[17] New Code section 1291(a)(2).
[18] New Code section 1291(a)(1).
[19] New Code section 1290(e).
[20] Id.
[21] New Code section 1295(a)(1).
[22] Id.
[23] New Code section 1290(f).
[24–29] * * *
[30] New Code section 1291(b).
[31] New Code section 1291(b)(2).
[32] New Code section 1291(b)(1).
[33] New Code section 1291(b)(5).
[34] New Code section 1291(b)(3).
[35] Id.
[36] Id.
[37] New Code section 1292(a)(1).
[38] New Code section 1292(a)(2).
[39] New Code section 1292(c)(1) and (2).
[40] New Code section 1292(c)(3)(a).
[41] New Code section 1292(c)(3)(b) and (c).
[42] New Code section 1292(c)(3)(d).
[43] New Code section 1293(a)(1).
[44] New Code section 1292(b)
[45] Id.
[46] Id.
[47] New Code section 1295(d)(1).
[48] New Code section 1295(d)(2).
[49] New Code section 1295(d)(2)(a).
[50] New Code section 1295(d)(2)(b).
[51] New Code section 1293(b).
[52] New Code section 1293(a).
[53] New Code section 1293(b).
[54] New Code section 1294.
[55] New Code section 1291(b)(4).
[56] New Code section 1293(c).
[57] New Code section 1294(b)(1).
[58] Id.
[59] New Code section 1294(b)(3).
[60] New Code section 1294(b)(2).
[61] New Code section 1294(b)(4).
[62] Id.
[63] New Code section 1294(c).
[64] New Code section 1294(c)(3) and (4).
[65] New Code section 1291(c)(1).
[66] New Code section 1291(c)(2).
[67] New Code section 1291(c)(3).
[68] New Code section 1295(a).
[69] New Code section 1295(b).
[70] New Code section 6049(d)(7).
[71] New Code section 6049(d)(7)(c).
[72] New Code section 6049(d)(7)(a).
[73] New Code section 1295(c).
[74] New Code section 1290(c) and (d).
[75] Bill section 5.●

By Mr. DURENBERGER (for himself and Mr. DANFORTH):

S. 1960. A bill entitled the "Medical Offer and Recovery Act"; to the Committee on Finance.

MEDICAL OFFER AND RECOVERY ACT

● Mr. DURENBERGER. Mr. President, today I am introducing the Medical Offer and Recovery Act along with my distinguished colleague, the Senator from Missouri [Mr. DANFORTH]. I am introducing this bill as a courtesy to my distinguished House colleagues, Representatives MOORE and GEPHARDT. It is a companion bill to H.R. 3084 which would propose to reform this country's medical malpractive system. This measure includes refinements to the proposal which they introduced last year and I am including a summary of the bill after my statement which outlines the provisions and changes from last year's version.

My House colleagues spent considerable time and effort developing this proposal and it is a serious contribution to a much needed national debate. It is the one major measure that provides an alternative to State tort

reform, and therefore deserves examination and scrutiny in the Senate along with another important measure, S. 1804, introduced by my distinguished Senate colleague, ORRIN HATCH. His proposal is authored by the American Medical Association.

Mr. President, there is no question that the funding of malpractice insurance is reaching a crisis point. I was reading an article in the Mankato Free Press from my own State of Minnesota, about a young woman named Ann McCall, who was looking forward to having the doctor who had delivered her 21 years before also deliver her new baby. Just 2 weeks before the anticipated delivery date, her doctor informed her that he was turning over his obstetric practice to another doctor because he could no longer afford the escalating cost of his malpractice insurance premiums. Zachary McCall was born to Ann and Pat McCall with the assistance of a physician they had known for only 2 weeks.

This story is repeated every day all over this country. And it's happening because there are major problems with the medical malpractice system in the United States.

Malpractice insurance premium costs are skyrocketing, reaching as high as $100,000 a year for some speciality physicians in certain areas of the country. The number of malpractice claims has tripled over the past decade and million dollar settlements happen on a regular basis. The average settlement has grown from $5,000 to over $300,000 in just 6 years.

Growing numbers of claims have resulted in physicians practicing defensive medicine. The AMA estimates that this may cost Americans at least $15 billion a year in extra costs. Still the number of claims against doctors continues to grow, and the public pays for it through high hospital bills, doctor bills, and health insurance premiums.

Higher malpractice insurance costs force doctors and hospitals to raise their charges and pass these costs on to third party payers and consumers. It is also pricing some physicians out of business. The Minnesota Medical Association estimates that 40 family practice doctors have stopped delivering babies and more are expected to drop the obstetric part of their practice. This could create serious problems for residents in rural Minnesota and similar areas around the country who rely on their community doctor for all their medical care.

The litigation of malpractice cases is unwieldy and expensive. It is also time-consuming and inequitable. A few plaintiffs are awarded large recoveries, but only after a long, drawn out litigation process. But the real tragedy is that the expense of litigation discourages many with valid claims from even prosecuting those claims. And international reinsurance companies are threatening to quit reinsuring American malpractice insurance companies. These reinsurers are concerned that damage awards in the United States have gotten too far out of line from premium revenues.

These problems are not new. In the mid-1970's, in response to increased numbers of claims and sizes of settlements, many liability insurance carriers were left out of the market and others had to raise their premiums by as much as 750 percent. The States responded to this by enacting medical malpractice reform legislation. But these reforms have obviously not had much of an effect.

States are now taking even more steps to reform their tort laws. I was in Florida in November and learned about their newly passed law which includes a sliding fee scale for attorneys' contingency fees. States are trying other methods of reform, and the jury is still out on the likely success of these measures. We will watch these changes closely. But it is time to determine whether a Federal role in this area is appropriate.

The crisis may be upon us again. This demands action. We must bring down the cost of malpractice insurance to physicians, insurers, and the public, and at the same time, create a more equitable, efficient system to adjudicate malpractice. At a time when the health care marketplace is becoming more and more cost conscious, we can ill afford this lopsided, ineffective malpractice system that perpetuates an insensitivity to price and unresponsiveness to fairness.

I trust the new year will bring serious debate and resolution of the professional liability crisis. I intend to be at the center of that debate. Mr. President, I ask unanimous consent that the bill and summary of the Medical Offer and Recovery Act be printed in the RECORD.

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

S. 1960

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medical Offer and Recovery Act".

SEC. 2. ALTERNATIVE LIABILITY SYSTEM FOR MALPRACTICE

(a) MEDICARE AMENDMENT.—Part A of title XVIII of the Social Security Act is amended—

(1) by inserting after the heading to part A the following new subpart heading:

"Subpart I—Hospital Insurance Program".

and

(2) by adding at the end the following new subpart:

"Subpart II—Alternative Liability System for Malpractice

"TENDER OF COMPENSATION BENEFITS IN SETTLEMENT OF MALPRACTICE CLAIMS

"SEC. 1821. (a)(1)(A) In the case of a health care provider (as defined in paragraph (4)(D)) which—

"(i) is participating in an assigned claims plan under section 1826 and

"(ii) is potentially liable for a personal injury (as defined in paragraph (4)(A)) to an injured individual,

if the provider provides the individual not later than the date specified in subparagraph (C) with a written tender to pay compensation benefits with respect to such injury in accordance with this subpart, the individual and any other entity shall (except as provided in paragraph (3)) be foreclosed from bringing any civil action described in paragraph (2) against such provider or other entity joined under subsection (b) based on such personal injury.

"(B) If the provider fails to provide an individual with such a written tender on a timely basis with respect to a personal injury, the individual may, during the 90-day period beginning on the date specified in subparagraph (C), serve on the provider a written request for arbitration on the question of the legal liability for the personal injury and the provisions of this section shall apply as though a tender under subparagraph (A) had been made. If the arbitrator determines that the provider was wholly or partly legally liable for the personal injury—

"(i) the amount of the liability of the provider shall be determined as though the provider had made a timely tender under subparagraph (A), and

"(ii) the provider shall be liable for reasonable attorneys fees incurred by the individual who requested the arbitration.

"(C) The date referred to in subparagraphs (A) and (B) is—

"(i) in the case of a personal injury resulting from a stay as an inpatient in an institution, 180 days after the date of the patient's discharge from the institution,

"(ii) in the case of failure to provide informed consent, erroneous diagnosis, or injury to a new born caused by action or inaction before or at the time of birth, 180 days after the date of the filing of a claim against the provider, or

"(iii) in the case of any other personal injury, 180 days after the date of the action or inaction giving rise to the personal injury,

except that such date may be extended for up to an additional 60 days for purposes of subparagraph (A) if the provider and the patient agree in writing to such extension.

"(D) Nothing in this subpart shall be construed as changing any applicable statute of limitations of any State or of the United States.

"(2)(A) Except as provided in subparagraph (B), civil actions referred to in paragraph (1) include any civil action (whether brought in a Federal or State court) which could have been brought against a compensation obligor (as defined in subsection (d)(1)) for recovery of damages relating to personal injury, whether based on (i) negligence or gross negligence, (ii) strict or absolute liability in tort, (iii) breach of express or implied warranty or contract, (iv) failure to discharge a duty to warn or instruct or to obtain consent, or (v) any other theory that is (or may be) a basis for an award of damages for personal injury.

"(B) Civil actions referred to in subparagraph (1) do not include—

"(i) any action to recover for compensation benefits tendered under this subpart, or

"(ii) any action in the nature of a wrongful death action, but only in the case of such an action for losses accruing to survivors after the death of an injured individual and resulting from the death of the individual.

"(3) In no event shall a civil action be foreclosed under paragraph (1) against any entity which intentionally caused or intended to cause injury, except that this paragraph shall not apply with respect to a personal injury unless the injured individual provides the provider making a tender with a notice of election not later than 90 days after the date the tender of compensation benefits was made.

"(4) As used in this subpart:

"(A) The terms 'injury' and 'personal injury' mean sickness or disease or bodily harm arising in the course of the provision of health care services provided pursuant to (or for which payment may be made under) this title, a State plan approved under title XIX, plans under sections 1079 and 1086 of title 10, United States Code (relating to the CHAMPUS program), section 613 of title 38, United States Code (relating to the CHAMPVA program), a health benefits plan pursuant to a contract with the Office of Personnel Management under chapter 89 of title 5, United States Code (relating to the Federal employees health benefits program), title 10 or title 38 of the United States Code (relating to the Department of Defense and the Veterans' Administration), or any other program established under Federal law.

"(B) The term 'injured individual' means an individual suffering injury in the course of health care provided by an individual or entity.

"(C) An entity intentionally causes or attempts to cause a personal injury when the entity acts or fails to act for the purpose of causing injury or with knowledge that injury is substantially certain to follow; but an entity does not intentionally cause or attempt to cause injury merely because the individual's act or failure to act is intentional or is done with the individual's realization only that it creates a grave risk of causing injury without the purpose of causing injury or if the act or omission is for the purpose of averting bodily harm to the individual or another entity.

"(D) The term 'health care provider' means—

"(i) any institution described in subsection (e)(1), (f)(1), (j)(1) of section 1861 which is a Federal institution or meets the requirement of section 1861(e)(7),

"(ii) an agency or organization described in section 1861(o)(1) which meets the requirement of section 1861(o)(4),

"(iii) any health care professional described in section 1861(r), and

"(iv) a rural health clinic (as defined in section 1861(aa)(2)), a comprehensive outpatient rehabilitation facility (as defined in section 1861(cc)(2)), and a hospice program (as defined in section 1861(dd)(2)).

"(E) The term 'entity' includes an individual or person.

"(b)(1)(A) A health care provider which has tendered (or deemed to have tendered) compensation benefits under subsection (a) may, by written notice to the entity, join in the foreclosure provided under subsection (a) any entity which is potentially liable, in whole or in part, for the personal injury and who may benefit from foreclosure of action against the entity under subsection (a). Joinder under this subparagraph may only be by written notice to the entity to be joined and such notice shall not be effective if provided later than the date the provider makes the tender under subsection (a).

"(B) Any entity which would benefit from foreclosure of action against the entity under subsection (a) with respect to a personal injury shall be joined in any tender made (or deemed to have been made) under subsection (a) with respect to that injury if the entity requests such joinder by written notice to the provider making the tender under subsection (a) not later than the date the tender under subsection (a) is made.

"(2) By joinder under this subsection, an entity is deemed to have agreed to pay a share of (A) such compensation benefits and (B) the reasonable costs incurred by the provider in preparing and making such tender and paying compensation benefits. Any disagreement between such entities involved as to any entity's share of the benefits and costs or the amount of such costs shall be submitted to binding arbitration for determination and each entity's share shall be based on the comparative fault of the entities (other than the injured individual) involved.

"(c)(1) Any entity which has tendered (or deemed to have tendered) compensation benefits with respect to an individual under subsection (a) or been joined in the tender under subsection (b) shall be subrogated to any rights of the individual against another entity (other than against another entity joined under subsection (b)) arising from or contributing to the personal injury and shall have a cause of action separate from that of the individual to the extent that (A) elements of damage compensated for by compensation benefits are recoverable and (B) the entity has paid or becomes obligated to pay accrued or future compensation benefits.

"(2) In the case that a foreclosure from liability is effected under subsection (a), no right of subrogation, contribution, or indemnity shall exist against a compensation obligor other than the right of contribution among compensation obligors under subsection (b)(2), nor shall any provision of any contract be enforced that has the effect of limiting or excluding payment under that contract because of the existence or payment of compensation benefits under this subpart.

"(3) The District Courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any civil action arising under this subpart.

"(d) As used in this subpart:

"(1) The term 'compensation obligor'—

"(A) means, with respect to a personal injury, the health care provider that has obligated itself to pay compensation benefits under subsection (a) with respect to that injury, and

"(B) includes—

"(i) any entity that has been joined under subsection (b) with respect to that injury, and

"(ii) any other entity (including an insurance company) which is contractually responsible for payment of the obligations of a compensation obligor under this subpart.

"(2) The term 'initiating compensation obligor' means, with respect to a personal injury, the compensation obligor which (A) first tenders compensation benefits to the injured individual, or (B) agrees to serve as an initiating compensation obligor and has been designated as such by a majority of the compensation obligors for that injury for purposes of this subpart.

"AMOUNT OF, AND ADJUSTMENTS TO, COMPENSATION BENEFITS

"SEC. 1822. (a)(1) The amount of compensation benefits payable with respect to a personal injury is equal to the net economic loss (as defined in subsection (b)(1)) resulting from such injury, plus attorney's fees (as provided under subsection (c)).

"(b) For purposes of this subpart:

"(1) The term 'net economic loss' means—

"(A) economic detriment, consisting only of—

"(i) allowable expense (as defined in paragraph (2)(A)),

"(ii) work loss (as defined in paragraph (2)(B)), and

"(iii) replacement services loss (as defined in paragraph (2)(C)),

whether caused by pain and suffering or physical impairment, but not including noneconomic loss (as defined in paragraph (3)), less collateral benefits (as defined in paragraph (4)).

"(2)(A) The term 'allowable expense' means reasonable expenses incurred for products, services, and accommodations reasonably needed for medical care, training, and other remedial treatment and care of an injured individual, but includes expenses for rehabilitation treatment and occupational training only in accordance with subsection (d).

"(B) The term 'work loss' means 100 percent of the loss of income from work the injured individual would have performed if the individual had not been injured, reduced by any income from substitute work actually performed by the individual or by income the individual would have earned in available appropriate substitute work the individual was capable of performing but unreasonably failed to undertake.

"(C) The term 'replacement services loss' means reasonable expenses incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but for the benefit of the individual or the individual's family, if the individual had not been injured.

"(3) The term 'noneconomic detriment' means pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, punitive or exemplary damages, and all other general (as opposed to special) damages, including loss of earning capacity and loss of any of the following which would have been provided by an injured individual to another: consortium, society, companionship, comfort, protection, marital care, attention, advice, counsel, training, guidance, and education. Such term does not include pecuniary loss caused by pain and suffering or by physical impairment.

"(4) The term 'collateral benefits' means all benefits and advantages received or entitled to be received (regardless of any right any other entity has or is entitled to assert for recoupment through subrogation, trust agreement, lien, or otherwise) by an injured individual or other entity as reimbursement of loss because of personal injury, payable or required to be paid, under—

"(A) the laws of any State or the Federal government (other than through a claim for breach of an obligation or duty), or

"(B) any health or accident insurance, wage or salary continuation plan, or disability income insurance;

except that no benefits payable with respect to an injury under a State plan approved under title XIX shall be considered to be collateral benefits for purposes of this subparagraph.

"(c)(1) Compensation benefits shall include reasonable expenses incurred by the injured individual in collecting such benefits, including a reasonable attorney's fee. Such expenses may be offset from the amount of compensation benefits otherwise provided, if any significant part of a claim for compensation benefits is fraudulent or so excessive as to have no reasonable foundation.

"(2) A compensation obligor defending a claim for compensation benefits shall be allowed a reasonable attorney's fee, in addition to other reasonable expenses incurred, in defending such a claim or part thereof that is fraudulent or so excessive as to have no reasonable foundation. The fee or expenses may be treated as an offset to any compensation benefits due. The compensation obligor may recover from the claimant any part of the fee or expenses not offset or otherwise paid.

"(d)(1) Allowable expenses under subsection (b)(2)(A) include expenses for a procedure or treatment for rehabilitation and rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, the expenses are reasonable in relation to the probable rehabilitative effects and the compensation benefits otherwise payable, and it is likely to contribute substantially to rehabiliation, even though it will not enhance the injured individual's earning capacity.

"(2) Allowable expenses shall not include expenses described in paragraph (1) with respect to a procedure or treatment for rehabilitation or a course of rehabilitative occupational training which exceed $2,000 in any 30-day period unless the injured individual has provided the initiating compensation obligor with notice of such procedure, treatment, or course of training before expenses totaling $2,000 with respect to such procedure, treatment, or course of training during such period have been incurred.

"PAYMENT OF COMPENSATION BENEFITS

"SEC. 1823. (a)(1)(A) Compensation benefits shall be paid not later than 30 days after the date there is submitted to the initiating compensation obligor reasonable proof of the fact and amount of net economic loss incurred, except that payment may be made, for expenses incurred over periods not exceeding 31 days, within 15 days after the end of the period. If reasonable proof is supplied as to only a portion of net economic loss, and the portion totals $100 or more, the compensation benefits with respect to that portion shall be paid without regard to the remainder of the net economic loss. An injured individual to whom a tender of compensation benefits has been made under section 1821 shall be entitled to interest, at the annual rate of interest applied to judgments in the State in which the injury occurred, on such benefits not paid on a timely basis.

"(B) If there elapses a period of five years after a claim for payment of net economic loss incurred is last made with respect to a personal injury, the injured individual is no longer entitled to receive compensation benefits with respect to that injury.

"(2) A compensation obligor who rejects in whole or in part a claim for compensation benefits shall give to the claimant prompt written notice of the rejection and the reasons therefor.

"(3) Compensation benefits with respect to allowable expenses may be paid either to the injured individual or to the entity supplying the products, services, or accomodations to the individual.

"(b) In lieu of payment therefor as a part of allowable expenses and with the consent of the injured individual, a health care provider may provide medical or rehabilitative services needed by the injured individual.

"(c)(1) Except as otherwise provided in this subsection, subsection (d)(2), or section 1822(c)(2), compensation benefits shall be paid without deduction or setoff.

"(2) An assignment or an agreement to assign any right to compensation benefits under this subpart for net economic loss accruing in the future is unenforceable except as to benefits for—

"(A) work loss to secure payment of alimony, maintenance, or child support; or

"(B) allowable expenses to the extent the benefits are for the cost of products, services, or accomodations provided or to be provided by the assignee.

"(3)(A) Compensation benefits for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim, except upon a claim of a creditor who has provided products, services, or accommodations to the extent benefits are for allowable expense for those products, services, or accommodation.

"(B) Compensation benefits other than those for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt under any applicable law exempting wages or earnings from process or claims.

"(4)(i) Except as provided in clause (iii), a claim for compensation benefits shall be paid without deduction or offset for collateral benefits, if the collateral benefits have not been paid to the injured individual before the incurring of expenses included in net economic loss.

"(ii) The compensation obligor is entitled to reimbursement from the entity obligated to make the payments or from the entity which actually receives the payments.

"(iii) A compensation obligor may offset amounts it is entitled to recover under clause (ii) against any compensation benefits otherwise due.

"(d)(1) An entity making payment of compensation benefits under this subpart may bring an action against an entity to recover compensation benefits paid because of an intentional misrepresentation of a material fact by that entity upon which the entity relied, except that such an action may not be brought against the injured individual unless the injured individual made or had knowledge of the making of the misrepresentation.

"(2) If such entity secures judgment in an action under paragraph (1), the entity may offset amounts it is entitled to recover under such judgment against any compensation benefits otherwise due.

"REQUIRING DISCLOSURE OF FACTS ABOUT, AND MENTAL AND PHYSICAL EXAMINATION OF, INJURED INDIVIDUALS

"SEC. 1824. (a)(1) Upon request of an injured individual or compensation obligor, information relevant to payment of compensation benefits shall be disclosed as follows:

"(A) The injured individual shall furnish evidence of the individual's earnings, if self-employed.

"(B) An employer of the individual shall furnish a statement of the work record and earnings of an injured individual who is or was an employee of the employer, for the period specified by the injured individual or obligor making the request, which may include a reasonable period before, and the entire period after, the injury.

"(C) The injured individual shall deliver to the compensation obligor upon request a copy of every written report, not otherwise available to the compensation obligor, previously or thereafter made, available to the individual, concerning any medical treatment or examination of the injured individual and the names and addresses of hospitals, physicians, and other entities, examining, diagnosing, treating, or providing accommodations to the individual in regard to the injury or to a relevant past injury, and the injured individual shall authorize the compensation obligor to inspect and copy all relevant records made by such entities.

"(D) A hospital, physician, or other entity examining, diagnosing, testing, or providing accommodations to an injured individual in connection with a condition alleged to be connected with an injury upon which a claim for compensation benefits is based, upon authorization of the injured individual, shall furnish a written report of the history, condition, diagnosis, medical tests, treatment, and dates and cost of treatment of the injured individual in connection with that condition or any previous or other condition which may be relevant to assessing such condition, and permit inspection and copying of all records and reports as to the history, condition, treatment, and dates and cost of treatment.

Any entity (other than the injured individual or a compensation obligor) providing information under this paragraph may charge the entity requesting the information for the reasonable cost of providing it.

"(2) In case of dispute as to the right of an injured individual or compensation obligor to discover information required to be disclosed under this subsection, the individual or obligor may petition a court having jurisdiction over the matter for an order for discovery, including the right to take written or oral depositions. Upon notice to all entities having an interest, the order may be made for good cause shown. It shall specify the time, place, manner, conditions, and scope of the discovery. To protect against oppression, the court may enter an order refusing discovery or specifying conditions of discovery and directing payment of costs and expenses of the proceeding, including reasonable attorney's fees.

"(b)(1) If the mental or physical condition of an injured individual is material and relevant to compensation benefits, a compensation obligor may petition a court having jurisdiction over the matter for an order directing the individual to submit to a mental or physical examination by a physician. Upon notice to the individual to be examined and all entities having an interest, the court may make the order for good cause shown. The order shall specify the time, place, manner, conditions, scope of the examination, and the physician by whom it is to be made.

"(2) If requested by the individual examined, a compensation obligor causing a mental or physical examination to be made shall deliver to the individual examined a copy of the written report of the examining physician, and reports of earlier examinations of the same condition. By requesting

and obtaining a report of the examination ordered or by taking the deposition of the physician, the individual examined waives any privilege the individual may have, in relation to the claim for compensation benefits, regarding the testimony of every other person who has examined or may thereafter examine the individual respecting the same condition. This subsection does not preclude discovery of a report of an examining physician, taking a deposition of the physician, or other discovery procedures in accordance with any rule of court or other provision of law. This paragraph applies to examinations made by agreement of the individual examined and a compensation obligor, unless the agreement provides otherwise.

"(3) If any individual refuses to comply with an order entered under this subsection, the court may make any just order as to the refusal, but may not find a individual in contempt for failure to submit to a mental or physical examination.

"(c) If a health care provider tenders compensation benefits with respect to an injured individual under this subpart and there is a dispute between the initiating compensation obligor and the injured individual respecting the determination of the amount of the compensation benefits owing, except as otherwise provided under this subpart, the initiating compensation obligor or the individual may apply to a court with appropriate jurisdiction for a declaration as to the amount of the compensation benefits owed.

"LUMP SUM AND INSTALLMENT SETTLEMENTS AND DECLARATIONS OF BENEFITS

"SEC. 1825. (a) An obligation to pay compensation benefits may be discharged initially or at any time thereafter by a settlement or lump sum payment, except that no such discharge shall be made with respect to an injury with a current value of net economic loss exceeding $5,000 unless a court having jurisdiction over the matter determines that the settlement is fair to the injured individual. A settlement agreement may also provide that the compensation obligor shall pay the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the future.

"(b)(1) In an action for payment of unpaid compensation benefits, a judgment may be entered for compensation benefits, other than allowable expense, that would accrue after the date of the award. The court may enter a judgment declaring that the compensation obligor is liable for the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the future if it is ascertainable or foreseeable that treatment will be required as a result of the injury for which the claim is made.

"(2) A judgment for compensation benefits, other than with respect to allowable expenses, that will accrue thereafter may be entered only for a period as to which the court can reasonably determine future net economic loss.

"(3) If the injured individual notifies the initiating compensation obligor of a proposed specified procedure or treatment for rehabilitation or specified course of rehabiliation occupational training the expenses of which are an allowable expense and the compensation obligor does not promptly agree to such characterization, the injured individual may move the court in an action to adjudicate the individual's claim, or, if no action is pending, bring an action in a court having jurisdiction over the matter for a determination respecting whether or not such expenses are allowable expenses for which compensation benefits are payable. The initiating compensation obligor may move the court in an action to adjudicate the injured individual's claim, or, if no action is pending, bring an action in a court having jurisdiction over the matter for such a determination as to whether or not expenses for such a procedure, treatment, or course or training which an injured individual has undertaken or proposes to undertake are allowable expenses for which compensation benefits are payable. This subsection does not preclude an action by the initiating compensation obligor or the injured individual for declaratory relief under any other applicable law, nor an action by the injured individual to recover compensation benefits.

"(4) If an injured individual unreasonably fails, either directly or through one legally empowered to act on the individual's behalf, to obtain medical care, rehabilitation, rehabilitative occupational training, or other medical treatment which is reasonable and appropriate, the initiating compensation obligor may move the court in an action to adjudicate the injured individual's claim, or, if no action is pending, may bring an action in a court having jurisdiction over the matter for a determination that future benefits will be reduced or terminated so that they equal the benefits that in reasonable probability would have been due if the injured individual had submitted to the procedure, treatment, or training, and for other reasonable order. In determining whether an injured individual has reasonable ground for refusal to undertake the procedure, treatment, or training, the court shall consider all relevant factors, including the risks to the injured individual, the extent of the probable benefit, the place where the procedure, treatment, or training is offered, the extent to which the procedure, treatment, or training is recognized as standard and customary, and whether the restriction of this paragraph because of the individual's refusal would abridge the individual's right to the free exercise of religion.

"(c)(1) A settlement agreement or judgment under this section may be modified as to amounts to be paid in the future upon a finding that a material and substantial change of circumstances has occurred after the date the agreement or judgment was made, or that there is newly discovered evidence concerning the injured individual's physical condition, loss, or rehabilitation, which would not have been known previously or discovered in the exercise of reasonable diligence prior to such agreement or judgment.

"(2) The court may make appropriate orders concerning the safeguarding and disposing of the proceeds of settlement agreements and funds collected under judgments under this section.

"(3) A settlement agreement or judgment for compensation benefits may be set aside if it is found to have been procured by fraud.

"ASSIGNED CLAIMS PLAN

"SEC. 1826. (a) In order to participate in the alternative liability program under this subpart, a health care provider must participate, directly or through an insurance company which has agreed to be the compensation obligor with respect to that provider, in an assigned claims plan which meets the requirements of this section in order to insure the payment of compensation benefits by compensation obligors.

"(b)(1) Entities (including insurance companies) in a State may organize and maintain, subject to approval and regulation by the regulator of insurance therein, an assigned claims plan and adopt rules for its operation (including designation of assignees) consistent with this section.

"(2) If such a plan is not established or maintained in a State, whether organized by such entities or otherwise under State law, the Secretary shall organize and maintain an assigned claims plan for the State meeting the requirements of this section for purposes of this subpart. The Secretary may not establish an assigned claims plan under this paragraph with respect to health care providers located in a State unless the Secretary determines that no plan under paragraph (1) has been established in the State and the Secretary has provided the State with notice providing the State at least six months in which to establish such a plan.

"(3) Each assigned claims plan shall provide for assessment of costs on a fair and equitable basis consistent with this subpart and providing for assignment of claims in accordance with subsection (c). An assigned claims plan may not permit an entity covered under the plan to withdraw from the plan retrospectively.

"(c)(1) An injured individual entitled to compensation benefits from a compensation obligor pursuant to this subpart may obtain them through the assigned claims plan established pursuant to this section if the initiating compensation obligor obligated therefor is financially unable to fulfill its obligation.

"(2) Where an assigned claims plan finds that a compensation obligor which is associated with such plan reasonably is financially unable to pay the compensation benefits it owes, the assigned claims plan shall promptly assign the claims to a member or members of the plan and notify the individual or individuals entitled to receive such benefits of the identity and address of the assignee or assignees. Claims shall be assigned so as to minimize inconvenience to injured individuals. Any such assignee shall have all rights and obligations as if it had lawfully obligated itself to pay such compensation benefits and the plan and assignee may seek payment (including interest) from the compensation obligor or its successor of 120 percent of the costs and expenses incurred in fulfilling the obligor's obligations.

"(d) If an obligation qualifies for assignment under this section, the assigned claims plan or any compensation obligor to whom the claim is assigned is subrogated to all rights of the injured individual against any compensation obligor, its successor in interest or substitute, legally obligated to provide compensation benefits to the injured individual, for compensation benefits provided by the assignee.

"ACTIVITIES TO ENHANCE QUALITY OF CARE

"SEC. 1827. (a)(1) As a condition of participation for an institutional health care provider (as defined in subsection (c)(3)) under this title, if the provider—

"(A) takes an action adversely affecting the clinical privileges of a health care professional (other than a suspension of clinical privileges for a period of 30 days or less), or

"(B) terminates or does not renew a contract with a health care professional,

for reasons relating to the professional incapability (as defined in subsection (c)(7)) of the professional, the provider shall submit a

written report detailing the action to the appropriate health care licensing board in the jurisdiction where the provider is located.

"(2)(A) Except as provided in subparagraph (C), no one shall disclose—

"(i) the identity of an entity that provides information to an institutional health care provider (or to a peer review committee) concerning the professional incapability of a health care professional who is or was a member of (or who has applied for membership in) the medical staff of the provider, and

"(ii) the minutes, analyses, findings, deliberations, and reports of a peer review committee.

"(B) Except as provided in subparagraph (C), information described in subparagraph (A) shall not be subject to discovery, and is not admissible into evidence, in any civil, administrative, or criminal proceeding.

"(C) The restrictions of subparagraphs (A)(ii) and (B) shall not apply to the disclosure, upon the request of a health care professional against whom an adverse action is taken by the institutional health care provider, of information relating to that professional, but only if the disclosure is made in a proceeding to determine the lawfulness of the adverse action.

"(b)(1) In the case of a health care professional who is or was a member of (or who has applied for membership in) the medical staff of an institutional health care provider, no one shall be liable to anyone in damages—

"(A) for an institutional health care provider transmitting to a health care licensing board or to another institutional health care provider information respecting the professional, or

"(B) for any entity transmitting to an institutional health care provider (or a peer review committee) information bearing on the professional incapability of the professional,

unless—

"(i) the information transmitted was false, and

"(ii) the entity transmitting the information (I) knew (or had reason to believe) that the information was false, and (II) acted with actual malice in transmitting the information.

"(2) No one shall be liable in damages for any decision (or recommendation of a peer review committee) adversely affecting the clinical privileges of a health care professional or terminating or failing to renew a contract with a health care professional, if the decision (or recommendation) was made in good faith for the purpose of enhancing the quality of care furnished by the provider.

"(c) As used in this section:

"(1) The term 'adversely affecting the clinical privileges' means reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges.

"(2) The term 'health care licensing board' means, with respect to a health care professional, the governmental board, commission, or other authority (if any) responsible for the licensing of a health care professional of that type.

"(3) The term 'institutional health care provider' means a health care provider described in section 1821(a)(4)(D)(i).

"(4) The term 'medical staff' means the professional staff of an institutional health care provider.

"(5) The term 'peer review activity' means any activity engaged in by an institutional health care provider—

"(A) in determining which health care professionals may have clinical privileges at the provider,

"(B) in determining the scope and conditions of these privileges, or

"(C) in changing or modifying these privileges.

"(6) The term 'peer review committee' means—

"(A) the governing body (or any committee thereof) of an institutional health care provider when conducting a peer review activity, and

"(B) any committee of the medical staff of an institutional health care provider assisting the governing body in a peer review activity under the authority of (and with functions delineated by) the governing body.

"(7) The term 'professional incapability' means professional incompetence, mental or physical impairment, or unprofessional or unethical conduct.

"REQUIRING MALPRACTICE INSURANCE FOR PHYSICIANS TO OBTAIN BENEFITS OF SUBPART

"SEC. 1828. A health care professional described in section 1861(r) may not participate in the alternative liability program under this subpart unless the professional has insurance against professional malpractice (or has a suitable bond or other indemnity against liability for professional malpractice) at least in such amount as the Secretary determines to be appropriate, based on the amounts that are consistent with the insurance or bond maintained by professionals in the community and specialty involved.

"EFFECTIVE DATE AND APPLICATION OF ALTERNATIVE STATE MEDICAL LIABILITY LAW

"SEC. 1829. Notwithstanding any other provision of this subpart, the preceding provisions of this subpart shall not apply to any personal injury occurring—

"(1) before January 1, 1988, or

"(2) in a State which has in effect a law that the Secretary determines is designed to bring about prompt payment for loss in the case of damages relating to sickness, disease, or bodily harm arising from the provision of health care services.".

(b) PREVENTING DUPLICATE PAYMENTS.—The first sentence of section 1862(b)(1) of the Social Security Act (42 U.S.C. 1395y(b)(1)) is amended by inserting before the period at the end the following: "or as compensation benefits under subpart II of part A or under an alternative State liability law meeting the requirements of section 1829(2)".

EXPLANATION OF THE MEDICAL OFFER AND RECOVERY ACT OF 1985 BY CONGRESSMEN W. HENSON MOORE AND RICHARD A. GEPHARDT

RATIONALE

The country again is facing a medical malpractice crisis. Litigation is increasing rapidly. The relationship between physicians and patients has become an adversarial one. Physicians engage in the practice of defensive medicine. They raise their fees to patients to offset increased insurance premiums. In some cases they abandon their practices, making it more difficult for patients to obtain care.

Patients are not being well-served by the current malpractice litigation system. Today's system does not provide a fair, rapid or rational method for compensating victims of medical malpractice. The process requires patients, physicians and hospitals to assume stances diametrically opposed to their best interest. The high cost of malpractice insurance is causing some physicians to abandon their practice, making it more difficult for patients to obtain care.

Today's system for determining and paying compensation for malpractice is unfair and inefficient. A few plaintiffs win large recoveries but only after the long and arduous litigation process, while others equally deserving receive nothing. Most insurance money currently is spent on transactional costs (fees for expert witnesses and lawyers and other costs of litigation) and on payment to a few victims of damages for noneconomic loss (pain and suffering, loss of consortium, etc.)

PROVISIONS OF THE BILL

Model for State Legislation.—The Medical Offer and Recovery Act is designed to serve as model legislation for state legislatures to consider in passing their own mechanism for providing prompt payment of a patient's economic loss. The federal provisions of the Medical Offer and Recovery Act will not apply to states that implement such reforms by January 1, 1988.

Mechanics of Proposal.—1. A health care provider would, within 180 days of an occurrence, have the option of making a commitment to pay the patient's economic loss. Payments from collateral sources such as private health insurance and workers compensation would offset the amount owed by the provider.

2. If the provider makes the commitment to pay the patient's economic loss, a patient's right to sue for malpractice under the conventional tort system would be foreclosed except for cases where the provider intentionally caused the injury or a wrongful death occurred.

3. The *offer must by definition encompass all of the patient's economic loss.* Economic loss includes the cost of continued medical and hospital care, rehabilitation, nursing care, wage loss, the cost of a housekeeper and adapting the patient's house and car, as well as reasonable attorneys' fees in advising the patient. The *payments would occur periodically* as the patient's economic loss accured.

4. The provider making a commitment to pay a patient's economic loss may join to the settlement other third parties (potential defendants) who may be responsible for the injury. Similarly, other third parties may request to be joined. Any disagreement between the joined parties will be settled by binding arbitration.

Patient Protections.—1. The patient's rights to sue for the enforcement of the commitment are protected should the provider default or breach the commitment.

2. If a provider and patient wish to settle for a lump sum payment instead of periodic payments, they may do so by agreement. However, the agreement would be ineffective (if the patient's net economic loss was in excess of $5,000) without court approval and the provider would be responsible for all of the patients net economic loss.

3.[1] Patients are *assured of payment.* The bill requires physicians to carry sufficient malpractice insurance or post bond in order to participate in the program. This protects patients against judgement proof providers.

4.[1] A patient may demand compensation for economic loss without going to court. In the event that a provider does not choose to

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[1] Denotes a new provision added to H.R. 5400 from the 98th Congress.

voluntarily make a commitment for economic loss, a patient who believed he or she had been a victim of malpractice could request that an expeditious arbitration proceeding be conducted. If the arbitrator determined the provider was at fault, the patient would be awarded compensation for economic loss as if the provider had voluntarily made the commitment. A request for arbitration would foreclose the patient's right to sue for noneconomic damages.

5.[1] A patient is further protected by provisions to reduce malpractice by preventing incompetent physicians and other health care professionals from practicing. Health care institutions must notify state licensing authorities if they terminate the privileges or take other adverse actions with respect to the privileges of a health care professional. It also provides confidentiality and immunity for those who provide information to a hospital or its medical staff that a member of the staff is incompetent or impaired. Finally, it provides immunity from suit for those who review health care professionals' conduct and those who take disciplinary action against them.

● Mr. DANFORTH. Mr. President, I am pleased to join my colleague on the Senate Finance Committee, Senator DURENBERGER, as a cosponsor of the Medical Offer and Recovery Act. This legislation addresses one of the Nation's critical health care problems—the spiraling cost of medical malpractice insurance.

In my own State of Missouri, malpractice insurance rates for family practice physicians rose by 135 percent this year, and hospital insurance costs increased by more than 150 percent. The problem is particularly severe in obstetrics and gynecology, where skyrocketing malpractice insurance rates are discouraging many rural physicians from performing such services and greatly diminishing and availability of care to high-risk maternal patients, who in many cases are poor.

At the Wetzel Clinic in Clinton, MO, which provides care to a wide rural area in the western part of the State, 7 of the 10 doctors who used to deliver babies have been squeezed out of this essential part of their practice by insurance rate increases.

Faced with a tenfold increase in its medical malpractice insurance premiums, Truman Medical Center, a public hospital in Kansas City, was forced to seek a $1.5 million loan from the city to form a self-insurance pool and avoid closing down or operating without insurance. A recent series of medical malpractice jury awards in excess of $10 million has made commercial reinsurance coverage virtually unavailable in western Missouri.

As these examples clearly demonstrate, the medical malpractice insurance crisis is not a problem faced only by doctors and hospitals—it is a problem which affects every one of us. The costs of medical malpractice—which include not only the rising price of insurance, but also the cost of additional tests and procedures ordered by doctors primarily to guard themselves against lawsuits—are paid by employers and individuals in the form of higher health insurance premiums and higher taxes.

This malpractice insurance crisis is but one facet of a much larger problem affecting all purchasers of liability insurance. Accountants, truck drivers, commercial fishermen, municipal governments, and many other groups also are confronting huge increases in the cost of insurance coverage. Indeed, the problem of cost and availability of liability insurance is so widespread and severe that it is becoming one of the most pressing economic issues the country faces today.

At the heart of the problem is a complicated and expensive civil justice system which consumes more money determining fault than compensating victims. If we are to get at the true cause of our insurance woes—in medical malpractice and other areas—something must be done to provide for more just and predictable awards to injured parties, while reducing the massive transactions costs associated with litigating disputes.

Although I am not yet certain that the legislation introduced today provides the best proposal for civil justice reform in the medical malpractice area, it is an important beginning. The Medical Offer and Recovery Act would provide for an alternative compensation scheme similar in design to legislation I have sponsored with regard to products liability. The goal is to get people out of the court system and to encourage swift and certain compensation for out-of-pocket losses. The products bill is moving ahead in the Commerce Committee, and I look forward to working on this legislation in the Finance Committee.

While I support the concept of setting up alternatives to formal court litigation of personal injury disputes, I am also aware that tort law reform is an issue within the purview of the States. Many States, including Missouri, have been very active recently in attempting to reform their laws governing personal injury litigation. This legislation is not attempting to discourage these efforts, but rather to complement and support them.

Mr. President, the Medical Offer and Recovery Act is directed at a complex problem, and there are a number of competing interests involved. While the task ahead is a challenging one, I am encouraged by the prospect of real reform that would benefit both the providers and consumers of medical care.●

By Mr. THURMOND (for himself, Mr. DECONCINI, Mr. ANDREWS, Mr. BURDICK, Mr. D'AMATO, Mr. DIXON, Mr. SIMON, and Mr. WARNER) (by request):

S. 1961. A bill to amend title 28 and title 11 of the United States Code to authorize a new U.S. trustee system by providing for the appointment of U.S. trustees to supervise the administration of bankruptcy cases in judicial districts throughout the United States, and for other purposes; to the Committee on the Judiciary.

UNITED STATES TRUSTEES ACT

Mr. THURMOND. Mr. President, on behalf of the administration, I rise to introduce the United States Trustee Act of 1985. This bill would expand and make permanent the U.S. Trustee Pilot Program for Bankruptcy Administration, which was established by title I of the Bankruptcy Act of 1978 (Public Law 95-598). The initial period for the project was 4½ years, but it was extended twice: First until September 30, 1984 (Public Law 98-166), and again until September 30, 1986 (Public Law 98-353).

The U.S. trustees would be charged with overseeing the administration of bankruptcy cases filed under chapters 7, 11, and 13 of the Bankruptcy Code. Under the aegis of the Justice Department, the U.S. trustee system would effect a separation of the administrative and case monitoring functions from the adjudicative functions carried out by the bankruptcy judges and the judiciary. In the nonpilot areas, the bankruptcy judges have continued to adjudicate legal issues and to supervise the administration of bankruptcy cases.

This legislation would expand the pilot program from 10 field offices covering 18 judicial districts to 30 regional offices covering the entire United States. Each region would be headed by a U.S. trustee appointed by the Attorney General for a 4-year term.

Pursuant to the 1976 act, an independent study to compare the pilot and nonpilot programs was undertaken by Abt Associates, Inc. of Cambridge, MA. The findings of that study indicate that the pilot program has resulted in "enhanced honesty and efficiency in bankruptcy administration" in the pilot districts. Certainly this approach deserves careful consideration.

I am pleased to introduce this measure by request and to be joined by Senators DECONCINI, ANDREWS, BURDICK, D'AMATO, DIXON, SIMON, and WARNER. Having the proposal before the Senate Committee on the Judiciary this early will ensure that the committee will have adequate time to study the issue prior to the sunset date of September 30, 1986.

I ask unanimous consent that the bill from the Department of Justice be printed in the RECORD.

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

S. 1961

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United States Trustees Act of 1985".

TITLE I—AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE

SEC. 101. Section 156 of title 28, United States Code, is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following new subsection:

"(c) In a judicial district where a bankruptcy clerk has been appointed pursuant to subsection (b), the bankruptcy clerk shall be the official custodian of the records of the bankruptcy court and of the dockets of all bankruptcy cases and proceedings.".

SEC. 102. (a) Section 519 of title 28, United States Code, is amended by striking out "United States attorneys, assistant United States attorneys, and special attorneys" and inserting "United States attorneys and trustees, assistant United States attorneys and trustees, and special attorneys" in lieu thereof.

(b) The table of sections for chapter 31 of title 28, United States Code, is amended by amending the item relating to section 519 to read as follows:

"519. Supervision."

SEC. 103. Section 526 of title 28, United States Code, is amended—

(1) in the heading thereof by striking out "trustee" and inserting "trustees" in lieu thereof:

(2) at paragraph (a)(1) by striking out "and" the first time it appears and inserting ", and also those of trustees in cases under title 11" immediately before the semicolon; and

(3) at paragraph (a)(2) by striking out "courts of the Canal Zone and the Virgin Islands, probation officers, trustees in cases under title 11," and inserting "court of the Virgin Islands, probation officers," in lieu thereof.

SEC. 104. Section 581 of title 28, United States Code, is amended to read as follows:

"§ 581. United States trustees

"(a) The Attorney General shall appoint one United States trustee for each of the thirty bankruptcy regions of the United States. Such regions are constituted of Federal judicial districts (without regard to section 451 of this title) as follows:

"(1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.

"(2) The Northern and Western Districts of New York and the judicial districts established for the States of Connecticut, and Vermont.

"(3) The Southern and Eastern Districts of New York.

"(4) The Eastern District of Pennsylvania and the judicial districts established for the States of Delaware, and New Jersey.

"(5) The Middle and Western Districts of Pennsylvania.

"(6) The District of Columbia and the judicial districts established for the State of Maryland.

"(7) The judicial districts established for the States of Virginia and West Virginia.

"(8) The judicial districts established for the States of North Carolina and South Carolina.

"(9) The judicial districts established for the State of Alabama.

"(10) The judicial districts established for the State of Georgia.

"(11) The judicial districts established for the State of Florida, for the Commonwealth of Puerto Rico and for the Virgin Islands of the United States.

"(12) The judicial districts established for the States of Louisiana and Mississippi.

"(13) The judicial districts established for the State of Texas.

"(14) The judicial districts established for the State of Ohio.

"(15) The judicial districts established for the State of Michigan.

"(16) The judicial districts established for the States of Tennessee, and Kentucky.

"(17) The Northern District of Illinois.

"(18) The judicial districts established for the State of Wisconsin.

"(19) The Central and Southern Districts of Illinois and the judicial districts established for the State of Indiana.

"(20) The judicial districts established for the States of Minnesota, North Dakota, and South Dakota.

"(21) The judicial districts established for the States of Iowa and Nebraska.

"(22) The judicial districts established for the States of Arkansas, and Missouri.

"(23) The judicial districts established for the States of Colorado, Utah, and Wyoming.

"(24) The judicial districts established for the States of New Mexico, Oklahoma, and Kansas.

"(25) The Southern District of California and the judicial districts established for the State of Hawaii, for Guam, and for the Commonwealth of the Northern Mariana Islands.

"(26) The judicial district established for the State of Arizona.

"(27) The Central District of California.

"(28) The Eastern District of California and the judicial district established for the State of Nevada.

"(29) The Northern District of California.

"(30) The judicial districts established for the States of Alaska, Idaho, Montana, Oregon, and Washington.

"(b) Each United States trustee shall be appointed for a term of four years. On the expiration of his term, a United States trustee shall continue to perform the duties of his office until a successor is appointed and qualifies.

"(c) Each United States trustee is subject to removal by the Attorney General.".

"SEC. 105. (a) Section 582 of title 28, United States Code, is amended—

"(a) in subsection (a), by striking out "district" and inserting in lieu thereof "region"; and

(b) in subsection (b), by striking out "for cause".

"SEC. 106. Section 584 of title 28, United States Code, is amended by striking out "districts" and inserting in lieu thereof "regions".

"SEC. 107. Section 585 of title 28, United States Code, is amended to read as follows:

"§ 585. Vacancies

"(a) The Attorney General may appoint an acting United States trustee for a region in which the office of the United States trustee is vacant. The individual so appointed may serve until the date on which the vacancy is filled by appointment under section 581 of this title or by designation under subsection (b) of this section.

"(b) The Attorney General may designate a United States trustee to serve in more than one region for such time as the public interest requires, and may authorize such United States trustee to remain at his original official station.".

"SEC. 108. Section 586 of title 28, United States Code, is amended to read as follows:

§ 586. Duties

"(a) Each United States trustee, within his region shall—

"(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

"(2) supervise the administration of cases and trustees in cases under chapter 7, 11, or 13 of title 11;

"(3) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

"(4) perform the duties prescribed for the United States trustee under titles 11 and 28 and such duties as may be prescribed by the Attorney General; and

"(5) make such reports as the Attorney General directs.

"(b) If the number of cases under chapter 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

"(c) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11.

"(d)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11, shall fix—

"(A) a maximum annual compensation for such individual, not to exceed the annual rate of basic pay in effect for step 1 of grade GS-16 of the General Schedule prescribed under section 5332 of title 5: *Provided, however,* That the Attorney General may increase the maximum compensation of such individual to an annual rate not in excess of that for step 6 of GS-16 of the General Schedule prescribed under section 5332 of title 5 upon a determination that such individual has significantly decreased actual expenses resulting in a decrease of the percentage fee; and

"(B) a percentage fee, not to exceed 10 per centum, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

"(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall pay to proprietary receipts in the general fund of the Treasury—

"(A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under chapter 13 of title 11 for which such individual serves as standing trustee; and

"(B) any amount by which the percentage for all such cases exceeds—

"(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

"(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases: *Provided, however*, That, subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.".

"SEC. 109. Section 587 of title 28, United States Code, is amended to read as follows:

"§587. Salaries

"Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.".

"SEC. 110. (a) The heading for chapter 39 of title 28, United States Code, as added by the Ethics in Government Act, is amended by striking out "CHAPTER 39" and inserting in lieu thereof "CHAPTER 40".

(b) The table of chapters for part II of title 28, United States Code, is amended by striking out the item relating to Independent Counsel and inserting in lieu thereof the following:

"40. Independent Counsel..... 591."

(c) Section 49(f) of title 28, United States Code, is amended by striking out "chapter 39" each place it appears and inserting in lieu thereof "chapter 40".

"SEC. 111. Subsection (f) of section 604 of title 28, United States Code, as added by the Act of November 6, 1978 (Public Law 95-598, 92 Stat. 2549), is repealed.

"SEC. 112. Section 1930 of title 28, United States Code, is amended—

(1) in paragraph (a)(1) by striking out "$60" and inserting "$100, plus such additional amount as is specified in regulations issued by the Attorney General: *Provided*, That to convert, on a motion by the debtor, the case under one of these chapters to a case under chapter 11, the debtor shall pay an additional $400" in lieu thereof;

(2) in paragraph (a)(3), by striking out "[that does not concern a railroad, as defined in section 101 of title 11,] $200" and inserting ", $500, plus such additional amount as is specified in regulations issued by the Attorney General" immediately before the period;

(3) in paragraph (a)(4), by striking out "$500" and inserting in lieu thereof "$1,000";

(4) by adding at the end of subsection (a) the following: "The clerk of the court may collect only the fees authorized under this section. The clerk shall transmit to the Treasury of the United States for deposit into proprietary receipts in the general fund $40 from the filing fee prescribed under paragraph (a)(1) of this section, $300 from the filing fee prescribed under paragraph (a)(3) of this section, and the additional amounts prescribed in the regulations issued by the Attorney General under this section, including such amounts as may arise from conversion of a case under one chapter of title 11 to a case under a different chapter of title 11.";

(5) by striking out subsection (e); and

(6) by adding at the end thereof the following new subsections:

"(e)(1) In addition to the filing fee paid to the clerk, a monthly charge shall be paid to the United States trustee in each case under chapter 11 of title 11 as an administrative expense under section 503(b) of title 11, until a plan is confirmed or the case is converted or dismissed, whichever first occurs. The charge shall be $100 for each month in which disbursements total less than $20,000, $250 for each month in which disbursements total $20,000 or more but less than $100,000, $750 for each month in which disbursements total $100,000 or more but less than $1,000,000, and $1,000 for each month in which disbursements total $1,000,000 or more. The Attorney General may, by regulation, increase or decrease the amount of these charges; *Provided*, That, in a case in which the debtor is a farmer, as defined in section 101(17) of title 11, United States Code, the court, for cause, may modify the monthly charge.

"(e)(2) The United States trustee shall transmit to the Treasury of the United States for deposit into proprietary receipts in the general fund all the charges collected under this subsection.

"(f) Any regulations promulgated pursuant to this provision shall be based on the amount necessary to ensure repayment to the Treasury of the amounts appropriated for the United States system, but also shall take into account changes in the cost of living and other related factors.".

TITLE II—AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE

SEC. 201. Section 101 of title 11, United States Code, is amended—

(1) in paragraph (14) by striking out "and governmental unit" and inserting in lieu thereof "governmental unit, and United States trustee" before the semicolon at the end thereof; and

(2) in paragraph (24) by inserting "(but not a United States trustee while serving as trustee in a case under this title)" after "United States" the second place it appears.

SEC. 202. Section 102 of title 11, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (7) thereof;

(2) by striking the period at the end of paragraph (8) and inserting "; and" in lieu thereof; and

(3) by inserting a new paragraph (9) to read as follows:

"(9) 'United States trustee' includes a designee of the United States trustee.".

SEC. 203. Section 104 of title 11, United States Code, is amended by inserting "except as to those changes and portions of fees to be specified in regulations issued by the Attorney General and deposited in the general fund of the Treasury" immediately before the period at the end thereof.

SEC. 204. Section 303 of title 11, United States Code, is amended—

(1) at subsection (g), by inserting "order the United States trustee to" after "may", the first time it appears;

(2) at subsection (i), by adding "or" at the end of subparagraph (7)(A);

(3) at subsection (i), by striking out subparagraph (1)(C);

(4) at subsection (i), by striking out the period at the end of subparagraph (2)(B) and inserting in lieu thereof "; or"; and

(5) at subsection (i), by adding at the end therefore the following new paragraph:

"(3) against a party requesting the appointment of a trustee under subsection (g) of this section or section 1104 of this title, for any damages proximately caused by the taking of possession of the debtor's property by such a trustee.".

SEC. 205. Subchapter I of chapter 3 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"§ 307. United States trustee

"The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title.".

SEC. 206. The table of sections for subchapter I of chapter 3 of title 11, United States Code, is amended by adding at the end thereof:

"307. United States trustee.".

SEC. 207. Section 321 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The United States trustee for the judicial district in which the case is pending is eligible to serve as trustee in the case.".

SEC. 208. Section 322 of title 11, United States Code, is amended—

(1) at subsection (a), by striking out "A person" and inserting in lieu thereof "Except as provided in subsection (b)(1), a person"; and

(2) by amending subsection (b) to read as follows:

"(b)(1) The United States trustee qualifies wherever such trustee serves as trustee in a case under this title.

"(2) The United States trustee shall determine—

"(A) the amount of a bond required to be filed under subsection (a) of this section; and

"(B) the sufficiency of the surety on such bond.".

SEC. 209. Section 324 of title 11, United States Code, is amended to read as follows:

"§ 324. Removal of trustee or examiner

"(a) The court, after notice and a hearing may remove a trustee, other than the United States trustee, or an examiner, for cause.

"(b) The United States trustee, after notice and a hearing and unless the court orders otherwise, may remove a trustee in a case under chapter 7, 11, or 13, or an examiner in a case under chapter 11 for cause.

"(c) Removal for cause under subsection (b) of this section in any case shall be deemed cause for removal in all cases in which such trustee or examiner is serving.".

SEC. 210. Section 326 of title 11, United States Code, is amended at subsection (b) by inserting "of the United States trustee or" after "expenses".

SEC. 211. Section 327(c) of title 11, United States Code, is amended by inserting "or the United States trustee" immediately after "another creditor".

SEC. 212. Section 330 of title 11, United States Code, is amended—

(1) at subsection (a) by inserting "to any parties in interest and to the United States trustee" after "notice"; and

(2) by inserting at the end thereof the following new subsection:

"(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under subsection (b) of this section shall be paid into proprietary receipts in the general fund of the Treasury.".

SEC. 213. Section 341 of title 11, United States Code, is amended—

(1) in subsection (a), by striking out "there shall be a meeting of creditors" and inserting "the United States trustee shall convene and preside at a meeting of creditors" in lieu thereof;

(2) in subsection (b), by striking out "court may order" and inserting "United States trustee may convene" in lieu thereof; and

(3) in subsection (b), by inserting "including any final meeting of creditors" before the period at the end thereof.

SEC. 214. Section 343 of title 11, United States Code, is amended to read as follows: "The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section."

SEC. 215. Section 345 of title 11, United States Code, is amended—

(1) by striking out "court" in subparagraph (b)(1)(B) and inserting in lieu thereof "United States trustee"; and

(2) by inserting a new subsection (d) to read as follows:

"(d) The United States trustee may aggregate money of estates for which such United States trustee serves as trustee for deposit or investment under this section, in order to increase the return on such money, taking into account the safety of such deposit or investment. The United States trustee shall maintain complete records identifying separately the money of each estate included in such an aggregation. Any return on any such deposit or investment shall be paid by the United States trustee into proprietary receipts of the general fund of the Treasury.".

SEC. 216. Section 701 of title 11, United States Code, is amended at subsection (a) to read as follows:

"(a)(1) Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 or that was serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

"(2) If none of the members of such panel is willing to serve as interim trustee in the case, then the United States trustee may serve as interim trustee in the case.".

SEC. 217. Section 703 of title 11, United States Code, is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following new subsections:

"(b) Pending election of a trustee under subsection (a) of this section, if necessary to preserve or prevent loss to the estate, the United States trustee may appoint an interim trustee in the manner specified in such subsection.

"(c) If creditors do not elect a successor trustee under subsection (a) of this section, or if a trustee is needed in a case reopened under section 350 of this title, then the United States may serve, or shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 to serve, as trustee in the case.".

SEC. 218. Section 704 of title 11, United States Code, is amended—

(1) at paragraph (8), by inserting ", with the United States trustee," immediately after "court" the first time it appears;

(2) at paragraph (8) by inserting "the United States trustee or" immediately after "information as"; and

(3) at paragraph (9) by inserting "and with the United States trustee" immediately before the period.

SEC. 219. Section 705 of title 11, United States Code, is amended—

(1) at subsection (b), by inserting "or the United States trustee" after "trustee" each place it appears; and

(2) at subsection (b), by inserting "or the United States trustee" immediately after "court".

SEC. 220. Section 707 of title 11, United States Code, is amended—

(1) at subsection (a), by striking out "or" at the end of paragraph (1);

(2) at subsection (a), by striking out the period at the end of paragraph (2) and inserting a semicolon in lieu thereof; and

(3) by adding to subsection (a) the following new paragraph at the end thereof;

"(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521.".

SEC. 221. Section 726 of title 11, United States Code, is amended at subsection (b) by inserting ", except as to fees and charges under chapter 123 of title 28" immediately after "paragraph (1)".

SEC. 222. Section 727 of title 11, United States Code, is amended by striking out subsection (c), (d), and (e) and inserting in lieu thereof the following new subsections:

"(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

"(2) On request of a party in interest, the court may order the trustee or the United States trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

"(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

"(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

"(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

"(3) the debtor committed an act specified in subsection (a)(6) of this section.

"(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

"(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

"(2) under subsection (d)(2) or (d)(3) of this section before the later of—

"(A) one year after the granting of such discharge; and

"(B) the date the case is closed.".

SEC. 223. Section 1102 of title 11, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1) As soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate.

(2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee."; and

(3) by striking out subsection (c).

SEC. 224. Section 1104 of title 11, United States Code, is amended—

(1) at subsection (a), by inserting "or the United States trustee" after "party in interest";

(2) at subsection (b), by inserting "or the United States trustee" after "party in interest";

(3) at subsection (c), by striking out "court" and inserting in lieu thereof "United States trustee, after consultation with parties in interest"; and

(4) at subsection (c), by striking out "one disinterested person" and inserting in lieu thereof ", subject to the court's approval, one disinterested person other than the United States trustee".

SEC. 225. Section 1105 of title 11, United States Code, is amended by inserting "or the United States trustee" immediately after "party in interest".

SEC. 226. Section 1112 of title 11, United States Code, is amended at subsection (b)—

(1) by inserting "or the United States trustee" immediately after "party in interest";

(2) by striking out "or" in paragraph (8);

(3) by striking out the period at the end of paragraph (9) and inserting a semicolon in lieu thereof; and

(4) by adding the following new paragraphs at the end thereof:

"(10) nonpayment of any fees or charges required under chapter 123 of title 28;

"(11) failure of the debtor in a voluntary case to file, within fifteen days after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, including a list containing the names and addresses of the holders of the lesser of all unsecured claims or the 20 largest unsecured claims, and the dollar amounts of such claims; or

"(12) failure to timely file the information required by paragraph (2) of section 521.".

SEC. 227. Section 1163 of title 11, United States Code, is amended by adding the following new sentence at the end thereof; "The United States trustee shall appoint one of such persons to serve as trustee in the case.".

SEC. 228. Section 1302 of title 11, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a) If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under chapter 13 of this title and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. The United States trustee may serve, or shall appoint one disinterested person to serve, as trustee in the case otherwise."; and

(2) by striking out subsections (d) and (e).

SEC. 229. Section 1307 of title 11, United States Code, is amended—

(1) in subsection (c) by inserting "or the United States trustee" immediately after "party in interest"; and

(2) in subsection (c) by striking out "or" at the end of paragraph (7) and inserting a semicolon in lieu thereof;

(3) in subsection (c) by adding the following new paragraphs at the end thereof:

"(9) failure of the debtor to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; or

"(10) failure to timely file the information required by paragraph (2) of section 521."; and

(4) in subsection (d) by inserting "or the United States trustee" immediately after "party in interest".

SEC. 230. Section 1326(b) of title 11, United States Code, is amended to read as follows:

"(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

"(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

"(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28.".

TITLE III—TRANSITION AND REPEALER

SEC. 301. Section 408(c) of the Act of November 6, 1978 (Public Law 95-598, 92 Stat. 2549, 2686-87), is amended—

(1) by striking out "and chapter 39 of title 28 of the United States Code are repealed, and all references to the United States trustee contained in title 28 of the United States Code are deleted, as of September 30, 1986" and inserting "is repealed" in lieu thereof; and

(2) by striking out the last sentence thereof.

SEC. 302. The service of any United States trustee and of any assistant United States trustee appointed under the authority of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), is terminated upon the earlier of the expiration of his term or March 31, 1987: *Provided*, That the Attorney General—

(1) may appoint any such United States trustee to serve for such period, not to exceed two years, as the Attorney General deems necessary to facilitate the transition from the Bankruptcy Administration Program established by that Act to the United States trustee system established by this Act; and

(2) may appoint any such assistant United States trustee under the provisions of section 582 of title 28, United States Code, as amended by this Act.

SEC. 303. Except as otherwise provided in this title, the amendments made by title I, III, IV and V of this Act shall become effective upon enactment of this Act. The amendment made by subsection 6 of section 111 of this Act shall become effective in a region thirty days after the certification of the Attorney General under section 306 of this Act as to cases in that region filed on or after the date of enactment of this Act. The remaining amendment made by section 111 of this Act shall become effective thirty days after the date of the enactment of this Act.

SEC. 304. (a) The amendments made by title II of this Act shall become effective two years from the date that the initial appropriation authorized under section 401 of this Act is enacted or thirty days after the Attorney General certifies the thirtieth region under section 306 of this Act, whichever first occurs.

(b) During the two-year period following the date of enactment of the initial appropriation authorized under section 401 of this Act, the amendments made by title II of this Act shall apply in each district in which a United States trustee was authorized by the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), and, thirty days after the Attorney General's certification under section 306 of this Act, in those remaining districts established pursuant to this Act: *Provided*, That, in any case commenced under chapter 7 of title 11, United States Code, prior to the date of enactment of this Act, the failure of a trustee to file the final report and account required by section 704 of title 11 prior to one year following certification of the district in which such trustee serves shall be deemed cause of removal under section 324 of title 11, as amended by section 209 of this Act, and in any case under chapter 11 in which a trustee was appointed prior to the date of enactment of this Act, the failure to obtain approval of a plan prior to one year after certification shall also be deemed cause for removal. In such cases, the United States trustee may remove the trustee by filing a notice of the appointment of a successor trustee.

SEC. 305. The United States trustee system herein established shall be phased-in over a two-year period from the date that the initial appropriation authorized under section 401 of this Act is enacted. The regions encompassing districts for which United States trustees were appointed pursuant to the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), shall be certified by the Attorney General pursuant to section 306 of this Act not later than two hundred and seventy days after the date of enactment of the initial appropriation authorized under section 401 of this Act.

SEC. 306. The Attorney General shall certify, to the appropriate Federal circuit courts of appeals, his intention to establish offices in a United States trustee region thirty days prior to the assumption of the responsibilities prescribed by this Act in that region. The courts promptly shall publish notice of this certification and of the implementation of section 111(6) of this Act in and for the districts within the region.

SEC. 307. (a) A case commenced under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, shall be conducted and determined under such Act as if this Act had not been enacted, and the substantive rights of parties in connection with any such bankruptcy case, matter, or proceeding shall continue to be governed by the law applicable to such case, matter, or proceeding as if this Act had not been enacted: *Provided*, That, at the end of one calendar year following the certification of a district in which any case is still pending under the Bankruptcy Act, the district court shall withdraw the reference of any such case and, after notice and a hearing, determine the status of the case and remand it to the bankruptcy judge with such instructions as are necessary for the prompt closing of the case and with a requirement that a progress report on the case be provided by the bankruptcy judge after such interval as the district court deems appropriate.

(b) A case commenced under the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), and all matters and proceedings in or relating to any such case, shall be conducted and determined under the provisions of this Act: *Provided, however*, That the amendments made by titles I and II of this Act relating to the authority and responsibilities of the United States trustees, except in those districts for which United States trustees were appointed pursuant to the Act of November 6, 1978 (Public Law 95-598, 92 Stat. 2549), shall not apply to a case under chapter 7 or chapter 11 of title 11, United States Code, commenced prior to the date of enactment of this Act, until one year after the region encompassing the district in which such case has been filed has been certified under section 306 of this Act. Such provisions shall not apply to such cases thereafter, if—

(1) in a case under chapter 7 of title 11, United States Code, the case trustee has filed the final report and account of the administration of the estate required by section 704 of title 11, United States Code, prior to or within the year after certification; and

(2) in a case under chapter 11 of title 11, United States Code, a plan has been confirmed under section 1129 of title 11, United States Code, prior to or within the year after certification.

SEC. 308. The Attorney General and the Director of the Administrative Office of the United States Courts shall consult with a view to achieving optimal coordination and may enter into agreements under which the United States trustees may use the services, equipment, personnel, records, reports, and data compilations, in any form, and the facilities of the Federal judiciary, and the United States trustees may cooperate in the use by the Federal judiciary of services, equipment, personnel, records, reports, and data compilations, in any form, and the facilities of the United States trustees in order to prevent duplication during the phase-in period.

SEC. 309. The Director of the Administrative Office of the United States Courts shall make available to the United States trustees on a current basis all records, reports, and data compilations, in any form, relating to cases and proceedings under title 11, United States Code, or the United States trustees' duties under titles 11 and 28, United States Code, as prescribed by this Act, and shall instruct all clerks to cooperate in the orderly transfer of functions, documents, and data compilations, in any form, to the United States trustee system and no such transfer shall be made without the consent of the Attorney General: *Provided, however*, That the United States trustees shall not be required to give any notice provided for in cases under title 11, United States Code.

SEC 310. ESTABLISHMENT OF A DEMONSTRATION ELECTRONIC CASE MANAGEMENT SYSTEM

(a) The Executive Office for United States Trustees, in consultation with the Administrative Office of the United States Courts, shall, within twelve months of the date of enactment of an appropriation therefor under section 401 of this Act, take such steps as are necessary to establish an electronic case management demonstration project for not fewer than, nor more than, three judicial districts in the United States having a sufficient caseload to provide a meaningful test of such system. A contract for such case management demonstration project shall be awarded by the Director, Executive Office for United States Trustees, upon competitive bids by qualified private

sector entities able to design an automated joint information system for use by the courts and the United States trustees, and to provide that level of expertise in the design and implementation of automated case management systems that is required for purposes of this demonstration project.

(b) The demonstration project required by subsection (a) of the section shall continue for a period of not less than two years after the date of its implementation, and one year after its implementation, Congress shall cause a study to be performed of the cost-effectiveness of such demonstration project in comparison to (1) judicial districts that do not have electronic case management systems in place, (2) judicial districts that participate in such electronic case management systems as are maintained by the Administrative Office of the United States Courts.

(c) The demonstration project required by subsection (a) of this section shall continue until such time as Congress shall evaluate the success of such project and act upon its continuance, its expansion to all judicial districts, or its termination.

(d) The electronic case management system required by subsection (a) of this section shall provide the clerk of court, in each district in which it may be operated, with a means of maintaining a complete electronic case file of all relevant information contained in the petitions and schedules filed by debtors and any amendments thereto including—

(1) a complete list of creditors in the case as listed by the debtor;

(2) a complete listing of all assets scheduled by the debtor, showing the manner in which each item is scheduled, the value thereof, and any action taken by the trustee or debtor in possession with regard to that item during the pendency of the case; and

(3) the debtor's statement of current expenses and income.

(e) The demonstration system shall provide the United States trustee in each district in which it may be completed with a means of maintaining a complete electronic case file which shall contain in addition to the information listed in subsection (d) of this section the following—

(1) a record of all motions, complaints, appointments, pleadings and responses; as well as a record of the responses by the United States Trustee Office to those motions, appointments and pleadings;

(2) automated generation of motions, complaints, appointments, pleadings and responses;

(3) automatic generation of standard management reports and letters on a exception basis;

(4) those accounting records, reports and information required to be maintained by debtors in possession and trustees in cases under title 11, United States Code, by the Executive Office for United States Trustees;

(5) an accurate record of bankruptcy case openings, case milestones, and case closings;

(6) the calculation of distribution to creditors, final applications and orders for distribution, final case closing reports, and all forms to insure prompt payment of statutory fees to trustees in asset and no asset cases.

(f) The demonstration system shall further provide the clerk of court with a means of electronically maintaining all calendars and dockets, and of producing all notices required to be sent in cases under title 11, United States Code.

(g) The demonstration system shall maintain the information specified in subsections (a) and (f) of this section in a format easily accessible by electronic means or otherwise to all entities within the district in which such system is maintained with an interest in a case pending under title 11, United States Code. *Provided, however,* that a charge of $5 shall be collected for each case access by such entity and that all such charges be paid to proprietary receipts in the general fund of the Treasury to help defray the cost of operating the demonstration system.

(h) Notwithstanding subsection (d) of this section, unlimited access to the information maintained in the demonstration system shall be provided at no charge to the following:

(1) Congress.

(2) The Executive Office for United States Trustees.

(3) The Administrative Office of the United States Courts.

(4) The clerks of the court in each judicial district in districts in which the demonstration system is operated.

(5) The judges of the bankruptcy and district courts in which the demonstration system is operated.

(6) Trustees in cases pending in those districts involved in operations of the demonstration system.

(i) Access as provided in subsection (e) of this section shall be subject to such security limitations as may be imposed by the officials in charge of each of the respective offices specified in paragraphs (1) through (5) of such subsection. Access to the information maintained in the electronic case management system by trustees, attorneys of record, and parties in interest in proceedings and attorneys admitted to practice before the courts of participating districts shall be limited to review of the information on file which constitutes information of public record as provided in section 107 of title 11, United States Code.

SEC. 311. If any provision of this Act or any amendment made by this Act, or the application thereof to any entity or circumstance is held invalid, the provisions of every other part, and their application shall not be affected thereby.

TITLE IV—AUTHORIZATION FOR APPROPRIATIONS FOR BANKRUPTCY ADMINISTRATION

SEC. 401. There hereby are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act: *Provided, however,* That such amounts as are collected pursuant to the amendments made by section 111 of this Act shall be utilized to reimburse the Treasury for such appropriations. Appropriations authorized under this section shall remain available for obligation until expended.

TITLE V—THE RULES OF BANKRUPTCY PROCEDURE

SEC. 501. Part X of the Rules of Bankruptcy Procedure applies in any district in which a United States trustee is serving until such Part is superseded by Rules of Bankruptcy Procedure promulgated under the authority of section 2075 of title 28, United States Code.

● Mr. DECONCINI. Mr. President, I am pleased to join with the distinguished chairman of the Committee on the Judiciary in introducing this bill to implement a nationwide U.S. Trustee System. This bill is needed to provide impartial, efficient, and effective administrative oversight of bankruptcy cases and to curb abuses and overreaching in some of those cases. The legislation we are introducing today is an extension and modification of a program that has been in place in 10 pilot programs for the past 6 years. The new System utilizes the knowledge we've gained from the pilot programs operations. The system will be completely self-supporting through small increases in the filing fees and modest monthly charges in chapter 11 cases reflecting the services provided by the system.

I also want to compliment the Attorney General and the Department of Justice for the constructive role they have played in the development of this legislation. Earlier this fall, it appeared that the Department might offer its own bill, that Judicial Conference might author a bill, and that I would also have a separate and distinct approach to bankruptcy administration. Since then, many thoughtful, productive meetings have occurred between the staff of the Department, the chairman's staff, and my staff. I believe the result is far better for their discussions than any of our individual products may have been, and I thank them for their efforts.

Active supervision of bankruptcy cases is essential due to the ever-present risk of fraud, self-dealing, and diversion of funds, and the huge number of people affected by bankruptcy proceedings, an estimated 8 million a year. Among the duties and responsibilities of the U.S. Trustees are overseeing the qualifications and appointments of private trustees in bankruptcy cases and supervising their performance, serving as trustees in certain cases, investigating misconduct or impropriety, monitoring the hiring of professionals and experts and the reasonableness of their fees and compensation, examining the debtor or presiding at meetings where the creditors examine the debtor, objecting in appropriate cases to the discharge of the debtor, reviewing the adequacy and completeness of financial statements submitted by the debtor, reviewing the final reports on estates that trustees have administered, forming representatives creditors' committees, and supervising creditors' committees to ensure that they perform their statutory duties.

The role of the U.S. Trustee is to eliminate favoritism, opportunities for fraud, and such improprieties as the operation of a company with no insurance during the pendency of a chapter 11 business reorganization proceeding, engendering administrative expenses (such as rent, utilities, and taxes) which cannot be paid, or failing to pay withholding taxes during the chapter 11 proceeding.

The sum of these duties led Congress to create the U.S. Trustee as an

executive branch officer and, after thorough deliberations, to place the system in the Department of Justice in view of the U.S. Trustees' litigating and enforcement functions. That placement has worked extremely well. The Department has the prestige to attract high caliber personnel, the experience in supervising attorneys, and has other responsibilities in the area of bankruptcy, especially the prosecution of bankruptcy crimes. The placement has allowed needed cooperation between the U.S. Trustees and the U.S. Attorneys, and other components of the Department, as well as other agencies and departments of the Government. It has also enhanced the Department's detection and prosecution of white collar crimes related to bankruptcy and of organized crime figures involved in bankruptcy bustouts.

The pilot program has been exhaustively evaluated and has been highly effective in improving the quality and efficiency of bankruptcy case administration. An independent evaluation by ABT Associates, Inc., of Cambridge, MA, was very positive. Among other indicia of the success of the program, it found that there were twice as many successful business reorganizations in districts with a U.S. Trustee than in others. The statutorily mandated 1984 Report of the Attorney General was equally positive, focusing particularly on the effective discharge of the U.S. Trustees' watchdog function. This legislation is quite similar to the United States Trustees Act of 1985 introduced in the other body as H.R. 3664, but differs in the following important respects.

It establishes 30 rather than 24 regions to be headed by a U.S. Trustee by reducing the geographical areas to be covered and, as a result, making the U.S. Trustee more accessible. This change would have only a minimal effect on the cost of the system since the number of offices would not be increased.

It clarifies the U.S. Trustees' authority to remove trustees and examiners for cause, by providing that removal in one case is cause for removal in all other cases. It makes clear that the U.S. Trustees are not given standing to file plans in chapter 11 cases, and provides for active district court supervision over cases still pending under the former Bankruptcy Act of 1898, as amended.

An important difference is the addition of a demonstration project to be implemented by the Department of Justice to evaluate the effectiveness of an integrated computer system in increasing efficiency in both the U.S. Trustees' offices and the offices of the clerks of the courts. Despite a decade-long attempt, the Administrative Office of the United States Courts, has been unable to develop such a system.

This legislation will implement a cost saving and effective administrative system to protect the financial interests of millions by implementing a U.S. Trustee system nationwide without burdening the taxpayers of the country.●

● Mr. D'AMATO. Mr. President, I am happy to be an original cosponsor of the United States Trustees Act, legislation being introduced today to expand the bankruptcy trustee program. I have become very familiar with this program through its successful operation in the Southern District of New York.

The pilot United States Trustee Program was established in 1979 to combat embezzlement, fraud, and other white collar crimes, as well as administrative waste and abuse, in our Nation's bankruptcy system.

In 1984, approximately 150 criminal matters were referred to appropriate law enforcement agencies for investigation and prosecution.

One of the worst frauds the trustee program combats is the so-called bust-out, or planned bankruptcy. This typically involves the purchase or taking control of a company with as small an investment of funds as possible.

A good credit rating is first established by submitting false financial information, and by making small purchases of goods from suppliers and paying promptly. Large amounts of goods are then obtained on credit. The goods are sold below cost for cash to companies under the participants' control.

The original company is then "sold" to "new" owners, who are also participants in the scheme. The new owners disclaim responsibility for debts of the prior owners, while obtaining more goods on credit.

Finally, the original company is put into bankruptcy with large debts and as few assets as possible. A great quantity of goods has been obtained on credit and without payment. The goods have been sold at a price very advantageous to participants in the scheme, and the company's creditors have been defrauded. The participants in such schemes, frequently members of organized crime, execute many bust-outs over a period of time by using various companies under their control.

In 18 pilot districts, Congress has given the Justice Department primary responsibility for administration and case monitoring. The U.S. Trustees serve as "watchdogs" who supervise the administration of all cases filed pursuant to Chapters 7, 11, and 13 of Title 1 of the Bankruptcy Reform Act.

Although the Bankruptcy Reform Act originally provided for the program to expire on April 1, 1984, Congress first extended it until September 30, 1984, and last year extended it again until September 30, 1986. This program has been subjected to the strictest scrutiny, and has repeatedly proved itself to be a success. I refer my colleagues to the 1983 study conducted by Abt Associates entitled, "An Evaluation of the United States Trustee Pilot Program for Bankruptcy Administration" and to the 1984 "Report of the Attorney General on the United States Trustee Program".

In chapter 7 cases, the trustees oversee the complete liquidation of the debtor's nonexempt assets. Their review helps prevent unnecessary expenses being charged to a debtor's estate and to prevent overreaching by professionals.

In 1984, the Trustees filed 1,550 objections to fee requests by professionals. In only 200 of these cases were the fees granted as originally requested. This number does not include the many cases handled by negotiations prior to action by the court.

In chapter 11 cases, the trustees oversee financial reorganizations, usually of businesses. They prevent dissipation of assets, and have been especially successful in making certain that withholding taxes are paid. There are twice as many successful business reorganizations under chapter 11 in those judicial districts where the United States Trustee Program is in place.

In chapter 13 cases, the trustees work to ensure that debtors repay their creditors with regular monthly payments over a set period of time, usually 3 years. Trustees assist debtors in developing acceptable repayment plans, and handle disbursements to creditors.

Mr. President, I encourage my colleagues to give this bill their full support. The United States Trustees Act is a major contribution toward the development of a nationwide system that provides relief to deserving creditors, maximizes distributions to creditors, and preserves jobs by allowing failing businesses to reorganize.●

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 1963. A bill to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, NM, to the New Mexico Institute of Mining and Technology; to the Committee on Energy and Natural Resources.

NEW MEXICO TECH LAND PURCHASE

● Mr. DOMENICI. Mr. President, today I introduce a bill that will convey 8,501 acres of Bureau of Land Management land to the New Mexico Institute of Mining and Technology, commonly called New Mexico Tech. This small, highly regarded institution is located at Socorro, NM.

New Mexico Tech has gained international prominence for the work it has completed in the areas of petroleum recovery research, explosive tech-

nology research, and military hardware research.

The land that will be conveyed in this bill is necessary so that valuable educational research and testing work can continue. The university's present field laboratory does not have enough usable space. If the university's present field laboratory is not expanded a very important component of our Nation's defense related research and testing capabilities will be put at jeopardy. Therefore, this legislation is not only very important for the university and for New Mexico, but for the Nation as well.

The research that would be conducted on the subject land would be undertaken by the terminal effects research and analysis [TERA] group which is a component of the Research and Development Division at New Mexico Tech.

TERA is known for its work in the fields of aircraft vulnerability, antiaircraft missile design, and warhead evaluation. TERA is also involved in the design and evaluation of missile warheads for antiship and antitank targets. The TERA group was involved in the pioneering design, testing and evaluation efforts for the Talos, Tartar, and Terrier warhead systems. In addition, TERA has more recently been involved in the Sea-Sparrow, Phoenix, Standard Missile-2, Amraam, Chaparral, and Roland missile systems projects.

All branches of the military are looking to TERA to assume more of the testing work which is required to fulfill their explosive testing obligations. This work, by its very nature, involves large explosive charges, rocket propellants, and long-range gun firings, all of which require large expanses of land for purposes of safety and security.

I have been informed by New Mexico Tech that current contract negotiations with the military include such project requests as a 5-kilometer (3-mile) gun range to test 120 mm ammunition for the M-1 Abrams tank, and an area for testing 10,000-pound explosive charges against blast barriers for U.S. embassies abroad, and a 5-kilometer range for a testbed electromagnetic rail gun. The present field laboratory with 37 test sites now in operation does not have usable space available to meet these current needs.

The land that would be conveyed to New Mexico Tech is admittedly a large acreage, but it is needed to meet both line-of-site and safety requirements. This land is contiguous to the present laboratory and thus well situated for security purposes. The land will allow for economies of operation that might otherwise not exist in a location removed from the existing facility.

TERA expertise centers on experimental development, evaluation, and analysis of defense system components intended for use by the U.S. Armed Forces. So far, the Department of Defense has been TERA's primary user, but increasingly the Departments of Energy and State as well as other Government agencies and private industry are turning to TERA for assistance.

TERA evolved from ordnance research projects during World War II and has been a part of New Mexico Tech since 1949. Over the years, TERA's combination of knowledge and experience, specialized test facilities, fast turnaround, and reasonable cost have served to make it a very important defense related research center. This bill will guarantee continued research for this vital institution.

I think it is very obvious that a lot of worthwhile activity is going on with the TERA group at New Mexico Tech. This university needs to have title to this land because they cannot lease it from BLM. BLM would be prohibited from issuing any permits and leases under the Federal Land Policy and Management Act of 1976 (FLPMA) because of the unique and special uses that the land would be used for. I have explained the merits of these special uses and the only way to insure that this special research can continue is if this bill is passed.

This legislation contains language which authorizes and directs the Secretary of the Interior to convey this land at fair market value. Preliminary estimates by the BLM show that this land is worth about $640,000. The university intends to get the State appropriation to purchase this land. So far their request has been approved by New Mexico's Board of Educational Finance and is supported by the Governnor. This evidences the State's commitment to this project and is a good example of State and Federal Governments working together to accomplish an important goal.

This legislation reserves to the Federal Government any mineral rights associated with the land. Further, New Mexico Tech agrees to perform and provide the Secretary with a survey of the archeological resources of the area. The university will complete this survey in coordination with New Mexico's historic preservation office. This conveyance is subject to all valid and existing rights such as existing grazing permits, geothermal leases, or mining claims.

In summary, this bill will provide New Mexico Tech with the additional land to fulfull TERA's defense-related commitments. This land is contiguous to the present field laboratory and will meet the university's requirements for safety and security while providing for economies of operation.●

By Mr. MOYNIHAN:

S. 1964. A bill to extend the Revenue Sharing Program for local governments through fiscal year 1988; to the Committee on Finance.

GENERAL REVENUE SHARING EXTENSION

● Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill extending through 1988 a program that has long been an important source of support for local and State governments—the General Revenue Sharing Program.

This is a matter which concerns the fundamental nature of our federalist system. During the 1960's we faced an elementary fact: the progressive arrangement of our income tax system caused those of the Federal Government to grow faster than the revenues of State and local governments. As money flowed to Washington, so did power.

Revenue sharing was established more than a decade ago when Congress passed the State and Local Fiscal Assistance Act of 1972. It was seen then as a way of halting, or even reversing, the trend toward ever-increasing concentrations of power in Washington, at the expense of State and local autonomy.

We extended the program in 1976, 1980, and 1983; since 1972, the program has provided more than $74 billion in assistance to State and local governments.

Mr. President, as in 1972, this program continues to embody the fundamental concept of maximizing local control over how funds are used. Since then, moreover, we have reformed the original program, to ensure that the funds could be sent to the governments which most truly need them. When first established, State governments as well as localities received revenue sharing funds. In 1980, we changed this arrangement to reflect the view that State governments were in better financial shape than the Federal Government.

Today, revenue sharing continues to provide needed funds to cities and towns throughout the country, on the basis of fiscal need and capacity. More than 39,000 units of government are eligible for the program, including 3,049 counties nationwide. Jurisdictions with populations of less than 10,000, most of which receive no other assistance from the Federal Government, account for more than 85 percent of the program's recipients. Revenue sharing is the only form of Federal assistance received by more than 30,000 local governments.

These communities do need revenue sharing. Sixty-two percent of all revenue sharing funds go to jurisdictions with per capita incomes below the national average. Fully 93 percent go to those with per capita incomes below 125 percent of the national average.

More than half of the funds are used for police, fire, schools, and hospitals. They are used as well to help maintain roads, highways, and bridges and to build jails and sewage and water treatment facilities. Funds also are used to

provide services for poor and elderly Americans, such as Meals on Wheels, indigent health care, and nursing homes.

Less than 0.2 percent of the funds are used for administration costs, making the program one of the most efficient the Government has ever established.

Without revenue sharing, local governments will be faced with the choice of increasing taxes or cutting nonessential services. For many local governments, taxes would have to go up more than 30 percent to compensate for the loss of revenue sharing.

I have long been a proponent of revenue sharing, and in the executive branch helped craft the legislation that led to creation of the program in 1972. Since coming to the Senate in 1977, I have always strongly supported the program. As the current program expires at the end of this fiscal year, the time has come again to extend the program. I urge my colleagues to support this effort.●

By Mr. STAFFORD (for himself, Mr. PELL, Mr. QUAYLE, Mr. KENNEDY, Mr. WEICKER, Mr. DODD, Mr. WALLOP, Mr. MATSUNAGA, Mr. SIMON, and Mr. PRESSLER):

S. 1965. A bill to reauthorize and revise the Higher Education Act of 1965, and for other purposes; to the Committee on Labor and Human Resources.

HIGHER EDUCATION AMENDMENTS

Mr. STAFFORD. Mr. President, today as chairman of the Senate Subcommittee on Education, Arts, and Humanities, I am introducing the reauthorization of the Higher Education Act of 1965 on behalf of myself and cosponsors Mr. PELL, Mr. QUAYLE, Mr. KENNEDY, Mr. WEICKER, Mr. DODD, Mr. WALLOP, Mr. MATSUNAGA, Mr. SIMON, and Mr. PRESSLER.

The Higher Education Act provides the means for millions of Americans to achieve a higher education. Its wide-ranging impact on the skills and competence of our work force, as well as on the quality of life for our people is immeasurable. The majority of testimony heard by this Senator during 12 days of hearings in Washington and around the Nation convinced me that the Higher Education Act was basically successful in design and execution, and should be reauthorized with a minimum of disruption to current programs.

With this in mind, the subcommittee has considered and unanimously voted out a conservative bill. Programs which have been funded are continued with improvements. Finally, our student aid programs are given the priority and emphasis they deserve. Particularly the Pell Grant Program which, as the centerpiece of the Federal investment in higher education, has been strengthened and expanded.

The bill is divided into two parts. Title I contains all of the student aid provisions. Title II is made up of all remaining programs that provide institutional support. As chairman of the subcommittee, it was my goal throughout this reauthorization process, to produce a bill that was realistic in light of the deep concern about the federal deficit, yet at the same time enjoyed wide bipartisan support. The long list of cosponsors who join with me today is a tribute to the hard work on the part of all subcommittee members and staff to help reach that goal.

The bill I am introducing today is over $2 billion below current authorization levels, and approximately $750 million below the higher education bill recently passed by the House of Representatives for fiscal year 1987.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD immediately following the statements of Senators PELL and SIMON.

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

● Mr. PELL. Mr. President, I am pleased to join the chairman of the Senate Subcommittee on Education, Arts, and Humanitaries [Mr. STAFFORD] in introducing the Higher Education Amendments of 1985. This legislation was approved by the subcommittee last Thursday, December 12, and represents strong bipartisan consensus on the part of the subcommittee members.

It is especially important to note that the total cost of this legislation is more than $2 billion below current authorizations for higher education. It is truly a bill that has been written in the spirit of prudent fiscal restraint.

I am particularly pleased that the major portions of this legislation focus upon student aid, which is by far our most important contribution to the cause of higher education. For some time, I have been very concerned by the decline of the actual dollar value of Pell grants, which is the cornerstone of our Federal student aid efforts. Over the past 4 years the value of that grant has declined by one-fifth. Further where a Pell grant in 1979 covered about 46 percent of average college attendance costs, it now covers less than a third.

Under the legislation approved by the subcommittee, the maximum Pell grant, now at $2,100, would increase to $2,400 for 1987, $2,600 for 1988, $2,800 for 1989, $3,000 for 1990, and $3,200 for 1991. In the first year of our proposal, this would mean an increase of almost 15 percent and that would do much to reverse the decline of the grant's value.

Generally the modest increases we have provided for undergraduate students through the Pell Grant Program and for graduate students through the Graduate and Professional Opportunities Program are truly investments in the future. Their cost will be repaid many times over in the contributions the men and women who receive these grants will make to our country.

There are, in addition, four proposals in which I have had a continuing interest that have been incorporated into this legislation. The first of these is the satisfactory progress provision, which stipulates that a student must maintain a "C" average in order to remain eligible for Federal student aid. I have long contended that we must make sure that student aid goes not only to those who truly need and deserve it but also only to those who are serious about their work, and who are completing and passing the courses in which they are enrolled.

Second, we have provided a modest $5 million authorization to assist college libraries. Unlike previous programs, however, this proposal would target assistance to those libraries which have the greatest demonstrated need. It is without question that the quality of a college education depends not only upon the quality of instruction but also upon the quality of a college library. Thus, what we do in this area in the very small program we are proposing can have a lasting impact upon student after student for years to come.

Third, under the bill approved by the subcommittee, campus-based aid to students would be targeted to students who demonstrate exceptional financial need. This change applies to both the Supplemental Education Opportunity Grant Program and the National Direct Student Loan Program. In a period of limited funds for student aid, it is particularly important that those funds reach students who need them most. The changes we have proposed will help accomplish that end.

Finally, our legislation includes the provision that child care be included in the cost of attendance and therefore an allowable expense to be considered in calculating student aid. This is especially important to students who are starting a college career or returning to college and must take care of small children at the same time. Including child care in the cost of attendance will help provide sufficient aid to cover those costs while the student is in school.

Mr. President, this is an excellent piece of legislation. It protects and improves student aid, provides important program assistance in such important areas as libraries, foreign language, and area studies, and cooperative education, and accomplishes all of that in a fiscally responsible manner. I am proud to have my name on this bill,

and I look forward to considering it in the full Labor and Human Resources Committee and on the floor of the Senate during the second session of the 99th Congress.●

● Mr. SIMON. Mr. President, I am pleased to join the distinguished chairman of the Subcommittee on Education, Arts, and Humanities and its ranking Democratic member as cosponsors of S. 1965, the Higher Education Act Amendments of 1985. This bill, which was marked up in the subcommittee last Thursday, represents the bipartisan coalition that has traditionally supported higher education in the Congress of the United States. It is a fiscally responsible, as well as responsive to the needs of students, parents, and the higher education community.

Last year, while I served in the other body as chairman of the Education and Labor Committee's Subcommittee on Postsecondary Education, I urged the higher education community to begin the process of reauthorizing the Higher Education Act of 1965 early. Although the community could not come to an agreement with respect to some critical issues in the student aid area, I thought then, and believe now, that the Congress and the President could have constructed a more positive and beneficial bill to higher education then we will in the current budgetary climate. Under the present circumstances, we often ask how much does it costs before we determine what will best serve students and the Nation!

The bill being introduced today achieves several of the objectives I articulated last year:

Expand access, by dramatically increasing the Pell grant maximum, enlarging the maximum grant in the Supplemental Educational Opportunity Grant Program (SEOG), while retargeting SEOG's on the neediest students;

Simplify programs while improving efficiency, by providing a simple form for Federal student aid applicants who come from families with annual incomes of $15,000 or less, and permit student aid officers to correct errors on Pell grant application forms on the campus; and

Enhance quality, by strengthening the statutory "satisfactory academic progress" requirement and improving institutional facilities and endowments under title III.

I am especially pleased that the bill contains several provisions included in H.R. 5240 (98th Congress):

Each State will be required to establish an agency to serve as a lender of last resort;

The special allowance will be reduced by one-half of 1 percent to 3 percent (for lenders whose GSL loan volume exceeds $8 million);

A master calendar is established in law to ensure the timely delivery of student aid;

All students will have to undergo a needs test to determine eligibility for assistance, and the GSL needs test will be mandated in the law as a part of the needs analysis for the GSL and campus-based programs in section 482; and

The Pell grant family contribution schedule is written into law in order to ensure that these funds will be available for low- and middle-income students.

The bill also addresses the important issue of restoring a better balance between loans and grants in the financing of higher education. There have been major shifts over time in the overall proportions of aid awarded in the form of grants and loans. From 1970-71 to 1975-76, grant aid increased from 66 percent to 80 percent of total aid awarded, while loans decreased from 29 to 17 percent. This pattern reversed itself in the mid-1970's. In 1983-84, the proportions of total aid awarded as grants and loans are about equal at 48 percent each; work-study support provides the other 4 percent.

There is no more critical issue facing higher education than the continued expansion of educational opportunity to minority students, women, and those who historically have been left at higher education's doorstep. Monday's Washington Post included an article about the decline in the number of blacks pursuing graduate careers and entering the professoriate. The same is true for Hispanics and native Americans, and while the situation has improved for women, they still often find themselves untenured, underpaid, and uncertain about their futures. I expect to offer an amendment when the full committee marks up our bill to address the minority access problem. My amendment will provide for the use of the fifth year of Pell grant assistance by needy, qualified graduate students, and would authorize an early identification program—similar to the Trio Program—for juniors and seniors in college.

Although this bill is not everything I would like for it to be, it maintains the Nation's commitment to access and choice in higher education and attempts to address many of the concerns raised by parents, students, and college and university leaders.

Chairman STAFFORD and Senator PELL, who ably chaired the subcommittee for many years, have worked closely with all of the subcommittee members in fashioning a bill we can all support. I urge my colleagues on both sides of the aisle to join us in support of academic excellence, increased efficiency, and improved opportunities—cosponsor the Higher Education Act Amendments of 1986.●

S. 1965

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

SHORT TITLE; REFERENCES; TABLE OF CONTENTS

SECTION 1. (a) SHORT TITLE.—This Act may be cited as the "Higher Education Amendments of 1985".

(b) REFERENCES.—References in this Act to "the Act" are to the Higher Education Act of 1965.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; references; table of contents.
Sec. 2. Effective date.
Sec. 3. Contracting authority subject to appropriations.

TITLE I—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS

SUBPART 1—PELL GRANTS

Sec. 101. Extension of program; eligibility.
Sec. 102. Maximum grant.
Sec. 103. Cost of attendance rules.
Sec. 104. Family contribution schedule for Pell Grants.
Sec. 105. Procedure with respect to award errors and overpayments.

SUBPART 2—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

Sec. 111. Authorization of appropriations.
Sec. 112. Maximum amount of grant.
Sec. 113. Priority for needy students.
Sec. 114. Apportionment.

SUBPART 3—STATE STUDENT INCENTIVE GRANTS

Sec. 121. Authorization of appropriations.
Sec. 122. Federal share limitation.

SUBPART 4—STUDENT SUPPORT SERVICE PROGRAMS

Sec. 126. Authorization of appropriations.
Sec. 127. Student support services; veterans.
Sec. 128. Outreach and staff development.

SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK

Sec. 131. Authorization of appropriations.

PART B—GUARANTEED LOANS

Sec. 151. Extension of programs.
Sec. 152. Needs basis for the guaranteed student loan program.
Sec. 153. Increasing loan limits.
Sec. 154. Interest rate increased for new borrowers.
Sec. 155. Maximum insurance premium.
Sec. 156. State guaranty agencies as lender of last resort.
Sec. 157. Deferment special rule.
Sec. 158. Auxiliary loan limits increased.
Sec. 159. Authority of the Secretary to impose and enforce limitations, suspensions, and terminations on certain eligible lenders.
Sec. 160. Prohibition of certain inducements by eligible lenders.
Sec. 161. Special allowance.

Sec. 162. Repeal of duplicative provision.
Sec. 163. Student Loan Marketing Association.

PART C—WORK STUDY PROGRAMS

Sec. 171. Authorization of appropriations.
Sec. 172. Apportionment.
Sec. 173. Work study for community service-learning on behalf of low-income individuals and families.

PART D—DIRECT LOANS

Sec. 176. Authorization of appropriations.
Sec. 177. Apportionment.
Sec. 178. Priority for needy students.
Sec. 179. Interest rate increased.

PART E—GENERAL STUDENT AID PROVISIONS

Sec. 181. Need analysis.
Sec. 182. Submission of family contribution schedules.
Sec. 183. Simplified needs test.
Sec. 184. Calendar for awarding financial aid prescribed.
Sec. 185. Less than one-half time course of study rule.
Sec. 186. Satisfactory progress.
Sec. 187. Financial and student support services training.
Sec. 188. Advisory Committee on Student Financial Assistance.

TITLE II—INSTITUTIONAL AND PROGRAM ASSISTANCE

PART A—CONTINUING POSTSECONDARY EDUCATION PROGRAM AND PLANNING

Sec. 201. Repeal of title I.
Sec. 202. National Advisory Council on Continuing Education.

PART B—LIBRARIES

Sec. 211. Reauthorization.
Sec. 212. College library resources.
Sec. 213. Study of the effectiveness of the needs criteria for the College Library Resource Program authorized.
Sec. 214. Strengthening research library resources.
Sec. 215. Repeal of part D.

PART C—INSTITUTIONAL AID

Sec. 221. Institutional aid reauthorized.

PART D—TEACHER TRAINING AND DEVELOPMENT

SUBPART 1—TEACHER TRAINING PROGRAMS FOR HIGHER EDUCATION PERSONNEL

Sec. 231. Repeal of part B.

SUBPART 2—TRAINING FOR SCHOOL TEACHERS TO TEACH HANDICAPPED CHILDREN

Sec. 232. Repeal of part C.

SUBPART 3—COORDINATION

Sec. 233. Repeal of part D.

SUBPART 4—CARL D. PERKINS SCHOLARSHIP PROGRAM

Sec. 234. Extension of authorization.

SUBPART 5—NATIONAL TALENTED TEACHER FELLOWSHIP PROGRAM

Sec. 235. Extension of authorization.

PART E—INTERNATIONAL EDUCATION

Sec. 241. Findings and purpose; international education.
Sec. 242. Language and area centers.
Sec. 243. Foreign language resource centers.
Sec. 244. International studies and foreign language programs.
Sec. 245. Summer institutes for foreign languages.
Sec. 246. Research.
Sec. 247. Distribution of funds.
Sec. 248. Reauthorization of part A.
Sec. 249. Reauthorization of part B.
Sec. 250. Advisory Board restructured.

PART F—CONSTRUCTION AND RENOVATION (RESERVED)

PART G—COOPERATIVE EDUCATION

Sec. 261. Cooperative education reauthorized.

PART H—GRADUATE AND PROFESSIONAL PROGRAMS

SUBPART 1—GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

Sec. 271. Repeal of part A.

SUBPART 2—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY

Sec. 272. Institutional and individual grant amounts.
Sec. 273. Application procedures.
Sec. 274. Reauthorization.

SUBPART 3—NATIONAL GRADUATE FELLOWS PROGRAM

Sec. 275. Reauthorization; designation of awardees.

SUBPART 4—TRAINING IN THE LEGAL PROFESSION

Sec. 276. Reauthorization.

SUBPART 5—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS

Sec. 277. Reauthorization.

PART I—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Sec. 281. Reauthorization.
Sec. 282. Innovative projects for community services and student financial independence.
Sec. 283. Minority Institutions Science Improvement Program reauthorization.

PART J—URBAN UNIVERSITY PROGRAM

Sec. 286. Repeal of title XI.

TITLE III—REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS

Sec. 301. Reauthorization.

EFFECTIVE DATE

SEC. 2. Except as otherwise provided in this Act, the amendments made by this Act shall take effect on October 1, 1986.

CONTRACTING AUTHORITY SUBJECT TO APPROPRIATIONS

SEC. 3. The authority to enter into contracts or other obligations under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

TITLE I—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS

SUBPART 1—PELL GRANTS

EXTENSION OF PROGRAM; ELIGIBILITY

SEC. 101. (a) EXTENSION.—Section 411(a)(1)(A) of the Act is amended by striking out "1985" and inserting in lieu thereof "1991".

(b) ELIGIBILITY.—Section 411(a)(2)(B) of the Act is amended—

(1) by redesignating division (iii) as division (iv), and

(2) by inserting after division (ii) the following new division:

"(iii) No basic grant shall be awarded to a student under this subpart if the income of the family of such student is equal to or is greater than $30,000 after subtracting Federal and State income taxes.".

MAXIMUM GRANT

SEC. 102. (a) MAXIMUM AMOUNT.—Section 411(a)(2)(A)(i) of the Act is amended to read as follows:

"(i) The amount of the basic grant for a student eligible under this part shall be—

"(I) $2,400 for academic year 1987-1988,

"(II) $2,600 for academic year 1988-1989,

"(III) $2,800 for academic year 1989-1990,

"(IV) $3,000 for academic year 1990-1991, and

"(V) $3,200 for academic year 1991-1992,

less an amount equal to the amount determined under section 411A to be the expected family contribution with respect to that student for that year.".

(b) COST OF ATTENDANCE.—Section 411(a)(2)(B)(i) of the Act is amended to read as follows:

"(B)(i) The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed 60 per centum of the cost of attendance (in accordance with subsection (c) and section 411A) at the institution at which the student is in attendance for that year.".

(c) TECHNICAL AMENDMENT.—Section 411(a)(1)(B) of the Act is amended—

(1) by striking out "in academic year 1985-1986, 70 per centum" and inserting in lieu thereof "60 per centum"; and

(2) by striking out "not in excess of $3,700".

(d) REPEAL.—Paragraph (5) of section 411(b) of the Act is repealed.

COST OF ATTENDANCE RULES

SEC. 103. Section 411 of the Act is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) For the purpose of this subpart, the term 'cost of attendance' means—

"(1) the student's tuition and uniform compulsory fees at the institution at which the student is in attendance for any award year, plus

"(2)(A) an allowance for room and board costs, books, supplies, transportation, child care, and miscellaneous expenses incurred by the student which shall not be greater than $1,800 for a student without dependents residing at home with parents; and

"(B) an allowance for room and board costs, books, supplies, transportation, and miscellaneous expenses incurred by the student which shall not be greater than $2,400 for all other students;

except that, if the maximum award under such subpart is less than or greater than $2,400, then the dollar amounts specified in subclauses (A) and (B) of clause (2) of this subsection shall be increased or decreased by an amount equal to the amount by which such maximum award is greater than or less than $2,400, respectively.".

FAMILY CONTRIBUTION SCHEDULE FOR PELL GRANTS

SEC. 104. Subpart 1 of part A of title IV of the Act is amended by inserting after section 411 the following new section:

"FAMILY CONTRIBUTION SCHEDULE FOR PELL GRANTS

"SEC. 411A. (a) GENERAL RULE FOR DETERMINATION OF EXPECTED FAMILY CONTRIBUTION.—(1) The expected family contribution for a dependent student shall be determined in accordance with subsection (b), and the expected family contribution for an independent student shall be determined in accordance with subsection (c).

"(2) The following data elements are considered in determining the expected family contribution:

"(A) the effective income of (i) the student and the student's spouse; and (ii) the student's parents, in the case of a dependent student;

"(B) the number of family members in the household;

"(C) the number of family members in the household who are enrolled in, on at least a half-time basis a program of postsecondary education;

"(D) the assets of (i) the student and the student's spouse, and (ii) the student's parents, in the case of a dependent student;

"(E) the marital status of the student;

"(F) the unusual medical expenses of (i) the student's parents, in the case of a dependent student, or (ii) the student and the student's spouse, in the case of an independent student;

"(G) the additional expenses incurred (i) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (ii) in the case of an independent student, when both the student and the student's spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1954; and

"(H) the tuition paid (i) in the case of a dependent student, by the student's parents for dependent children, other than the student, who are enrolled in an elementary or secondary school, (ii) in the case of an independent student, by the student or the student's spouse for dependent children who are so enrolled.

"(b) RULES FOR DEPENDENT STUDENTS.—(1) For each dependent student the expected family contribution is equal to—

"(A) the sum of (i) the family income contribution amount determined under paragraph (2), (ii) the family asset contribution amount determined under paragraph (3), (iii) the student income contribution amount determined under paragraph (4), and (iv) the student asset contribution amount determined under paragraph (5); adjusted for—

"(B) the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award year for which Pell Grant assistance is requested in the following manner:

"Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in subparagraph (A).
2	70 percent of the contribution determined in subparagraph (A).
3	50 percent of the contribution determined in subparagraph (A).
4 or more	40 percent of the contribution determined in subparagraph (A).

"(2)(A) The family income contribution amount is determined by deducting from effective family income (i) a family size offset determined in accordance with subparagraph (B), (ii) an unusual expense offset determined in accordance with subparagraph (C), (iii) an employment expense offset determined in accordance with subparagraph (D), and (iv) an educational expense offset determined in accordance with subparagraph (E). If such discretionary income is a negative amount, the family income contribution amount is zero. If such discretionary income is a positive amount the family income contribution amount is determined in accordance with the following chart:

"Discretionary income	Expected contribution
$0 to $5,000	11% of discretionary income.
$5,001 to $10,000	$550, plus 13% of amount over $5,000.
$10,001 to $15,000	$1,200, plus 18% of amount over $10,000.
$15,001 and above	$2,100, plus 25% of amount over $15,000.

"(B)(i) The family size offset is equal to the amount specified in the following table:

"FAMILY SIZE OFFSETS

"Family members	Amount
2	$6,700
3	8,100
4	10,400
5	12,300
6	13,800
7 or more	13,800 plus $1,800 for each member over 6.

"(ii) In determining family size—

"(I) if the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents;

"(II) if the parents are divorced or separated, family members include the parent whose income is included in computing the effective family income and that parent's dependents; and

"(III) if the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subdivision (II) of this division, the new spouse and any dependents of the new spouse if that spouse's income is included in determining effective family income.

"(C) The unusual expense offset is equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective income of the parents. The expenses of both parents are included only if the income of both parents are included in determining effective family income. A stepparent's expenses are included only if the parent's income is included in determining effective family income.

"(D) The employment expense offset is determined as follows:

"(i) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such offset is equal to the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the parent with the lesser earned income.

"(ii) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code of 1954, such offset is equal to the lesser of $1,500 or 50 percent of the parent's earned income.

"(E) The educational expense offset is equal to the tuition paid by the student's parents for dependent children, other than the student, enrolled in elementary or secondary school.

"(3)(A) The family asset contribution amount is equal to 5 percent of (i) the sum of the amounts computed under subparagraphs (B) and (C), reduced by (ii) the amount, if any, by which discretionary income as computed under paragraph (2)(A), is less than zero. If the result of such subtraction is a negative amount, the family asset contribution amount is zero.

"(B) If parental assets include assets other than a principal place of residence and other than farm and business assets, the amount determined under this subparagraph is the net value of such assets, minus $25,000. If such value minus such amount produces a negative number the amount determined under this subparagraph is zero.

"(C)(i) If parental assets include farm or business assets, or both, the amount determined under this subparagraph is the net value of such assets, minus $80,000. If such value minus such amount produces a negative number the amount determined under this subparagraph is zero.

"(ii) If the sum of the farm and business deduction and the deduction under subparagraph (B) exceeds $100,000, the farm and business deduction shall be reduced by the amount such sum exceeds $100,000.

"(D) If the student's parents are separated, or divorced, and not remarried, only the assets of the parent whose income is included in computing effective family income shall be included, for purposes of this paragraph. If that parent has remarried, or if the parent was a widow or widower who has remarried, and that parent's spouse's income is also included in computing effective family income, the assets of that parent's spouse shall also be included, for purposes of this paragraph.

"(E) In the computation of family contributions from effective family income and parental assets for any academic year beginning on or after July 1, 1986, the proceeds of a sale of farm or business assets of the family shall be excluded from family income if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.

"(4)(A) The student income contribution amount is equal to—

"(i) 75 percent of the student's discretionary income in the case of a single dependent student;

"(ii) 25 percent of the student's discretionary income in the case of a married dependent student; or

"(iii) zero if the student's discretionary income is a negative amount.

"(B) A student's discretionary income is equal to the effective student income of such student minus—

"(i) $3,500 in the case of a single student or $5,300 in the case of a married student, if the amount determined under paragraph (2)(A) for parental discretionary income is a positive amount; or

"(ii) if such parental discretionary income is a negative amount, the sum of (I) the amount allowed as an offset under clause (i), plus (II) the amount, if any, by which the result of the subtraction performed under paragraph (3)(A) is less than zero.

"(5) The student asset contribution amount is equal to—

"(A) 33 percent of net value of the student's assets, in the case of a single dependent student; or

"(B) in the case of a married dependent student and spouse, 5 percent of (i) the net asset value, minus (ii) $25,000.

If such value minus such amount (as computed under clause (B) (i) and (ii)) is a negative amount, the student asset contribution amount is zero.

"(c) RULES FOR INDEPENDENT STUDENTS.—(1) For each independent student the expected family contribution is equal to—

"(A) the sum of (i) the family income contribution amount determined under paragraph (2), and (ii) the family asset contribution amount determined under paragraph (3), adjusted for—

"(B) the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award year for which Pell Grant assistance is requested in the following manner:

"Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in subparagraph (A).
2	70 percent of the contribution determined in subparagraph (A).
3	50 percent of the contribution determined in subparagraph (A).

"(2)(A) The family income contribution amount is determined by deducting from effective family income (i) a family size offset determined in accordance with subparagraph (B), (ii) an unusual expense offset determined in accordance with subparagraph (C), (iii) an employment expense offset determined in accordance with subparagraph (D), and (iv) an educational expense offset determined in accordance with subparagraph (E). If such discretionary income is a negative amount, the family income contribution amount is zero. If such discretionary income is a positive amount the family income contribution amount is equal to—

"(i) 75 percent of such discretionary income in the case of a single independent student with no dependents or a married independent student without children, or

"(ii) 25 percent of such discretionary income in the case of an independent student with one or more dependents.

"(B)(i) The family size offset is equal to the amount specified in the following table:

"FAMILY SIZE OFFSETS

"Family members	Amount
1	$5,300
2	6,700
3	8,100
4	10,400
5	12,300
6	13,800
7 or more	13,800 plus $1,800 for each member over 6.

"(ii) In determining family size—

"(I) family members include the student, the student's spouse, and the student's dependents; and

"(II) if the student is divorced or separated, family members do not include the spouse (or ex-spouse) and the student's dependents.

"(C) The unusual expense offset is equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective family income. The expenses of both the student and the student's spouse are included only if the incomes of both are included in determining effective family income.

"(D) The employment expense offset is determined as follows:

"(i) If both the student and the student's spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such offset is equal to the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the spouse with the lesser earned income.

"(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code of 1954, such offset is equal to the lesser of $1,500 or 50 percent of the student's earned income.

"(E) The educational expense offset is equal to the tuition paid by the student and spouse for dependent children enrolled in elementary or secondary school.

"(3)(A) The family asset contribution amount of an independent student with dependents is equal to 5 percent of (i) the sum of the amounts computed under subparagraphs (C) and (D), reduced by (ii) the amount, if any, by which discretionary income as computed under paragraph (2)(A), is less than zero. If the result of such subtraction is a negative amount, the family asset contribution amount is zero.

"(B) The family asset contribution amount of a single independent student is equal to 33 percent of such student's net asset value, reduced by the amount, if any, by which discretionary income as computed under paragraph (2)(A) is less than zero. If such value minus such amount is a negative amount, the family asset contribution amount is zero.

"(C) If the assets of an independent student with dependents include assets other than a principal place of residence and other than farm and business assets the amount determined under this subparagraph is the net value of such assets, minus $25,000. If such value minus such amount produces a negative number the amount determined under this subparagraph is zero.

"(D)(i) If the assets of an independent student with dependents include farm or business assets, or both, the amount determined under this subparagraph is the net value of such assets, minus $80,000. If such value minus such amount produces a negative number the amount determined under this subparagraph is zero.

"(ii) If the sum of the farm and business deduction and the deduction under subparagraph (B) exceeds $100,000, the farm and business deduction shall be reduced by the amount such sum exceeds $100,000.

"(E) In the computation of family contributions from effective family income and parental assets for any academic year beginning on or after July 1, 1986, the proceeds of a sale of farm or business assets of the family shall be excluded from family income if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.

"(d) REGULATION AUTHORITY LIMITATIONS.—The Secretary shall promulgate only such regulations as may be necessary to require the use of the most recent and relevant data in determining the expected family contribution under this section. Such regulations may also include procedures for computing family contributions when the student's family or an independent student have encountered extraordinary circumstances.

"(e) DEFINITIONS.—For the purpose of this section, the terms—

"(1) 'Annual adjusted family income' means the sum received in the year immediately preceding the award year, by the student, the student's spouse, and the student's parents, except excludable income under clause (6) of this subsection, from the following sources subject to the following rules:

"(A) Adjusted gross income, as defined in section 62 of the Internal Revenue Code of 1954.

"(B) Investment income upon which no Federal income tax is required to be paid, such as the interest on municipal bonds.

"(C) Other income, such as child support payments and welfare benefits, upon which no Federal income tax is paid except for—

"(i) veterans' benefits paid under chapters 34 and 35 of title 38 of the United States Code;

"(ii) Social Security educational benefits received by or on account of the student; and

"(iii) Social Security educational benefits paid to the student's parents for the student's siblings that would not be paid if those siblings were not students.

"(D) Income from one-half of any veteran's benefits to be paid to the student for the 1984-85 award year under chapters 34 and 35 of title 38 of the United States Code.

"(E) Income from Social Security educational benefits to be paid to the student, or to the student's parents for the student for the previous award year.

"(F) Income for a student whose parents are divorced or separated is determined under the following procedures:

"(i) Include only the income described in subsection (b) of this section, of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

"(ii) If the preceding criterion does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

"(iii) If neither of the preceding criteria apply, include only the income of the parent who provided the greater support during the most recent calendar year for which parental support was provided.

"(G) Income in the case of the death of any parent as follows:

"(i) If either of the parents have died, the student shall include only the income of the surviving parent.

"(ii) If both parents have died, the student shall not report any parental income.

"(H) Income in the case of a parent whose income is taken into account under clause (F) of this section, or a parent who is a widow or widower and whose income is taken into account under clause (E) of this section, has remarried, under the following rule: The income of that parent's spouse shall be included in determining the student's annual adjusted family income if, in the 2 previous award years, the student on July 1 of the award year concerned was not 23 years of age or older and—

"(i) has received or will receive financial assistance of more than $750 in either of such award years from that spouse;

"(ii) has lived or will live for more than 6 weeks in either of those years in the home of the parent and that spouse; and

"(iii) was claimed as a dependent by the parent or legal guardian of the student on the appropriate individual Federal income tax return.

"(2) 'Assets' means cash on hand, including amount in checking and savings accounts, time deposits, money market funds, trusts, stocks, bonds, other securities, mutual funds, tax shelters, real estate (except the student's or parent's single principal place of residence), income producing property, as well as business assets and farm assets.

"(3) 'Award year' is the period of time between July 1 of 1 year and June 30 of the following year.

"(4) 'Business assets' means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.

"(5) Except as otherwise provided, 'dependent of the student' means the student, the student's spouse, any of the student's dependent children, dependent children of the student's parents, including those children who are deemed to be dependent students when applying for title IV aid; and other persons who live with and receive more than one-half of their support from the parents and will continue to receive more than half of their support from the parents during the award year.

"(6)(A) The term 'excludible income' means the income described in this clause which is excluded for the purpose of determining 'annual adjusted family income' under clause (1).

"(B) For a Native American student, the annual adjusted family income does not include the income received by the student, the student's spouse, or the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.).

"(C) In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be considered in determining the effective family income.

"(D) The annual adjusted family income does not include any student financial assistance except veterans' or Social Security benefits set forth in clause (1) of this subsection.

"(7) 'Farm assets' means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"(8) 'Medical expenses' means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code of 1954 and that were paid in the taxable year immediately preceding the award year, unless the student files an application with the Secretary under the provisions of regulations promulgated by the Secretary. In that case, the expenses reported are expenses paid in the award year.

"(9) 'Net assets' means the current market value at the time of application of the assets included in the definition of 'assets' minus the outstanding liabilities (indebtedness) against the assets.

"(10) 'State income tax' means the tax on income paid to one or more of the 50 States of the United States or the District of Columbia.

"(11) 'Effective family income' is the annual adjusted family income minus the Federal and State taxes paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.".

PROCEDURE WITH RESPECT TO AWARD ERRORS AND OVERPAYMENTS

SEC. 105. Section 411 of the Act (as amended by section 103(1)) is amended by adding at the end thereof the following new subsection:

"(e)(1) Each contractor processing applications for awards under this subpart shall, in a timely manner, furnish to the student financial aid administrator at each institution of higher education which a student awarded a basic grant under this subpart is attending an estimate of the amount of the award for each such student. Each such student financial aid administrator shall—

"(A) examine and verify the correctness of the estimated amount of the award furnished pursuant to this subsection; and

"(B) report the corrected amount of the award, if necessary, to such contractor for a confirmation of the correct computation of the amount of the award for each such student.

"(2) Whenever a student receives an award under this subpart that is in excess of the amount which the student is entitled to receive under this subpart, the institution of higher education which such student is attending shall pay to the Secretary the amount of such excess.

"(3) Each contractor processing applications for awards under this subpart shall for each academic year after academic year 1985-1986 prepare and submit a report to the Secretary on the correctness of the computations of awards under this subpart for the previous academic year for which the contractor is responsible. The Secretary shall transmit the report, together with the comments and recommendations of the Secretary, to the Committee on Appropriations and the Committee on Labor and Human Resources of the Senate and the Committee on Appropriations and the Committee on Education and Labor of the House of Representatives.".

SUBPART 2—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

AUTHORIZATION OF APPROPRIATIONS

SEC. 111. Section 413A(b) of the Act is amended to read as follows:

"(b) For the purpose of enabling the Secretary to make payments to institutions of higher education which have made agreements with the Secretary in accordance with section 487, for use by such institutions for payments to undergraduate students of a supplemental grant awarded to them under this subpart, there are authorized to be appropriated $433,125,000 for fiscal year 1987, $454,781,000 for fiscal year 1988, $477,520,000 for fiscal year 1989, $501,396,000 for fiscal year 1990, and $526,466,000 for fiscal year 1991.".

MAXIMUM AMOUNT OF GRANT

SEC. 112. Section 413B(a)(2)(A) of the Act is amended by striking out "$2,000" and inserting in lieu thereof "$3,000".

PRIORITY FOR NEEDY STUDENTS

SEC. 113. Section 413C(b) of the Act is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) In carrying out paragraph (1) of this subsection, each institution of higher education shall, in the agreement made under section 487, assure that the selection procedures—

"(A) will be designed to award supplemental grants under this subpart, first, to students with exceptional need, and

"(B) will give a priority for supplemental grants under this subpart to students who receive Pell Grants and meet the requirements of section 484.".

APPORTIONMENT

SEC. 114. (a) GENERAL RULE.—Section 413D of the Act is amended—

(1) by redesignating paragraph (3) of subsection (b) as subsection (c);

(2) by redesignating paragraph (4) of subsection (b) as subsection (d); and

(3) by amending subsection (a) and paragraphs (1) and (2) of subsection (b) to read as follows:

"(a)(1)(A) From the sums appropriated pursuant to section 413A(b)(1) for any fiscal year which are equal to or less than the amount appropriated for this subpart for fiscal year 1985, the Secretary shall apportion to each institution of higher education participating in the grant program under this subpart an amount equal to the amount so appropriated multiplied by the eligible institution's apportionment percentage.

"(B) For the purpose of subparagraph (A) of this paragraph, an eligible institution's apportionment percentage is the percentage which the amount the institution of higher education was eligible to receive from appropriations made in fiscal year 1985 under this subpart bears to the total amount available under this subpart for that year.

"(2)(A) In any fiscal year in which the amount appropriated for this subpart exceeds the amount appropriated for this subpart in fiscal year 1985, the Secretary shall apportion to each institution of higher education participating in the grant program under this subpart an amount which bears the same ratio to such excess as the number of eligible undergraduates who are enrolled full time and the full-time equivalent of the number of eligible undergraduates enrolled part time in the institution of higher education, bears to the total number of such undergraduates in all institutions of higher education.

"(B) For the purpose of subparagraph (A) of this paragraph, the term 'eligible' means undergraduates who were eligible to receive a supplemental grant under this subpart for the fiscal year preceding the fiscal year for which the determination is made.

"(b) If the Secretary determines that the sums apportioned to any institution of higher education under paragraph (2) for any fiscal year exceed the aggregate of the amounts that the Secretary determines to be required by that institution for that fiscal year, the Secretary shall reapportion such excess, from time to time, on such date or dates as the Secretary shall fix, to other institutions of higher education in such manner as the Secretary determines will best assist in achieving the purposes of this subpart.".

(b) CONFORMING AMENDMENT.—Subsection (c) of section 413D of the Act (as redesignated by subsection (a) of this section) is amended by striking out "from apportionments made to the State under subsection (a)(1) and under subsection (a)(2)".

SUBPART 3—STATE STUDENT INCENTIVE GRANTS

AUTHORIZATION OF APPROPRIATIONS

SEC. 121. Section 415A(b)(1) of the Act is amended to read as follows:

"(b)(1) There are authorized to be appropriated $76,000,000 for fiscal year 1987, and for each succeeding fiscal year ending prior to October 1, 1991, for payments to the

States for grants to eligible students under this subpart.".

FEDERAL SHARE LIMITATION

SEC. 122. Section 415C of the Act is amended by adding at the end thereof the following new subsection:

"(d) Each State shall pay the non-Federal share of the cost of the State student incentive grant program authorized by this subpart from State or other public sources.

SUBPART 4—STUDENT SUPPORT SERVICE PROGRAMS

AUTHORIZATION OF APPROPRIATIONS

SEC. 126. Section 417A(c) of the Act is amended to read as follows:

"(c) For the purpose of making grants and contracts under this subpart there are authorized to be appropriated $188,339,000 for fiscal year 1987, $197,756,000 for fiscal year 1988, $207,644,000 for fiscal year 1989, $218,026,000 for fiscal year 1990, and $228,927,000 for fiscal year 1991.".

STUDENT SUPPORT SERVICES; VETERANS

SEC. 127. (a) GENERAL RULE.—(1)(A) Section 417D(a) of the Act is amended by striking out "special services for disadvantaged students (hereinafter referred to as 'special services')" and insert in lieu thereof "student support services".

(B) Section 417D of the Act is amended by striking out "special services" each place it appears in subsections (b), (c), and (d) and inserting in lieu thereof "student support services" each such time.

(2) Section 417D(b) of the Act is amended—

(A) by striking out "and" at the end of clause (7);

(B) by striking out the period at the end of clause (8) and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new clause:

"(9) specific counseling and support services designed to assist veterans, including each of the activities described in clauses (1) through (7) and the activities described in subsection (e).".

(3) Section 417D of the Act is amended by adding at the end thereof the following new subsection:

"(e) In approving applications for student support services projects for veterans under this subpart, the Secretary shall require an assurance that the institution which is the recipient of the grant or contract will make an adequate effort—

"(1) to maintain a full-time office of veterans' affairs which has responsibility for veterans' outreach, recruitment, and special education programs, including the provision of educational, vocational, and personal counseling for veterans;

"(2) to carry out programs designed to prepare educationally disadvantaged veterans for postsecondary education (A) under subchapter V of chapter 34 or title 38, United States Code, and (B) in the case of any institution located near a military installation, under subchapter VI of such chapter 34;

"(3) to carry out active outreach (with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans), recruiting, and counseling activities through the use of funds available under federally assisted work-study programs (with special emphasis on the veteran-student services program under section 1685 of such title 38);

"(4) to carry out an active tutorial assistance program (including dissemination of information regarding such program) in order to make maximum use of the benefits available under section 1692 of such title 38; and

"(5) to coordinate activities carried out under this part under section 612A of title 28, United States Code, and with the veterans employment and training initiatives authorized under the Job Training Partnership Act and under chapters 41 and 42 of title 38, United States Code, in order to assist in serving the readjustment, rehabilitation, personal counseling, and employment needs of veterans.".

(b) TECHNICAL AMENDMENT.—The heading of section 417D of the Act is amended to read as follows:

"STUDENT SUPPORT SERVICES".

(c) REPEALER.—Section 420A of the Act is repealed.

OUTREACH AND STAFF DEVELOPMENT

SEC. 128. Section 417F of the Act is amended to read as follows:

"OUTREACH AND STAFF DEVELOPMENT ACTIVITIES

"SEC. 417F. For the purposes of improving the operation of the special services programs and projects authorized by this subpart, and to expand the outreach of related activities which extend postsecondary educational opportunities to students from disadvantaged backgrounds, the Secretary is authorized to make grants to institutions of higher education and other public and private nonprofit institutions and organizations to provide training for staff and leadership personnel (including junior and high school counselors) employed in, or preparing for employment in, such programs and projects. Such training shall include—

"(1) conferences, internships, seminars, and workshops designed to improve the operation of programs and projects assisted under this subpart; and

"(2) training institutes to enable junior and senior high schools' counselors and teachers, personnel involved in programs and projects assisted under this subpart, college admissions personnel, and community agency staffs to counsel more effectively students and adults regarding postsecondary opportunity and financial aid eligibility.

Training under this section shall be carried out in the various regions of the Nation in order to ensure that the training opportunities are appropriate to meet the needs in the local areas being served by such programs and projects. Grants made under this section shall be made only after consultation with regional and State professional associations of persons having special knowledge with respect to the needs and problems of such programs and projects.".

SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK

AUTHORIZATION OF APPROPRIATIONS

SEC. 131. Section 418A(b) of the Act is amended to read as follows:

"(b) There are authorized to be appropriated $7,875,000 for fiscal year 1987, $8,269,000 for fiscal year 1988, $8,682,000 for fiscal year 1989, $9,116,000 for fiscal year 1990, and $9,572,000 for fiscal year 1991, to carry out the provisions of this subpart.".

PART B—GUARANTEED LOANS

EXTENSION OF PROGRAMS

SEC. 151. (a) Section 424(a) of the Act is amended—

(1) by striking out "1986" and inserting in lieu thereof "1992"; and

(2) by striking out "1990" and inserting in lieu thereof "1996".

(b) Section 428(a)(5) of the Act is amended—

(1) by striking out "1986" and inserting in lieu thereof "1992"; and

(2) by striking out "1990" and inserting in lieu thereof "1996".

NEEDS BASIS FOR THE GUARANTEED STUDENT LOAN PROGRAM

SEC. 152. (a) NEEDS BASIS REQUIRED.—Section 428(a)(2)(B) of the Act is amended to read as follows:

"(B) For the purpose of clause (ii) of subparagraph (A) a student shall qualify for a portion of an interest payment under paragraph (1) if the eligible institution has provided the lender with a statement evidencing a determination of need for a loan and the amount of such need.".

(b) INSTITUTIONAL RESPONSIBILITY FOR DETERMINATION OF NEED.—Section 428(a)(2)(F) of the Act is amended to read as follows:

"(F) An eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, provide a statement which permits the student to receive any loan under this part in excess of the maximum amount applicable to such loan.".

INCREASING LOAN LIMITS

SEC. 153. (a) FEDERALLY INSURED LOANS.—(1) Section 425(a)(1) of the Act is amended by striking out "$2,500 in the case of a student who has not successfully completed a program of undergraduate education, or $5,000" and inserting in lieu thereof "$3,000 in the case of a student who has not successfully completed 2 years or its equivalent of a program of undergraduate education, $4,000 in the case of a student who has completed 2 years or its equivalent of a program of undergraduate education, but who has not completed such program, or $7,500".

(2)(A) Section 425(a)(1)(A) of the Act is amended by striking out "$2,500" and inserting in lieu thereof "$3,000".

(B) Section 425(b)(1)(B) of the Act is amended by striking out "$1,500" and inserting in lieu thereof "$2,000".

(3) Section 425(a)(2) of the Act is amended—

(A) by striking out "$12,500" and inserting in lieu thereof "$18,000"; and

(B) by striking out "$25,000" and inserting in lieu thereof "$55,500".

(b) GUARANTEED LOANS.—(1) Section 428(b)(1)(A) of the Act is amended by striking out "$2,500 in the case of a student who has not successfully completed a program of undergraduate education, or $5,000" and inserting in lieu thereof "$3,000 in the case of a student who has not successfully completed 2 years or its equivalent of a program of undergraduate education, $4,000 in the case of a student who has completed 2 years or its equivalent of a program of undergraduate education, but who has not completed such program, or $7,500".

(2)(A) Section 428(b)(1)(A)(i) of the Act is amended by striking out "$2,500" and inserting in lieu thereof "$3,000".

(B) Section 428(b)(1)(A)(ii) of the Act is amended by striking out "$1,500" and inserting in lieu thereof "$2,000".

(3) Section 428(b)(1)(B) of the Act is amended—

(A) by striking out "$12,500" and inserting in lieu thereof "$18,000"; and

(B) by striking out "$25,000" and inserting in lieu thereof "$55,500".

(c) LOANS UNDER SUPPLEMENTAL GUARANTY AGREEMENT.—(1)(A) Section 428A(a)(1)(A) of

the Act is amended by striking out "$2,500 (in the case of a student who has not successfully completed a program of undergraduate education), or $5,000" and inserting in lieu thereof "$3,000 (in the case of a student who has not successfully completed 2 years or its equivalent of a program of undergraduate education), $4,000 (in the case of a student who has completed 2 years or its equivalent of a program of undergraduate education, but who has not completed such program), or $7,500".

(B) Section 428A(a)(1)(A) of the Act is further amended—

(i) by striking out "$12,500" and inserting in lieu thereof "$18,000"; and

(ii) by striking out "$25,000" and inserting in lieu thereof "$55,500".

(2) Section 428A(a)(2)(A) of the Act is amended by striking out "$2,500 (in the case of a student who has not successfully completed a program of undergraduate education), or $5,000" and inserting in lieu thereof "$3,000 (in the case of a student who has not successfully completed 2 years or its equivalent of a program of undergraduate education), $4,000 (in the case of a student who has completed 2 years or its equivalent of a program of undergraduate education, but who has not completed such program, or $7,500".

(3) Section 428A(a)(2)(A) of the Act is further amended—

(A) by striking out "$12,500" and inserting in lieu thereof "$18,000"; and

(B) by striking out "$25,000" and inserting in lieu thereof "$55,500".

INTEREST RATE INCREASED FOR NEW BORROWERS

SEC. 154: (a) NEW BORROWERS.—Section 427A of the Act is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and

(2) by adding after subsection (c) the following new subsection:

"(d) Notwithstanding subsections (a) and (b) of this section, with respect to any loan (other than a loan made pursuant to section 428B) to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1986, to any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, the applicable rate of interest shall be 10 per centum on the unpaid principal or interest of the loan.".

(b) CONFORMING AMENDMENTS.—Section 427A is amended—

(1) by inserting after the subsection designation (a) the following: "RATES TO BE CONSISTENT WITH BORROWER'S ENTIRE DEBT.—";

(2) by inserting after the subsection designation (b) the following: "REDUCTION FOR CERTAIN BORROWERS AFTER DECLINE IN CERTAIN RATES.—";

(3) by inserting after the subsection designation (c) the following: "RATES FOR SUPPLEMENTAL AND PARENTAL LOANS.—";

(4) by inserting after the subsection designation (d) (as added by subsection (a) of this section) the following: "INTEREST RATES FOR NEW BORROWERS AFTER JULY 1, 1986.—";

(5) by inserting after the subsection designation (e) (as redesignated by subsection (a)) the following: "LESSER LOAN RATES PERMITTED.—"; and

(6) by inserting after the subsection designation (f) (as redesignated by subsection (a)) the following: "DEFINITIONS.—".

MAXIMUM INSURANCE PREMIUM

SEC. 155. Section 428(b)(1)(H) of the Act is amended to read as follows:

"(H) does not provide for collection of (i) an insurance premium in excess of 1 per centum per year on the unpaid principal amount of the loan (excluding interest added to principal) for the first year of the loan and (ii) an excessive insurance premium for other loans, and insures that the proceeds of the premium will not be used for incentive payments to lenders;".

STATE GUARANTY AGENCIES AS LENDER OF LAST RESORT

SEC. 156. Section 428(b)(1) of the Act is amended—

(1) by striking out "and" at the end of clause (O);

(2) by striking out the period at the end of clause (P) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new clause:

"(Q) provides for a lender of last resort in the State for all eligible borrowers who are unable to obtain a loan under this part and who are legal residents of the State or are accepted for enrollment in or are attending an eligible institution in the State.".

DEFERMENT SPECIAL RULE

SEC. 157. Section 428(b) of the Act is amended by adding at the end thereof the following new paragraph:

"(3) For the purpose of paragraph (1)(M) of this subsection, the Secretary shall approve any course of study at a foreign university that is accepted for the completion of a recognized international fellowship program by the administrator of such a program.".

AUXILIARY LOAN LIMITS INCREASED

SEC. 158. Section 428B of the Act is amended—

(1) by striking out "$3,000" in subsection (b)(1) and inserting in lieu therof "$4,000";

(2) by striking out "15,000" in subsection (b)(2) and inserting in lieu thereof "20,000"; and

(3) by striking out "2,500" in subsection (c)(4)(B) and inserting in lieu thereof "4,500".

AUTHORITY OF THE SECRETARY TO IMPOSE AND ENFORCE LIMITATIONS, SUSPENSIONS, AND TERMINATIONS ON CERTAIN ELIGIBLE LENDERS

SEC. 159. (a) GENERAL RULE.—Section 432 of the Act is amended by adding at the end thereof the following new subsection:

"(f)(1) If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that the eligible lender—

"(A) has substantially failed—

"(i) to exercise reasonable care and diligence in the making and collecting of loans under the provisions of this part,

"(ii) to make the reports or statements under section 428(a)(4),

"(iii) to pay the required loan insurance premiums to any guaranty agency, or

"(B) has engaged in—

"(i) fraudulent or misleading advertising or in solicitations that have resulted in the making of loans insured or guaranteed under this part to borrowers who are ineligible; or

"(ii) the practice of making loans that violate the certification for eligibility provided in section 428,

the Secretary shall limit, suspend, or terminate that lender from participation in the insurance programs operated by guaranty agencies under this part. The Secretary shall not lift any such limitation, suspension, or termination until the Secretary is satisfied that the lender's failure under clause (A) of this paragraph or practice under clause (B) of this paragraph has ceased and finds that there are reasonable assurances that the lender will—

"(I) exercise the necessary care and diligence,

"(II) comply with the requirements described in clause (A), or

"(III) cease to engage in the practices described in clause (B),

as the case may be.

"(2)(A) The Secretary shall, in accordance with sections 556 and 557 of title 5, United States Code, review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 428A(a)(1)(F) within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the lender. The Secretary shall disqualify such lender from participation in the student loan insurance program of each guaranty agency under this part, and notify each such guaranty agency of such disqualification—

"(i) if such review is waived; or

"(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with the requirements of such section.

"(B) The Secretary shall not lift any such disqualification until the Secretary is satisfied that the lender has corrected the failures or practices which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the lender will comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such disqualification.

"(3)(A) The Secretary shall, in accordance with sections 556 and 557 of title 5, United States Code, review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 428A(b)(1)(E) within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the institution. The Secretary shall disqualify such institution from participation in the student loan insurance program of each guaranty agency under this part, and notify each such guaranty agency of such disqualification—

"(i) if such review is waived; or

"(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with the requirements of such section.

"(B) The Secretary shall not lift any such disqualification until the Secretary is satisfied that the institution has corrected the failures or practices which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the institution will comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such disqualification.".

(b) CONFORMING AMENDMENT.—(1) Section 428A(a)(1)(F) of the Act is amended to read as follows:

"(F) provides (i) for the eligibility of all lenders described in section 435(g)(1) under reasonable criteria, unless (I) that lender is

eliminated as a lender under regulations for the limitation, suspension, or termination of lender under the Federal student loan insurance program or is eliminated as a lender pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility as a lender issued under the Federal student loan insurance program, or (II) there is a State constitutional prohibition affecting the eligibility of a lender, and (ii) assurances that the guaranty agency will report to the Secretary annually concerning such criteria, including any procedures in effect under such program to limit, suspend, or terminate lenders.".

(2) Section 428A(2)(F) of the Act is amended to read as follows:

"(F) provides (i) for the eligibility of all lenders described in section 435(d)(1) under reasonable criteria, unless (I) that lender is eliminated as a lender under regulations for the limitation, suspension, or termination of lender under the Federal student loan insurance program or is eliminated as a lender pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility as a lender issued under the Federal student loan insurance program, or (II) there is a State constitutional prohibition affecting the eligibility of a lender, and (ii) assurances that the guaranty agency will report to the Secretary annually concerning such criteria, including any procedures in effect under such program to limit, suspend, or terminate lenders.".

PROHIBITION OF CERTAIN INDUCEMENTS BY ELIGIBLE LENDERS

SEC. 160. Section 435(g) of the Act is amended—

(1) by striking out "Except" in paragraph (1) and inserting in lieu thereof "Subject to paragraph (5), except"; and

(2) by adding at the end thereof the following new paragraph:

"(5) An eligible lender under this part may not—

"(A) offer, directly or indirectly, points, premiums, payments, or other inducements to any educational institution or individual in order to secure applicants for loans under this part;

"(B) offer, directly or indirectly, loans under this part as an inducement to a prospective borrower to purchase a policy of insurance or other product; or

"(C) engage in fraudulent or misleading advertising.".

SPECIAL ALLOWANCE

SEC. 161. (a) GENERAL RULE.—Section 438(b)(2)(A) of the Act is amended by striking out "3.5 per centum" and inserting in lieu thereof "3.25 per centum".

(b) SPECIAL RULE FOR HOLDERS OBTAINING LOANS FROM TAX EXEMPT OBLIGATIONS.—The first sentence of section 438(b)(2)(B)(i) of the Act is amended by inserting before the period at the end thereof a comma and the following: "except that in setting the rate under this division the per centum prescribed in clause (iii) of subparagraph (A) shall be 3.5 per centum.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) of this section shall take effect with respect to loans made on or after July 1, 1986.

REPEAL OF DUPLICATIVE PROVISION

SEC. 162. Section 438 of the Act is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

STUDENT LOAN MARKETING ASSOCIATION

SEC. 163. Section 439(d)(1) of the Act is amended—

(1) by inserting "and" at the end of clause (B);

(2) by striking out the semicolon and "and" at the end of clause (C) and inserting in lieu thereof a period; and

(3) by striking out clause (D).

PART C—WORK STUDY PROGRAMS

AUTHORIZATION OF APPROPRIATIONS

SEC. 171. Section 441(b) of the Act is amended to read as follows:

"(b) There are authorized to be appropriated for carrying out this part $622,125,000 for fiscal year 1987, $653,231,000 for fiscal year 1988, $685,893,000 for fiscal year 1989, $720,187,000 for fiscal year 1990, and $756,197,000 for fiscal year 1991.".

APPORTIONMENT

SEC. 172. (a) GENERAL RULE.—Section 442 of the Act is amended to read as follows:

"APPORTIONMENT

"SEC. 442. (a)(1)(A) From the sums appropriated pursuant to section 441(b) for any fiscal year which are equal to or less than the amount appropriated for this part for fiscal year 1985, the Secretary shall apportion to each institution of higher education participating in the grant program under this part an amount equal to the amount so appropriated multiplied by the eligible institution's apportionment percentage.

"(B) For the purpose of subparagraph (A) of this paragraph, an eligible institution's apportionment percentage is the percentage which the amount the institution of higher education was eligible to receive from appropriations made in fiscal year 1985 under this part bears to the total amount available under this part for that year.

"(2)(A) In any fiscal year in which the amount appropriated for this part exceeds the amount appropriated for this part in fiscal year 1985, the Secretary shall apportion to each institution of higher education participating in the grant program under this part an amount which bears the same ratio to such excess as the number of eligible undergraduates who are enrolled full time and the full-time equivalent of the number of eligible undergraduates enrolled part time in the institution of higher education, bears to the total number of such undergraduates in all institutions of higher education.

"(B) For the purpose of subparagraph (A) of this paragraph, the term 'eligible' means undergraduates who were eligible for the work study program under this part for the fiscal year preceding the fiscal year for which the determination is made.

"(b) If the Secretary determines that the sums apportioned to any institution of higher education under subsection (a) for any fiscal year exceed the aggregate of the amounts that the Secretary determines to be required by that institution for that fiscal year, the Secretary shall reapportion such excess, from time to time, on such date or dates as the Secretary shall fix, to other institutions of higher education in such manner as the Secretary determines will best assist in achieving the purposes of this part.".

(b) CONFORMING AMENDMENTS.—(1) Section 446(a) of the Act is repealed.

(2) Section 446 of the Act is amended—

(A) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively; and

(B) by striking out "in the same State" in subsection (a) (as redesignated by this clause).

(3) The heading of section 446 of the Act is amended to read as follows:

"AVAILABILITY OF ASSISTANCE".

WORK STUDY FOR COMMUNITY SERVICE-LEARNING ON BEHALF OF LOW-INCOME INDIVIDUALS AND FAMILIES

SEC. 173. (a) GENERAL RULE.—(1) Section 448(b)(1)(B) of the Act is amended to read as follows:

"(B) to the maximum extent practicable, provides participating students with work-learning opportunities which complement and reinforce their educational programs or vocational goals; and".

(2) Section 448(b)(2) of the Act is amended to read as follows:

"(2) 'community services' means services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs including, but not limited to, such fields as health care, child care, literacy training, education, housing and neighborhood improvement, rural development, and community improvement.".

(3) Section 448(c)(3) of the Act is amended by inserting after "planning" a comma and the following: "development,".

(b) FEDERAL SHARE.—(1) Section 443(b)(2) of the Act is amended by inserting after "except that" the following: "(A) an institution may use not to exceed 10 per centum of the funds granted to the institution in any fiscal year to carry out the work study program described in section 448 at the increased Federal share specified in clause (6)(B) of this subsection, and (B)".

(2) Section 443(b)(6) of the Act is amended—

(A) by inserting "(A)" after "except that"; and

(B) by adding before the semicolon at the end thereof a comma and the following: "and (B) the Federal share of the compensation of the students employed in the work study for community service-learning programs described in section 448 from funds available under clause (2)(A) in accordance with the agreement will not exceed 90 per centum of such compensation".

PART D—DIRECT LOANS

AUTHORIZATION OF APPROPRIATIONS

SEC. 176. Section 461(b)(1) of the Act is amended to read as follows:

"(b)(1) For the purpose of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $228,356,000 for fiscal year 1987, $239,774,000 for fiscal year 1988, $251,763,000 for fiscal year 1989, $264,351,000 for fiscal year 1990, and $277,568,000 for fiscal year 1991, except that no funds are authorized to be appropriated for any fiscal year which begins after there has been a capital distribution under section 466(a).".

APPORTIONMENT

SEC. 177. (a) GENERAL RULE.—Section 462(a) of the Act is amended to read as follows:

"(a)(1)(A) From the sums appropriated pursuant to section 461(b) for any fiscal year which are equal to or less than the amount appropriated for this part for fiscal year 1985, the Secretary shall apportion to each institution of higher education participating in the loan program under this part an amount equal to the amount so appropriated multiplied by the eligible institution's apportionment percentage.

"(B) For the purpose of subparagraph (A) of this paragraph, an eligible institution's apportionment percentage is the percentage which the amount the institution of higher education was eligible to receive from appropriations made in fiscal year 1985 under this part bears to the total amount available under this part for that year.

"(2)(A) In any fiscal year in which the amount appropriated for this part exceeds the amount appropriated for this part in fiscal year 1985, the Secretary shall apportion to each institution of higher education participating in the loan program under this part an amount which bears the same ratio to such excess as the number of eligible undergraduates who are enrolled full time and the full-time equivalent of the number of eligible undergraduates enrolled part time in the institution of higher education, bears to the total number of such undergraduates in all institutions of higher education.

"(B) For the purpose of subparagraph (A) of this paragraph, the term 'eligible' means undergraduates who were eligible to receive a loan under this part for the fiscal year preceding the fiscal year for which the determination is made.

"(3) If the Secretary determines that the sums apportioned to any institution of higher education under paragraphs (1) and (2) for any fiscal year exceed the aggregate of the amounts that the Secretary determines to be required by that institution for that fiscal year, the Secretary shall reapportion such excess, from time to time, on such date or dates as the Secretary shall fix, to other institutions of higher education in such manner as the Secretary determines will best assist in achieving the purposes of this part.".

(b) CONFORMING AMENDMENTS.—(1)(A) Section 462(b)(1) of the Act is amended by striking out "from the apportionment of the State in which it is located".

(B) Section 462(b)(2) of the Act is amended by striking out "from the amount apportioned to the State in which it is located".

(2)(A) Section 462(c)(1)(A) of the Act is amended by striking out "from a State".

(B) Section 462(c)(1)(B) of the Act is amended by striking out "in a State".

(C) Section 462(c) of the Act is amended—

(i) by striking out "(A)";

(ii) by striking out paragraph (2); and

(iii) by redesignating subparagraph (B) as paragraph (2).

PRIORITY FOR NEEDY STUDENTS

SEC. 178. Section 463(a) of the Act is amended—

(1) by redesignating clause (9) as clause (10); and

(2) by inserting after clause (8) the following new clause:

"(9) provide that the institution of higher education will make loans first to students with exceptional need; and".

INTEREST RATE INCREASED

SEC. 179. Section 464(c)(1)(D) of the Act is amended by inserting after "October 1, 1981" a comma and the following: "or 7 per centum in the case of any loan made on or after July 1, 1986".

PART E—GENERAL STUDENT AID PROVISIONS

NEED ANALYSIS

SEC. 181. Section 482 of the Act is amended to read as follows:

"NEED ANALYSIS

"SEC. 482. (a) GENERAL AUTHORITY.—(1) The Secretary, in cooperation with the Advisory Committee on Student Financial Assistance established under section 491 of this title, shall prepare and publish a schedule of expected family contributions for programs under subpart 2 of part A, part B for loans for which an interest subsidy is paid pursuant to section 428, part C, and part E of this title in accordance with the master schedule established under section 482B.

"(2) In preparing the schedule of expected family contributions under this section, the Secretary shall, in evaluating the ability of the family to pay and the eligibility of the student for assistance under the program subject to the schedule, apply the following policies:

"(A) Parents of dependent students have a responsibility to finance their children's education to the extent that they are able to do so.

"(B) The ability of parents to pay derives from an evaluation of their financial resources at the time their dependent son or daughter applies for assistance.

"(C) Both income and assets of the parents and student are considered in arriving at an estimate of a family's ability to contribute to educational costs.

"(D) Basic and nondiscretionary expenses for food, shelter, and clothing and obligatory expenditures, such as taxes, are assumed not to be available to the family to pay for the children's educational costs. A portion of the remaining discretionary income is assumed to be available for postsecondary educational expenses.

"(E) Students who are dependent on their parents also are expected to contribute to their own educational expenses through their earnings, savings (including an $800 minimum contribution), or other resources that may be available directly to them, such as veterans' benefits.

"(F) Students are expected to contribute a greater proportion of their income and assets for education than their parents.

"(G) To qualify as self-supporting, students must meet age or other criteria established in this title and must demonstrate that they are not receiving any significant financial assistance from their parents.

"(H) Students determined to be self-supporting who have not accumulated sufficient personal resources should be able to receive financial assistance to pay for direct educational costs and minimum living costs for themselves and their dependents.

"(I) Through a combination of financial aid and personal resources, all self-supporting students and their families should be able to maintain a minimum living standard.

"(J) Students with no minor dependent children and their spouses who earn income should be expected to contribute most of that income toward direct and indirect educational expenses and be allowed to retain a portion of that income in order to improve their standard of living.

"(K) Self-supporting students with minor dependent children should be expected to contribute the same proportion of income and assets toward direct and indirect educational expenses as families of dependent students.

"(L) All self-supporting students and their spouses should be expected to contribute a minimum amount of resources toward their education.

"(b) BASIC CRITERIA.—The basic criteria to be followed in promulgating the expected family contribution are as follows:

"(1) The total income, including Adjusted Gross Income and other untaxed income, of the student and the student's spouse; or the student and the student's parents, in the case of a dependent student.

"(2) Allowances against income shall include:

"(A) United States income tax, Social Security taxes paid under sections 1401 and 3101 of the Internal Revenue Code of 1954, and a standard allowance for State income taxes.

"(B) A standard living allowance, based on consumption and other living costs for a family at a low standard of living as estimated by the Bureau of Labor Statistics.

"(C) Any unusual medical and dental expenses of the student and the student's spouse; or the student and the student's parents, in the case of a dependent student.

"(D) An allowance for unreimbursed tuition paid for dependent children other than the student enrolled in private elementary or secondary institutions.

"(E) An allowance for employment-related expenses in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed.

"(3) The net assets of the student and the student's spouse; and the student and the student's parents, in the case of a dependent student, including—

"(A) the current balance of checking and savings accounts and cash on hand;

"(B) the equity in a principal place of residence;

"(C) the net value of investments and other real estate; and

"(D) the net worth of a business or farm.

"(4) An asset protection allowance based on the age of the older parent or the age of the student, in the case of the independent student.

"(5) An $800 mandatory expected minimum contribution for dependent students from savings, summer earnings, or academic year employment.

"(6) The number of dependents in the family of the student.

"(7) The number of dependents in the family of the student who are enrolled in, on at least a half-time basis, a program of postsecondary education.

"(8) In the case of an independent student, the marital status of the student and the number of minor dependents in the student's family.

"(9) In determining the expected family contribution under this section, a schedule of marginal taxation rates shall be applied to the amount of Adjusted Available Income. Separate taxation rates shall be developed for the parents of dependent undergraduate students, independent students with minor dependents, parents of dependent graduate students, and for independent students without minor dependents.

"(c) SEPARATE SCHEDULES.—Separate schedules of expected family contributions shall be developed for independent students and independent students with dependent minor children. Such separate schedules shall be consistent with the basic criteria set forth in subsection (b), except that such schedules shall—

"(1) provide that the portion of assets which shall be exempt from assessment for contribution for an independent student

who has one or more dependent minor children shall be the same as the portion so exempt for the family of a dependent student;

"(2) provide that the rate of assessment for contribution on that portion of assets of such an independent student with minor dependents which is not exempt under subsection (b)(3) shall be the same as the rate applied to the comparable portion of assets of the family of a dependent student; and

"(3) in determining the family contribution for an independent student who has one or more dependent minor children, provide that the assessment rate which is to be applied to the student's available income shall be the same as the assessment rate applied to the available income of the family of a dependent student.

"(d) ASSESSMENT FROM ADJUSTED AVAILABLE INCOME.—The Adjusted Available Income is assessed according to the following table:

"Assessment From Adjusted Available Income (AAI)

If AAI is—	The Assessment is—
Less than $3,409	$750
$3,409-$7,600	22% of AAI
$7,601-$9,500	$1,672 + 25% of AAI over $7,600
$9,501-$11,400	$2,147 + 29% of AAI over $9,500
$11,401-$13,300	$2,698 + 34% of AAI over $11,400
$13,301-$15,200	$3,344 + 40% of AAI over $13,300
$15,201 or more	$4,104 + 47% of AAI over $15,200.

The Secretary shall prescribe modifications in the preceding assessments as necessary to carry out this section.

"(e) COST OF ATTENDANCE.—For purposes of this title, the term 'cost of attendance' means—

"(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution of higher education, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

"(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

"(3) an allowance (as determined by the institution) for room and board costs incurred by the student which—

"(A) shall be an allowance of not less than $1,500 for a student without dependents residing at home with parents;

"(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount assessed its residents for room and board; and

"(C) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board, except that the amount may not be less than $2,500;

"(4) for a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

"(5) for a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study;

"(6) an allowance based on actual expenses for child care for minor dependent children who require care, during the hours the student is in class or engaged in academic-related activities or in transit; and

"(7) for a handicapped student, an allowance for those expenses related to his handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

"(f) INDEPENDENT STUDENT.—(1) For the purpose of this title, the term 'independent student' means a student who is determined, pursuant to regulations of the Secretary, to be independent of the parents or legal guardians of the students.

"(2) In carrying out paragraph (1) of this subsection, the Secretary shall apply the criteria specified in paragraph (3) for the relevant years described in paragraph (4).

"(3) A student qualifies as an independent student for an award year if the student—

"(A) does not, during any of the relevant years described in paragraph (4), live for more than 6 weeks in the home of the student's parent for whom income must be reported;

"(B) is not, for any of the relevant years described in paragraph (4), claimed as a dependent for Federal income tax purposes by such parent; and

"(C) does not, during any of the relevant years described in paragraph (4), receive financial assistance of more than $750 from such parent.

"(4) Except as provided in paragraph (5), to qualify as an independent student for any award year—

"(A) an unmarried student who has not attained 23 years of age must satisfy the criteria set forth in paragraph (3) for the first calendar year of an award year and the 2 preceding calendar years;

"(B) an unmarried student who has attained 23 years of age must satisfy the criteria set forth in paragraph (3) for the first calendar year of an award year and the preceding calendar year;

"(C) a married student must satisfy the criteria set forth in paragraph (3) for the first calendar year of the award year; and

"(D) an unmarried student with minor dependents (excluding a minor spouse) must satisfy the criteria set forth in paragraph (3) for the first calendar year of the award year.

"(5) Any student will qualify to be an independent student if, before the end of the award year—

"(A) the student's parents die; or

"(B) the student is declared a ward of a court.

"(g) ADDITIONAL TERMS.—For the purpose of this title, the term—

"(1) 'available income' is the difference between the parent's income and allowances against income;

"(2) 'Adjusted Available Income' is the sum of available income and a supplement from assets; and

"(3) 'family contribution' is the amount which the student and the family of the student may be reasonably expected to contribute toward the student's postsecondary education for the academic year for which the determination is made, as determined in accordance with the family contribution schedule required by this section.

"(h) SPECIAL RULE FOR FORECLOSURE, FORFEITURE, LIQUIDATION, OR BANKRUPTCY.—In the computation of family contributions for the programs under this title for any academic year beginning on or after July 1, 1986, the proceeds of a sale of farm or business assets of the family shall be excluded from family income if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.

"(i) LESSER RATES PERMITTED.—Nothing in this section shall prohibit an institution of higher education, in individual cases, from adjusting the determination of financial need for a student eligible for the purpose of eligibility for assistance under subpart 2 of part A, part C, or part E of this title if the basis for such adjustment is documented.".

SUBMISSION OF FAMILY CONTRIBUTION SCHEDULES

SEC. 182. Title IV of the Act is amended by inserting after section 482 the following new section:

"SUBMISSION OF EXPECTED FAMILY CONTRIBUTION SCHEDULES

"SEC. 482A. (a) SUBMISSION; JOINT RESOLUTION.—Each schedule of expected family contribution required under section 482 shall be submitted to the President of the Senate and to the Speaker of the House of Representatives not later than June 1 of each year. Before each such schedule shall become effective, both the Senate and the House of Representatives must adopt a joint resolution approving or modifying, in whole or in part, the proposed schedule.

"(b) DISAPPROVAL.—If any such schedule has not been approved by both the Senate and the House of Representatives pursuant to subsection (a) of this section, which has been signed by the President, not later than September 1 in the year in which the schedule was submitted, the Secretary shall—

"(1) publish the family contribution schedule for the previous academic year for Pell Grants under subpart 1 of part A modified to reflect the most recent and relevant data; and

"(2) publish the family contribution schedules for the previous academic year for the programs under subpart 2 of part A, part B for loans for which an interest subsidy is paid pursuant to section 428, part C, and part E modified to reflect the most recent and relevant data.".

SIMPLIFIED NEEDS TEST

SEC. 183. Section 482 of the Act (as amended by section 181) is amended by adding at the end thereof the following new subsection:

"(j)(1) The Secretary may use a simplified needs analysis based upon the elements set forth in paragraph (2) for the calculation of the expected family contribution for families with adjusted gross incomes which are equal to or less than $15,000 per year.

"(2) The five elements to be used for the simplified needs analysis are—

"(A) adjusted gross income,

"(B) Federal and State taxes paid,

"(C) untaxed income and benefits,

"(D) the number of family members, and

"(E) the number of family members in postsecondary education.".

CALENDAR FOR AWARDING FINANCIAL AID PRESCRIBED

SEC. 184. Title IV of the Act is amended by adding after section 482A the following new section:

"MASTER CALENDAR

"SEC. 482B. (a) SECRETARY REQUIRED TO COMPLY WITH SCHEDULE.—To assure adequate notification and timely delivery of student aid funds under this title, the Secretary shall adhere to the following calendar dates in the year preceding the award year:

"(1) Development and distribution of Federal and multiple data entry forms—

"(A) by February 1: first meeting of the Education Department's technical committee on forms design;

"(B) by March 1: Proposed family contribution schedule published in the Federal Register;

"(C) by June 1: final family contribution schedule;

"(D) by August 15: application for Federal student assistance and multiple data entry data elements and instructions approved;

"(E) by August 30: final approved forms delivered to servicers and printers;

"(F) by October 1: Federal and multiple data entry forms and instructions printed; and

"(G) by November 1: Federal and multiple data entry forms, instructions, and training materials distributed.

"(2) Allocations of campus-based and Pell Grant funds—

"(A) by August 1: distribution of institutional application for campus-based funds (FISAP) to institutions;

"(B) by October 1: final date for submission of FISAP by institutions to Department of Education;

"(C) by November 15: edited FISAP and computer printout received by institutions;

"(D) by December 1: appeals procedures received by institutions;

"(E) by December 15: edits returned by institutions to Department of Education;

"(F) by February 1: tentative award levels received by institutions and final Pell Grant payment schedule;

"(G) by February 15: closing date for receipt of institutional appeals by the Department of Education;

"(H) by March 1: appeals process completed;

"(I) by April 1: final award notifications sent to institutions;

"(J) by June 1: Pell Grant authorization levels sent to institutions.

"(b) TIMING FOR REALLOCATIONS.—With respect to any funds reallocated under section 413D or 442, the Secretary shall reallocate such funds at any time during the course of the year that will best meet the purposes of the programs under subpart 2 of part A and part C, respectively. Such reallocation shall occur at least once each year, not later than September 30 of that year.

"(c) DELAY OF EFFECTIVE DATE OF LATE PUBLICATIONS.—Any additional regulatory changes initiated by the Secretary affecting the general administration of the programs pursuant to this title that have not been published in final form by December prior to the start of the award year shall not become effective until the beginning of the second award year after the December 1 date.

"(d) NOTICE TO CONGRESS.—The Secretary shall notify the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives when the items specified in the calendar have been completed and provide all relevant forms, rules and instructions with such notice. When a deadline included in the calendar is not met, the Secretary, within 7 days, shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives a written report, including proper documentation, as to why the deadline was not adhered to and a detailed plan for ensuring that subsequent dates are met. Nothing in this section shall be interpreted to penalize institutions or deny them the specified times allotted to enable them to return information to the Secretary based on the failure of the Secretary to adhere to the dates specified in this section.".

LESS THAN ONE-HALF TIME COURSE OF STUDY RULE

SEC. 185. (a) GENERAL RULE.—Section 484 of the Act is amended—

(1) by redesignating subsection (b) as subsection (c), and

(2) by inserting after subsection (a) the following new subsection:

"(b)(1) A student may be eligible for student assistance described in paragraph (2) if—

"(A) the student carries less than one-half the normal full-time workload for the course of study the student is pursuing, as determined by the institution of higher education, and

"(B) the institution of higher education has met the need for assistance under each such program described in paragraph (2) for students enrolled at the institution described in clause (2) of subsection (a).

"(2) The student assistance to which paragraph (1) of this subsection applies are—

"(A) supplemental education opportunity grants under subpart 2 of part A of this title;

"(B) work-study programs under part C of this title; and

"(C) direct student loans under part E of this title.".

(b) REPEALS.—(1) Section 413C(c) of the Act is repealed.

(2) Section 443(a)(3) of the Act is amended by striking out "except that each eligible institution may reserve and award not more than 10 per centum of the funds made available under this part for each fiscal year for less-than-half-time students who are determined by the institution to be in need of such grants and who meet the requirements of section 484, other than the requirement of clause (2) of section 484(a)".

SATISFACTORY PROGRESS

SEC. 186. (a) GENERAL RULE.—(1) Section 484(a)(3) of the Act is amended—

(A) by inserting after "progress" the following: "toward a degree or certificate"; and

(B) by striking out "according to the standards and practices of the institution at which the student is in attendance" and inserting in lieu thereof the following: "in accordance with the provisions of subsection (c) of this section".

(2) Section 484 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1) For the purpose of clause (3) of subsection (a) of this section, a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution, and

"(B) the student has a cumulative C average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) Whenever a student fails to meet the eligibility requirements of clause (3) of subsection (a) as a result of the application of this subsection and subsequent to that failure the student has a cumulative C average for any grading period, the student may, subject to this subsection, again be eligible under such clause (3) for a grant, loan, or work assistance under this title.

"(3) Any institution of higher education at which the student is in attendance may, for the purpose of clause (3), waive the provisions of paragraph (1) or paragraph (2) of this subsection for undue hardship based on—

"(A) the death of a relative of the student,

"(B) the personal injury or illness of the student, or

"(C) special circumstances as determined by the institution.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect for the first academic year, or its equivalent, as determined by the Secretary of Education, beginning after the date of enactment of this Act.

FINANCIAL AND STUDENT SUPPORT SERVICES TRAINING

SEC. 187. Section 486(c) of the Act is amended by striking out "1985" and inserting in lieu thereof "1986".

ADVISORY COMMITTEE ON STUDENT FINANCIAL ASSISTANCE

SEC. 188. (a) ADVISORY COMMITTEE AUTHORIZED.—Section 491 of the Act is amended to read as follows:

"ADVISORY COMMITTEE ON STUDENT FINANCIAL ASSISTANCE

"SEC. 491. (a) ESTABLISHMENT AND PURPOSE.—(1) There is established in the Department an independent Advisory Committee on Student Financial Assistance (hereafter in this section referred to as the 'Advisory Committee') which shall provide advice and counsel to the Congress and to the Secretary on student financial aid matters.

"(2) The purpose of the Advisory Committee is—

"(A) to provide extensive knowledge and understanding of the Federal, State, and institutional programs of postsecondary student assistance;

"(B) to provide technical expertise with regard to systems of needs analysis and application forms; and

"(C) to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

"(b) INDEPENDENCE OF ADVISORY COMMITTEE.—In the exercise of its functions, powers, and duties, the Advisory Committee shall be independent of the Secretary and the other offices and officers of the Department.

"(c) MEMBERSHIP.—(1) The Advisory Committee shall have 11 members of which—

"(A) 3 members shall be appointed by the President pro tempore of the Senate,

"(B) 3 members shall be appointed by the Speaker of the House of Representatives, and

"(C) 5 members shall be appointed by the Secretary including, but not limited to representatives of States, institutions of higher education, secondary schools, credit institutions, students, and parents.

"(2) Not less than 7 members of the Advisory Committee shall be individuals who have been appointed on the basis of technical qualifications, professional standing and demonstrated knowledge in the fields of higher education and student aid administration, need analysis, financing postsecondary education, student aid delivery, and the operations and financing of student loan guarantee agencies.

"(d) FUNCTIONS OF THE COMMITTEE.—The Advisory Committee shall—

"(1) develop, review, and comment upon the system of needs analysis established under section 482 of this title;

"(2) monitor, apprise, and evaluate the effectiveness of student aid delivery and recommend improvements;

"(3) recommend data collection needs and student information requirements which would improve access and choice for eligible students under this title and assist the Department of Education in improving the delivery of student aid and in assessing the impact of legislative and administrative policy proposals;

"(4) review and comment upon, prior to promulgation, all regulations affecting programs under this title, including proposed regulations;

"(5) recommend to the Congress and to the Secretary such studies, surveys, and analyses of student financial assistance programs, policies, and practices, including the special needs of low-income, disadvantaged, and nontraditional students, and the means by which the needs may be met;

"(6) review and comment upon standards by which financial need is measured in determining eligibility for Federal student assistance programs; and

"(7) appraise the adequacies and deficiencies of current student financial aid information resources and services and evaluate the effectiveness of current student aid information programs.

"(e) OPERATIONS OF THE COMMITTEE.—(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

"(A) 4 shall be appointed for a term of 1 year;

"(B) 4 shall be appointed for a term of 2 years; and

"(C) 3 shall be appointed for a term of 3 years.

"(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of such term. A member of the Advisory Committee shall, upon request, continue to serve after the expiration of a term until a successor has been appointed. A member of the Advisory Committee may be reappointed to successive terms on the Advisory Committee.

"(3) The Advisory Committee shall elect a Chairman and a Vice Chairman from among its members.

"(4) Six members of the Advisory Committee shall constitute a quorum.

"(5) The Advisory Committee shall meet at the call of the Chairman or a majority of its members.

"(f) SUBMISSION TO DEPARTMENT FOR COMMENT.—The Advisory Committee shall submit any of its proposed studies or recommendations to the Department of Education for comment for a period not to exceed 30 days in each instance.

"(g) COMPENSATION AND EXPENSES.—(1) Members of the Advisory Committee who are officers or full-time 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; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(2) Members of the Advisory Committee who are not officers or full-time employees of the United States may each receive reimbursement for travel expenses incident to attending Advisory Committee meetings, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(h) PERSONNEL AND RESOURCES.—(1) The Advisory Committee may appoint such personnel as may be necessary by the Chairman without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS-18 of the General Schedule.

"(2) In carrying out its duties under the Act, the Advisory Committee shall consult with other Federal agencies, representatives of State and local governments, and private organizations to the extent feasible.

"(3) The Advisory Committee is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics for the purpose of this section and each such department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Advisory Committee, upon request made by the Chairman.

"(4) The Advisory Committee is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

"(5) The head of each Federal agency shall, to the extent not prohibited by law, cooperate with the Advisory Committee in carrying out this section.

"(6) The Advisory Committee is authorized to utilize, with their consent, the services, personnel, information, and facilities of other Federal, State, local, and private agencies with or without reimbursement.

"(i) AVAILABILITY OF FUNDS.—An amount, not to exceed $1,000,000 in any fiscal year, shall be available from the amount appropriated for each such fiscal year from salaries and expenses for the costs of carrying out the provisions of this section.".

(b) TERMINATION.—(1) The Advisory Committee shall cease to exist 1 year after the first meeting of the Advisory Committee.

(2) Effective 1 year after the first meeting of the Advisory Committee, section 491 of the Act is repealed.

TITLE II—INSTITUTIONAL AND PROGRAM ASSISTANCE

PART A—CONTINUING POSTSECONDARY EDUCATION PROGRAM AND PLANNING

REPEAL OF TITLE I

SEC. 201. Title I of the Act is repealed.

NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION

SEC. 202. (a) COUNCIL ESTABLISHED.—Title II of the Department of Education Organization Act is amended by adding at the end thereof the following:

"NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION

"SEC. 215. (a) The President shall appoint a National Advisory Council on Continuing Education consisting of eight representatives of Federal agencies having postsecondary continuing education and training responsibilities, including, but not limited to—

"(1) one representative each from—

"(A) the Department of Education,

"(B) the Department of Agriculture,

"(C) the Department of Defense,

"(D) the Department of Labor, and

"(E) the Veterans' Administration; and

"(2) twelve members, not full-time employees of the Federal Government, who are knowledgeable and experienced in the field of continuing education, including State and local government officials, representatives of business, labor, and community groups, and adults whose educational needs have been inadequately served.

The Advisory Council shall meet at the call of the Chairman but not less than twice a year.

"(b) The Advisory Council shall advise the Secretary in the preparation of general regulations and with respect to policies and procedures arising in the administration of the Higher Education Act of 1965 with respect to continuing education.

"(c) The Advisory Council shall examine all federally supported continuing education and training programs and make recommendations with regard to policies to eliminate duplication and to effectuate the coordination of programs under the Higher Education Act of 1965 with respect to continuing education and other federally funded continuing education and training programs and services.

"(d) The Advisory Council shall make annual reports to the President, the Congress, and the Secretary of its findings and recommendations, including recommendations for changes in the provisions of the Higher Education Act of 1965 with respect to continuing education and other Federal laws relating to continuing education and training activities. The President shall transmit each such report to the Congress with his comments and recommendations. The Advisory Council shall make such other reports or recommendations to the President, the Congress, the Secretary, or the head of any other Federal department or agency as may be appropriate.

"(e) The Advisory Council may utilize the services and facilities of any agency of the Federal Government as may be necessary. The Advisory Council may accept, employ, and dispose of gifts or bequests to carry out its responsibilities under this section.".

(b) CONFORMING AMENDMENT.—The table of contents of such Act is amended by adding after item "Sec. 214." the following new item:

"Sec. 215. National Advisory Council on Continuing Education.".

PART B—LIBRARIES

REAUTHORIZATION

SEC. 211. Section 201(b) of the Act is amended to read as follows:

"(b)(1) There are authorized to be appropriated to carry out part A $5,000,000 for fiscal year 1987, $5,250,000 for fiscal year 1988, $5,512,500 for fiscal year 1989, $5,788,125 for fiscal year 1990, and $6,077,530 for fiscal year 1991.

"(2) There are authorized to be appropriated to carry out part B $1,050,000 for fiscal year 1987, $1,103,000 for fiscal year 1988, $1,158,000 for fiscal year 1989, $1,216,000 for fiscal year 1990, and $1,277,000 for fiscal year 1991.

"(3) There are authorized to be appropriated to carry out part C $6,300,000 for fiscal year 1987, $6,615,000 for fiscal year 1988, $6,940,000 for fiscal year 1989, $7,280,000 for fiscal year 1990, and $7,650,000 for fiscal year 1991.".

COLLEGE LIBRARY RESOURCES

SEC. 212. (a) GRANT AMOUNT; NEED CRITERIA.—Section 211 of the Act is amended to read as follows:

"COLLEGE LIBRARY RESOURCES

"SEC. 211. (a) From the amount appropriated for this part, the Secretary shall make grants to eligible institutions of higher education or combinations thereof (and to branches of institutions which are located in different communities from that in which its parent institution is located). The amount of a grant under this part shall not be less than $2,000 nor more than $10,000 and shall reflect the number of full-time equivalent students enrolled at the recipient institution. If the funds are not sufficient to provide grants to all eligible institutions, grants shall be made to those institutions demonstrating the greatest need, based on the eligibility criteria in section 211(c).

"(b) A grant under this part may be made only if the application provides—

"(1) information about the institution and its library resources as prescribed by the Secretary in regulations;

"(2) satisfactory assurance that the applicant has expended for all library materials (exclusive of construction) during the institutional fiscal year preceding the year of application for which the grant is sought (hereafter in this section called the 'base year'), from funds other than funds received under this part, an amount not less than the average annual aggregate amount or the average amount per full-time equivalent student it expended for such purposes during the 2 years preceding the base year;

"(3) for such fiscal control and fund accounting procedures as are necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part;

"(4) for making such reports as the Secretary may require, including a report on how such funds received under a grant were expended, and for keeping such records and for affording such access thereto as the Secretary deems necessary to assure the correctness and verification of such reports; and

"(5) a statement setting forth how the funds received under this part will be used to improve the quality of the institution's library services.

"(c) In order to be considered an eligible institution, an institution must provide the Secretary assurance that—

"(1) the expenditures of the institution *per full-time equivalent student for library* materials is less than the average of the expenditures for library materials per full-time equivalent student by other institutions of comparable size and program, as determined by the Secretary in accordance with definitions established by the National Center for Education; and

"(2) the number of volumes per full-time equivalent student is less than the average of such number of volumes held by institutions of comparable size and program, as determined by the Secretary in accordance with definitions established by the National Center for Education Statistics.

"(d) If the Secretary determines, in accordance with regulations, that there are very unusual circumstances which prevent the applicant from making the assurance required by subsection (b)(2), the requirement for such assurance may be waived. For purposes of this subsection, the term 'very unusual circumstances' means theft, vandalism, fire, flood, earthquake, or other occurrence which may temporarily reduce the level of expenditures for library materials, or which resulted in unusually high expenditures for library materials.

"(e) If the Secretary determines, in accordance with regulations, that there are very unusual circumstances which prevent an otherwise eligible institution from qualifying under subsection (c), the requirements of subsection (c) may be waived. The Secretary may not grant such waivers to more than 5 percent of the eligible institutions receiving grants under this part.

"(f) Grants under this part may be used only for books, periodicals, documents, magnetic tapes, phonographic records, audiovisual materials, and other related library materials (including necessary binding) and for the establishment and maintenance of networks for sharing library resources with other institutions of higher education.".

STUDY OF THE EFFECTIVENESS OF THE NEEDS CRITERIA FOR THE COLLEGE LIBRARY RESOURCE PROGRAM AUTHORIZED

SEC. 213. Title II of the Act is amended by inserting after section 211 the following new section:

"STUDY OF THE EFFECTIVENESS OF THE NEEDS CRITERIA FOR THE COLLEGE LIBRARY RESOURCE PROGRAM AUTHORIZED

"SEC. 212. (a) The National Commission on Libraries and Information Sciences shall conduct a study on the effectiveness in directing assistance to libraries with the greatest need of the needs criteria specified in section 211 under this part.

"(b) The National Commission on Libraries and Information Sciences shall prepare and submit a report to the Congress not later than 3 years after the conclusion of the first fiscal year in which appropriations are made for the College Library Resource Program authorized by section 211, as amended by section 212 of the Higher Education Amendments of 1985, together with such recommendations as the Commission on Libraries and Information Sciences deems appropriate.".

STRENGTHENING RESEARCH LIBRARY RESOURCES

SEC. 214. Section 231 of the Act is further amended by inserting at the end thereof the following new subsection:

"(c) In determining eligibility for assistance under this part, the Secretary shall permit institutions that do not otherwise qualify to provide additional information or documents to demonstrate the national or international significance for scholarly research of the particular *collection described* in the grant proposal.".

REPEAL OF PART D

SEC. 215. Part D of title II of the Act is repealed.

PART C—INSTITUTIONAL AID

INSTITUTIONAL AID REAUTHORIZED

SEC. 221. Title III of the Act is amended to read as follows:

"TITLE III—INSTITUTIONAL AID

"FINDINGS AND PURPOSES

"SEC. 301. (a) FINDINGS.—The Congress finds that—

"(1) many institutions of higher education in this era of declining enrollments and scarce resources face problems which threaten their ability to survive;

"(2) the problems relate to the management and fiscal operations of certain institutions of higher education, as well as to an inability to engage in long-range planning, recruitment activities, and development activities;

"(3) the title III program prior to 1985 did not always meet the specific development needs of historically black colleges and universities and other institutions with large concentrations of minority, low-income students;

"(4) the solution of the problems of these institutions would enable them to become viable, thriving institutions of higher education;

"(5) providing a minimum level of assistance to each category of eligible institutions will assure the continued participation of the institutions in the program established in title III and enhance their role in providing access to low-income and minority students; and

"(6) these institutions play an important role in the American system of higher education, and there is a strong national interest in assisting them in solving their problems and in stabilizing their management and fiscal operations.

"(b) PURPOSE.—It is the purpose of this title to assist such institutions through a program of Federal assistance.

"PART A—STRENGTHENING INSTITUTIONS

"PROGRAM PURPOSE

"SEC. 311. (a) GENERAL AUTHORIZATION.—The Secretary shall carry out a program, in accordance with this part, to improve the academic quality, institutional management, and fiscal stability of eligible institutions, in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

"(b) GRANTS AWARDED; SPECIAL CONSIDERATION.—From the sums available for this part under section 358(a)(1), the Secretary may award grants to any eligible institution with an application approved under section 351 in order to assist such an institution to plan, develop, or implement activities that promise to strengthen the institution. Special consideration shall be given to applications which propose, pursuant to the institution's plan, to engage in—

"(1) faculty development;

"(2) funds and administrative management;

"(3) development and improvement of academic programs;

"(4) acquisition of equipment for use in strengthening funds management and academic programs;

"(5) joint use of facilities such as libraries and laboratories; and

"(6) student services.

"DEFINITIONS

"SEC. 312. For purposes of this part:

"(1) The term 'educational and general expenditures' means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

"(2) The term 'eligible institution' means—

"(A) an institution of higher education—

"(i)(I) which, in the case of an institution which awards a bachelor's degree, has an enrollment which includes a substantial percentage of students receiving need-based assistance under title IV of this Act (other than loans for which an interest subsidy is paid pursuant to section 428), the average

amount of which assistance is high in comparison with the average amount of all assistance provided under such title to students at such institutions, unless this requirement is waived under section 352(a), and (II) which, in the case of junior or community colleges, has an enrollment which includes a substantial percentage of students receiving need-based assistance under title IV, the average amount of which assistance is high in comparison with the average amount of all assistance provided under such title to students at such institutions;

"(ii) except as provided in section 352(b), the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

"(iii)(I) is legally authorized to provide, and provides within the State, an educational program for which it awards a bachelor's degree, or (II) is a junior or community college;

"(iv) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation;

"(v) except as provided in section 352(b) has, during the 5 academic years preceding the academic year for which it seeks assistance under this part—

"(I) met the requirement of either subclause (iii)(I) or (iii)(II), or of both such subclauses (simultaneously or consecutively); and

"(II) met the requirement of subclause (iv); and

"(vi) meets such other requirements as the Secretary may prescribe;

"(B) any branch of any institution of higher education described under clause (A) which by itself satisfies the requirements contained in subclauses (i) and (ii) of such clause;

"(C) any institution of higher education which has an enrollment of which at least 20 percent are Mexican American, Puerto Rican, Cuban, or other Hispanic students, or combination thereof, and which also satisfies the requirements of subclauses (i) and (ii) of such clause;

"(D) any institution of higher education which has an enrollment of at least 60 percent American Indian, Alaska Native or Aleut, or combination thereof, and which also satisfies the requirements of subclauses (i) and (ii) of such clause; and

"(E) any institution of higher education which has an enrollment of which at least 5 percent are Native Hawaiian, Asian American, American Samoan, Micronesian, Guamian (Chamorro), and Northern Marianian, or any combination thereof, and which also satisfies the requirements of subclauses (i) and (ii) of such clause.

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under clause (A)(i) shall be given twice the weight of the factor described under clause (A)(ii).

"(3) The term 'full-time equivalent students' means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

"(4) The term 'junior or community college' means an institution of higher education—

"(A) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

"(B) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

"(C) that—

"(i) provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or

"(ii) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"DURATION OF GRANT

"SEC. 313. (a) GENERAL RULE.—The Secretary may award a grant to an eligible institution under this part for—

"(1) not to exceed 3 years, or

"(2) not less than 4 nor more than 7 years, subject for each fiscal year to the availability of appropriations therefor.

The Secretary shall not accept the application of an eligible institution for a grant under both clauses (1) and (2) for a fiscal year.

"(b) LIMITATION.—The Secretary shall not award a grant under this part to an eligible institution that has, for any prior fiscal year, exhausted its 7 years of eligibility under subsection (a)(2), except as provided in section 352(c).

"(c) EXCEPTION.—Notwithstanding subsection (a), the Secretary may award a grant to an eligible institution under this part for a period of 1 year for the purpose of assisting such institution in the preparation of plans and applications under this part.

"PART B—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

"FINDINGS AND PURPOSES

"SEC. 321. The Congress finds that—

"(1) the historically black colleges and universities have contributed significantly to the effort to attain equal opportunity through postsecondary education for black, low-income, and educationally disadvantaged Americans;

"(2) States and the Federal Government have discriminated in the allocation of land and financial resources to support black public institutions under the Morrill Act of 1862 and its progeny, and against public and private black colleges and universities in the award of Federal grants and contracts, and the distribution of Federal resources under this Act and other Federal programs which benefit institutions of higher education;

"(3) the current state of black colleges and universities is partly attributable to the discriminatory action of the States and the Federal Government and this discriminatory action requires the remedy of enhancement of black postsecondary institutions to ensure their continuation and participation in fulfilling the Federal mission of equality of educational opportunity; and

"(4) financial assistance to establish or strengthen the physical plants, financial management, academic resources, and endowments of the historically black colleges and universities are appropriate methods to enhance these institutions and facilitate a decrease in reliance on governmental financial support and to encourage reliance on endowments and private sources.

"DEFINITIONS

"SEC. 322. For the purposes of this part:

"(1) The term 'graduate' means an individual who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than 5 consecutive school years.

"(2) The term 'part B institution' means any historically black college or university that was established prior to 1964 and whose principal mission was, and is, the education of black Americans.

"(3) The term 'Pell Grant recipient' means a recipient of financial aid under title IV, part A, subpart 1 of this Act.

"(4) The term 'professional and academic areas in which blacks are underrepresented' shall be determined by the Administrator of the National Center for Education Statistics and the Commissioner of the Bureau of Labor Statistics, on the basis of the most recent available satisfactory data, as professional and academic areas in which the percentage of black Americans who have been educated, trained, and employed is less than the percentage of blacks in the general population.

"(5) The term 'school year' means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"GRANTS TO INSTITUTIONS

"SEC. 323. (a) GENERAL AUTHORIZATION; USES OF FUNDS.—From amounts available under section 358(a)(2) in any fiscal year the Secretary shall make grants (under section 324) to institutions which have applications approved by the Secretary (under section 325) for any of the following uses:

"(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

"(2) Renovation and improvement in classroom, library, laboratory, and other instructional facilities.

"(3) Support of faculty exchanges and faculty fellowships to assist in attaining advanced degrees in their field of instruction.

"(4) Academic instruction in disciplines in which black Americans are underrepresented.

"(5) Purchase of library books, periodicals, microfilm, and other educational materials.

"(6) Tutoring, counseling, and student service programs designed to improve academic success.

"(b) LIMITATION.—No grant may be made under this Act for any educational program, activity, or service related to sectarian instruction or religious worship, or provided by a school or department of divinity. For purposes of this subsection, the term 'school or department of divinity' means an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

"ALLOTMENTS TO INSTITUTIONS

"SEC. 324. (a) ALLOTMENT; PELL GRANT BASIS.—From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-half that amount as the number of Pell Grant recipients in attendance and in good standing at such institution at the end of

the school year preceding the beginning of that fiscal year bears to the total number of Pell Grant recipients at all part B institutions.

"(b) ALLOTMENT; GRADUATES BASIS.—From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth that amount as the number of graduates for such school year at such institution bears to the total number of graduates for such school year at all part B institutions.

"(c) ALLOTMENT; GRADUATE AND PROFESSIONAL STUDENT BASIS.—From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth that amount as the number of graduates, who are admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which blacks are underrepresented, bears to the number of such graduates for all part B institutions.

"(d) REALLOTMENT.—The amount of any part B institution's allotment under subsection (a), (b), or (c) for any fiscal year which the Secretary determines will not be required for such institution for the period such allotment is available shall be available for reallotment from time to time on such date during such period as the Secretary may determine to other part B institutions in proportion to the original allotment to such other institutions under this section for such fiscal year.

"(e) SPECIAL RULE.—In any fiscal year that the Secretary determines that Howard University or the University of the District of Columbia will receive an allotment under subsections (b) and (c) of this section which is not in excess of amounts received by Howard University under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123), relating to annual authorization of appropriations for Howard University, or by the University of the District of Columbia under the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 774) for such fiscal year, then Howard University and the University of the District of Columbia, as the case may be, shall be ineligible to receive an allotment under this section.

"APPLICATIONS

"SEC. 325. (a) CONTENTS.—No part B institution shall be entitled to its allotment of Federal funds for any grant under section 324 for any period unless that institution meets the requirements of section 312(2)(A)(iii), (iv), and (v) and submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

"(1) provide that the payments under this Act will be used for the purposes set forth in section 322; and

"(2) provide for making an annual report to the Secretary and for auditing the books and monitoring expenditures as may be reasonably required to carry out this Act.

"(b) APPROVAL.—The Secretary shall approve any application which meets the requirements of subsection (a) and shall not disapprove any application submitted under this part, or any modification thereof, without first affording such institution reasonable notice and opportunity for a hearing.

"PROFESSIONAL OR GRADUATE INSTITUTIONS

"SEC. 326. (a) GENERAL AUTHORIZATION.—(1) Subject to the availability of funds appropriated to carry out this section, the Secretary shall award program grants to each of the postgraduate institutions listed in subsection (e) that is determined by the Secretary to be making a substantial contribution to the legal, medical, dental, veterinary, or other graduate education opportunities for black Americans.

"(2) No grant in excess of $500,000 may be made under this section unless the postgraduate institution provides assurances that 50 per centum of the cost of the purposes for which the grant is made will be paid from non-Federal sources.

"(b) DURATION.—Grants shall be made for a period not to exceed 5 years. No more than two 5-year grants (for a period of not more than 10 years) may be made to any one undergraduate or postgraduate institution.

"(c) USES OF FUNDS.—A grant under this section may be used for—

"(1) any of the purposes enumerated under section 323;

"(2) to establish or improve a development office to strengthen and increase contributions from alumni and the private sector; and

"(3) to assist in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 333 of this title.

"(d) APPLICATION.—Any institution eligible for a grant under this section shall submit an application which—

"(1) demonstrates how the grant funds will be used to improve graduate educational opportunities for black and low-income students, and lead to greater financial independence; and

"(2) provides, in the case of applications for grants in excess of $500,000, the assurances required by subsection (a)(2) and specifies the manner in which the eligible institution is going to pay the non-Federal share of the cost of the application.

"(e) ELIGIBLE PROFESSIONAL OR GRADUATE INSTITUTIONS.—Independent professional or graduate institutions eligible for grants under subsection (a) include—

"(1) Morehouse School of Medicine;

"(2) Meharry Medical School;

"(3) Charles R. Drew Postgraduate Medical School;

"(4) Atlanta University; and

"(5) Tuskegee Institute School of Veterinary Medicine.

"REPORTING AND AUDIT REQUIREMENTS

"SEC. 327. (a) RECORDKEEPING.—Each recipient of a grant under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose—

"(1) the amount and disposition by such recipient of the proceeds of such assistance;

"(2) the cost of the project or undertaking in connection with which such assistance is given or used;

"(3) the amount of that portion of the cost of the project or undertaking supplied by other sources; and

"(4) such other records as will facilitate an effective audit.

"(b) REPAYMENT OF UNEXPENDED FUNDS.—Any funds paid to an institution and not expended or used for the purposes for which the funds were paid within 10 years following the date of the initial grant awarded to an institution under part B of this title shall be repaid to the Treasury of the United States.

"PENALTIES

"SEC. 328. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of Federal financial assistance or grant pursuant to this Act embezzles, willfully misapplies, steals, or obtains by fraud any of the funds which are the subject of such grant or assistance, shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both.

"PART C—CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B

"ESTABLISHMENT OF CHALLENGE GRANT PROGRAM

"SEC. 331. (a) GENERAL AUTHORIZATION; ELIGIBILITY.—(1) From the sums available under section 358(a)(3) for each fiscal year, the Secretary may award a challenge grant to each institution—

"(A) which is an eligible institution under part A or would be considered to be such an institution if section 312(2)(A)(iii) referred to a postgraduate degree rather than a bachelor's degree; or

"(B) which is an institution under part B or would be considered to be such an institution if section 324 referred to a postgraduate degree rather than a baccalaureate degree.

"(2) The Secretary may waive the requirements set forth in subparagraphs (A) and (B) of paragraph (1) with respect to a postgraduate degree in the case of any institution otherwise eligible under such paragraph for a challenge grant upon determining that the institution makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged.

"(b) USES OF FUNDS.—A grant under this section may be used by an institution eligible for a grant under this section to assist the institution to achieve financial independence.

"APPLICATIONS FOR CHALLENGE GRANTS

"SEC. 332. (a) CONTENTS.—Any institution eligible for a challenge grant under section 331(a) may apply for such a grant under section 351, except that the application for the purpose of this part shall—

"(1) provide assurances that funds will be available to the applicant within 1 year to match funds that the Secretary is requested to make available to the institution as a challenge grant;

"(2) in the case of an application by a public institution, contain the recommendations of an appropriate State agency responsible for higher education in the State, or provide evidence that the institution requested the State agency to comment but the State agency failed to comment; and

"(3) demonstrate how challenge grant funds will be used to achieve financial independence.

"(b) NOTICE OF APPROVAL.—Not later than April 1 of the fiscal year preceding the fiscal year in which any grant is to be made under section 331 of this part, the Secretary shall determine which institutions will receive challenge grants under such section and notify the institutions of the amount of the grant.

"(c) PREFERENCE.—In approving applications for such grants, preference shall be given to institutions which are receiving, or have received, grants under part A or part B.

"CHALLENGE GRANTS

"SEC. 333. (a) PURPOSE; DEFINITIONS.—(1) The purpose of this section is to establish a program to provide matching grants to eligible institutions of higher education in order

to establish or increase endowment funds at such institutions, to provide additional incentives to promote fund raising activities by such institutions, and to foster increased independence and self-sufficiency at such institutions.

"(2) For purposes of this section:

"(A) The term 'endowment fund' means a fund established by State law, by an institution of higher education, or by a foundation which is exempt from taxation and is maintained for the purpose of generating income for the support of the institution, but which shall not include real estate.

"(B) The term 'endowment fund corpus' means an amount equal to the grant or grants awarded under this section plus an amount equal to such grant or grants provided by the institution.

"(C) The term 'endowment fund income' means an amount equal to the total value of the endowment fund established under this section minus the endowment fund corpus.

"(b) GRANTS AUTHORIZED.—(1) From sums available for this section under section 358, the Secretary is authorized to award challenge grants to eligible institutions of higher education to establish or increase an endowment fund at such institution. Such grants shall be made only to eligible institutions described in paragraph (4) whose applications have been approved pursuant to subsection (g).

"(2) No institution shall receive a grant under this section, unless such institution has deposited in its endowment fund established under this section an amount equal to the amount of such grant. The source of funds for this institutional match shall not include Federal funds or funds from an existing endowment fund.

"(3) The period of a grant under this section shall be not more than 20 years. During the grant period, an institution may not withdraw or expend any of the endowment fund corpus. After the termination of the grant period, an institution may use the endowment fund corpus plus any endowment fund income for any educational purpose.

"(4)(A) An institution of higher education is eligible to receive a grant under this section if it is an eligible institution as described in section 331(a)(1).

"(B) No institution shall be ineligible for a challenge grant under this section for a fiscal year by reason of the previous receipt of such a grant but no institution shall be eligible to receive such a grant for more than 2 fiscal years out of any period of 5 consecutive fiscal years.

"(5) A challenge grant under this section to an eligible institution year shall—

"(A) not be less than $50,000 for any fiscal year; and

"(B) not be more than (i) $250,000 for fiscal year 1987; or (ii) $500,000 for fiscal year 1988 or any succeeding fiscal year.

"(6)(A) An eligible institution may designate a foundation, which was established for the purpose of raising money for the institution, as the recipient of the grant awarded under this section.

"(B) The Secretary shall not award a grant to a foundation on behalf of an institution unless—

"(i) the institution assures the Secretary that the foundation is legally authorized to receive the endowment fund corpus and is legally authorized to administer the fund in accordance with this section and any implementing regulation;

"(ii) the foundation agrees to administer the fund in accordance with the requirements of this section and any implementing regulation; and

"(iii) the institution agrees to be liable for any violation by the foundation of the provisions of this section and any implementing regulation, including any monetary liability that may arise as a result of such violation.

"(c) GRANT AGREEMENT; ENDOWMENT FUND PROVISIONS.—(1) An institution awarded a grant under this section shall enter into an agreement with the Secretary containing satisfactory assurances that it will (A) immediately comply with the matching requirements of subsection (b)(2), (B) establish an endowment fund independent of any other such fund of the institution, (C) invest the endowment fund corpus, and (D) meet the other requirements of this section.

"(2)(A) An institution shall invest the endowment fund corpus and endowment fund income in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located such as a federally insured bank savings account or comparable interest-bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.

"(B) The institution, in investing the endowment fund established under this section, shall exercise the judgment and care, under the circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of such person's own affairs.

"(3)(A) An institution may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of such college, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, and technical assistance.

"(B)(i) Except as provided in clause (ii), an institution may not spend more than 50 percent of the total aggregate endowment fund income earned prior to the time of expenditure.

"(ii) The Secretary may permit an institution to spend more than 50 percent of the endowment fund income notwithstanding clause (i) if the institution demonstrates such an expenditure is necessary because of (I) a financial emergency, such as a pending insolvency or temporary liquidity problem; (II) a life-threatening situation occasioned by a natural disaster or arson; or (III) any other unusual occurrence or exigent circumstance.

"(d) REPAYMENT PROVISIONS.—(1) If at any time an institution withdraws part of the endowment fund corpus, the institution shall repay to the Secretary an amount equal to 50 percent of the withdrawn amount, which represents the Federal share, plus income earned thereon. The Secretary may use such repaid funds to make additional challenge grants, or to increase existing endowment grants, to other eligible institutions.

"(2) If an institution expends more of the endowment fund income than is permitted under subsection (c), the institution shall repay the Secretary an amount equal to 50 percent of the amount improperly expended (representing the Federal share thereof). The Secretary may use such repaid fund to make additional challenge grants, or to increase existing challenge grants, to other eligible institutions.

"(e) AUDIT INFORMATION.—An institution receiving a grant under this section shall provide to the Secretary (or a designee thereof) such information (or access thereto) as may be necessary to audit or examine expenditures made from the endowment fund corpus or income in order to determine compliance with this section.

"(f) SELECTION CRITERIA.—In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall—

"(1) give priority to an applicant which is a recipient of a grant made under part A or part B of this title during the academic year in which the applicant is applying for a grant under this section; and

"(2) give priority to an applicant with a greater need for such a grant, based on the current market value of the applicant's existing endowment in relation to the number of full-time equivalent students enrolled at such institution;

"(3) consider—

"(A) the effort made by the applicant to build or maintain its existing endowment fund; and

"(B) the degree to which an applicant proposes to match the grant with nongovernmental funds.

"(g) APPLICATION.—Any institution which is eligible for assistance under this section may submit to the Secretary a grant application at such time, in such form, and containing such information as the Secretary may prescribe. Subject to the availability of appropriations to carry out this section and consistent with the requirement of subsection (f), the Secretary may approve an application for a grant if an institution, in its application, provides adequate assurances that it will comply with the requirements of this section.

"(h) TERMINATION AND RECOVERY PROVISIONS.—(1) After notice and an opportunity for a hearing, the Secretary may terminate and recover a grant awarded under this section if the grantee institution—

"(A) expends portions of the endowment fund corpus or expends more than the permissible amount of the endowment funds income as prescribed in subsection (c)(3);

"(B) fails to invest the endowment fund in accordance with the investment standards set forth in subsection (c)(2); or

"(C) fails to properly account to the Secretary concerning the investment and expenditures of the endowment funds.

"(2) If the Secretary terminates a grant under paragraph (1), the grantee shall return to the Secretary an amount equal to the sum of each original grant under this section plus income earned thereon. The Secretary may use such repaid funds to make additional endowment grants, or to increase existing challenge grants, to other eligible institutions under this part.

"PART D—RESERVATION FOR HISPANIC, NATIVE AMERICAN, ASIAN AMERICAN, AND PACIFIC BASIN INSTITUTIONS

"STATEMENT OF FINDINGS AND PURPOSE

"SEC. 341. (a) FINDINGS.—The Congress finds that—

"(1) Hispanic students in the United States are overwhelmingly concentrated in public postsecondary institutions, especially in 2-year community colleges;

"(2) Hispanic and Native American, including Native American Pacific Islander, students rarely transfer to a 4-year institution of higher education, after receiving an associate degree, and often do not complete the requirements for a baccalaureate degree even when they enroll in a 4-year institution;

"(3) Native American students are the most grossly, underrepresented of all American minorities in higher education, consti-

tuting one-half of 1 percent of all students, and 0.3 percent of those receiving degrees; and Hispanics comprise 3 percent of all students in higher education, with less than 3 percent receiving bachelors, masters, and Ph.D. degrees;

"(4) Native Hawaiians represent less than 5 percent of the population of Hawaii who hold a college degree; less than 25 percent of the traditional college-age population actually attends college, although in some of the Pacific Basin territories fewer than 20 percent (Northern Mariana Islands) actually complete more than a high school education, a single community college may be the only form of postsecondary education available on the island, and many teachers possess an associate's degree or less; and literacy rates in both English and the native language ranks far below national averages; and

"(5) the special problems of providing higher education opportunities for Puerto Ricans in the Commonwealth of Puerto Rico require separate attention and different solutions than those which relate to Hispanics in the United States.

"(b) PURPOSE.—It is therefore the purpose of this Act to provide a set-aside to address the special needs of Hispanic, Native American, Asian American, and Pacific Basin students, when they constitute a significant portion of the institutional student population.

"RESERVATION FROM PART A APPROPRIATION

"SEC. 342. Of the sums appropriated under section 357(a)(1) for any fiscal year for part A, the Secretary shall make available for use for the purpose of such part—

"(1) not less than—

"(A) $7,350,000 for fiscal year 1987;

"(B) $7,717,500 for fiscal year 1988;

"(C) $8,103,375 for fiscal year 1989;

"(D) $8,508,544 for fiscal year 1990; and

"(E) $8,933,971 for fiscal year 1991;

for Hispanic institutions, as defined in section 312(2)(C);

"(2) not less than—

"(A) $3,150,000 for fiscal year 1987;

"(B) $3,307,500 for fiscal year 1988;

"(C) $3,472,875 for fiscal year 1989;

"(D) $3,646,519 for fiscal year 1990; and

"(E) $3,828,845 for fiscal year 1991;

for Native American, Alaskan Native, or Aleut institutions, as defined in section 312(2)(D); and

"(3) not less than—

"(A) $1,575,000 for fiscal year 1987;

"(B) $1,653,750 for fiscal year 1988;

"(C) $1,736,437 for fiscal year 1989;

"(D) $1,823,260 for fiscal year 1990; and

"(E) $1,914,422 for fiscal year 1991;

for institutions serving Native American Pacific Islanders, including Native Hawaiians, and serving Asian Americans residing in the Pacific Basin, including the State of Hawaii, as defined in section 312(2)(E).

"USES OF FUNDS

"SEC. 343. Funds made available under section 342 may be used for—

"(1) faculty development, including fellowship assistance to encourage qualified candidates to pursue masters and terminal degrees and return to the institution;

"(2) the acquisition of equipment and library resources which assist in instruction and research;

"(3) institutional partnerships which assist development and facilitate student transition to baccalaureate study, in the case of 2-year institutions;

"(4) student services, with special emphasis on retention and transition in the case of 2-year institutions;

"(5) management of institutional funds and funds authorized under title IV of this Act; and

"(6) any other activity, approved by the Secretary, which would assist the institution in carrying out the purposes of this part or assist the institution to achieve the objectives of its 5-year plan.

"PART E—GENERAL PROVISIONS

"APPLICATIONS FOR ASSISTANCE

"SEC. 351. (a) APPLICATION REQUIRED; APPROVAL.—Any institution which is eligible for assistance under this title shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate its need for assistance. Subject to the availability of appropriations to carry out this title, the Secretary may approve an application for a grant under this title if the application meets the requirements of subsection (b) and shows that the applicant is eligible for assistance in accordance with the part of this title under which the assistance is sought.

"(b) CONTENTS.—An institution, in its application for a grant, shall—

"(1) set forth, or describe how it will develop, a comprehensive development plan to strengthen the institution's academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this title);

"(2) set forth policies and procedures to ensure that Federal funds made available under this title for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 311(b) or 323, and in no case supplant those funds;

"(3) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this title;

"(4) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this title;

"(5) provide (A) for making such reports, in such form and containing such information, as the Secretary may require to carry out the functions under this title, including not less than one report annually setting forth the institution's progress toward achieving the objectives for which the funds were awarded, and (B) for keeping such records and affording such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports;

"(6) provide that the institution will comply with the limitations set forth in section 356;

"(7) describe in a comprehensive manner any proposed project for which funds are sought under the application and include—

"(A) a description of the various components of the proposed project, including the estimated time required to complete each such component;

"(B) in the case of any development project which consists of several components (as described by the applicant pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this title in conjunction with other parts of the development project (as specified by the applicant);

"(C) an evaluation by the applicant of the priority given any proposed project for which funds are sought in relation to any other projects for which funds are sought by the applicant under this title, and a similar evaluation regarding priorities among the components of any single proposed project (as described by the applicant pursuant to subparagraph (A));

"(D) in the case of a request for an award for a period of more than 1 year, a statement of reasons explaining why funds are necessary for each year of such period and why a single year award would be inadequate;

"(E) information explaining the manner in which the proposed project will assist the applicant to prepare for the critical financial problems that all institutions of higher education will face during the subsequent decade as a result of declining enrollment, increased energy costs, and other problems;

"(F) a detailed budget showing the manner in which funds for any proposed project would be spent by the applicant; and

"(G) a detailed description of any activity which involves the expenditure of more than $25,000, as identified in the budget referred to in subparagraph (F); and

"(8) include such other information as the Secretary may prescribe.

"(c) PRIORITY CRITERIA PUBLICATION REQUIRED.—The Secretary shall publish in the Federal Register, pursuant to chapter 5 of title 5, United States Code, all policies and procedures required to exercise the authority set forth in subsection (a). No other criteria, policies, or procedures shall apply.

"(d) ELIGIBILITY DATA.—The Secretary shall use the most recent and relevant data concerning the number and percentage of students receiving need-based assistance under title IV of this Act in making eligibility determinations under section 312 and shall advance the base-year forward following each annual grant cycle.

"WAIVER AUTHORITY AND REPORTING REQUIREMENT

"SEC. 352. (a) WAIVER REQUIREMENTS; NEED-BASED ASSISTANCE STUDENTS.—The Secretary shall waive the requirements set forth in section 312(2)(A)(i)(I) in the case of an institution (1) which is extensively subsidized by the State in which it is located and charges low or no tuition; (2) which serves a substantial number of low- and middle-income students as a percentage of its total student population; (3) which is contributing substantially to increasing higher education opportunities for black Americans, Hispanic Americans, Native Americans, Alaskan Natives and Aleuts, and Native American Pacific Islanders, including Native Hawaiians, who are low-income individuals; or (4) which is substantially increasing higher educational opportunities for individuals in rural or other isolated areas which are unserved by postsecondary institutions.

"(b) WAIVER DETERMINATIONS; EXPENDITURES.—(1) The Secretary may waive the requirements set forth in section 312(2)(A)(ii) if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A is oth-

erwise consistent with the purposes of such parts.

"(2) The Secretary shall submit to the Congress each year a report concerning the institutions which, although not satisfying the criterion contained in section 312(2)(A)(ii), have been determined to be eligible institutions under part A or Hispanic, Native American, Asian American, or Pacific Basin institutions under part D, as the case may be. Such report shall—

"(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with section 312(2)(A) (i) and (ii); and

"(B) contain a list of each institution determined to be an eligible institution under part A including a statement of the reasons for each such determination.

"(c) WAIVER DETERMINATIONS; AUTHORITY AND ACCREDITATION.—The Secretary may waive the requirement set forth in section 312(2)(v) in the case of an institution—

"(1) located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians;

"(2) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Hispanic Americans, Native Americans, Asian Americans, or Pacific Islanders, including Native Hawaiians;

"(3) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of individuals living in rural areas, whose needs are for the most part unserved by other postsecondary education institutions;

"(4) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of low-income individuals; or

"(5) wherever located, if the Secretary determines that the institution has traditionally served substantial numbers of black students.

"APPLICATION REVIEW PROCESS

"SEC. 353. (a) REVIEW PANEL.—(1) All applications submitted under this title by institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary. The Secretary shall assure that no individual assigned under this section to review any application has any conflict of interest with regard to the application which might impair the impartiality with which the individual conducts the review under this section.

"(2) The Secretary shall take care to assure that representatives of historically black colleges, Hispanic institutions, Native American institutions, and Native American Pacific Islanders, including Native Hawaiians are included as readers.

"(3) All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this title and consistent with the provisions of this title, including—

"(A) explanations and examples of the types of activities referred to in section 311(b) that should receive special consideration for grants awarded under part A and of the types of activities referred to in section 323 that should receive special consideration for grants awarded under part B;

"(B) an enumeration of the factors to be used to determine the quality of applications submitted under this title; and

"(C) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this title, the amount of any such grant, and the duration of any such grant.

"(b) RECOMMENDATIONS OF PANEL.—In awarding grants under this title, the Secretary shall take into consideration the recommendations of the panel made under subsection (a).

"(c) NOTIFICATION.—Not later than June 30 of each year, the Secretary shall notify each institution of higher education making an application under this title of—

"(1) the scores given the applicant by the panel pursuant to this section;

"(2) the recommendations of the panel with respect to such application; and

"(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this title, and any modifications, if any, in the recommendations of the panel made by the Secretary.

"COOPERATIVE ARRANGEMENTS

"SEC. 354. (a) GENERAL AUTHORITY.—The Secretary may make grants to encourage cooperative arrangements—

"(1) with funds available to carry out part A, between institutions eligible for assistance under part A and between such institutions and institutions not receiving assistance under this title; or

"(2) with funds available to carry out part B, between institutions eligible for assistance under part B and institutions not receiving assistance under this title;

for the activities described in section 311(b) or section 323, as the case may be, so that the resources of the cooperating institutions might be combined and shared to achieve the purposes of such parts and avoid costly duplicative efforts and to enhance the development of part A and part B eligible institutions.

"(b) PRIORITY.—The Secretary shall give priority to grants for the purposes described under subsection (a) whenever the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

"(c) DURATION.—Grants to institutions having a cooperative arrangement may be made under this section for a period as determined under section 313.

"ASSISTANCE TO INSTITUTIONS UNDER OTHER PROGRAMS

"SEC. 355. (a) ASSISTANCE ELIGIBILITY.—Each institution which the Secretary determines to be an institution eligible under part A or an institution eligible under part B shall be eligible for waivers in accordance with subsection (b).

"(b) WAIVER APPLICABILITY.—(1) Subject to, and in accordance with, regulations promulgated for the purpose of this section, in the case of any application by an institution referred to in subsection (a) for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.

"(2) The provisions of this section shall apply to any program authorized by title II, IV, VII, or VIII of this Act.

"(c) LIMITATION.—The Secretary shall not waive, under subsection (b), the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 percent of the appropriations for the program for any fiscal year.

"LIMITATIONS

"SEC. 356. The funds appropriated under section 358 may not be used—

"(1) for a school or department of divinity or any religious worship or sectarian activity;

"(2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution;

"(3) for an activity that is inconsistent with a State plan of higher education applicable to such institution; or

"(4) for purposes other than the purposes set forth in the approved application under which the funds were made available to the institution.

"CHALLENGE GRANT APPLICATION REQUIRED

"SEC. 357. The Secretary shall not make a Challenge Grant to any grantee institution under section 313(a)(2) or under part B which has not applied for funds under part C and compiled with section 332(a)(1) of part C after September 30, 1989.

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 358. (a) AUTHORIZATIONS.—(1) There are authorized to be appropriated to carry out part A $85,000,000 for fiscal year 1987, $89,250,000 for fiscal year 1988, $93,710,000 for fiscal year 1989, $98,398,000 for fiscal year 1990, and $103,318,000 for fiscal year 1991.

"(2)(A) There are authorized to be appropriated to carry out part B (other than section 326) $55,000,000 for fiscal year 1987, $57,750,000 for fiscal year 1988, $60,637,000 for fiscal year 1989, $63,669,000 for fiscal year 1990, and $66,850,000 for fiscal year 1991.

"(B) There are authorized to be appropriated to carry out section 326 $5,000,000 for fiscal year 1987 and for each of the succeeding fiscal years ending prior to October 1, 1991.

"(3) There are authorized to be appropriated to carry out part C $20,000,000 for fiscal year 1987, $21,250,000 for fiscal year 1988, $22,560,000 for fiscal year 1989, $23,940,000 for fiscal year 1990, and $25,387,000 for fiscal year 1991.

"(b) USE OF MULTIPLE YEAR AWARDS.—In the event of a multiple year award to any institution under this title, the Secretary shall make funds available for such award from funds appropriated for this title for the fiscal year in which such funds are to be used by the recipient.

"(c) RESERVATION OF FUNDS.—Of the sums appropriated under subsection (a)(1) for any fiscal year for part A, the Secretary shall make available to use for the purposes of each such part—

"(1) not less than 30 percent to institutions that are junior or community colleges;

"(2)(A) not less than—

"(i) $7,350,000 for fiscal year 1987;

"(ii) $7,717,500 for fiscal year 1988;

"(iii) $8,103,375 for fiscal year 1989;

"(iv) $8,508,544 for fiscal year 1990; and

"(v) $8,933,971 for fiscal year 1991;

for Hispanic institutions as defined in section 312(2)(C);

"(B) not less than—

"(i) $3,150,000 for fiscal year 1987;

"(ii) $3,307,500 for fiscal year 1988;

"(iii) $3,472,875 for fiscal year 1989;
"(iv) $3,646,519 for fiscal year 1990; and
"(v) $3,828,845 for fiscal year 1991;
for Native American, Alaskan Native, or Aleut institutions as defined in section 312(2)(D); and
"(C) not less than—
"(i) $1,575,000 for fiscal year 1987;
"(ii) $1,653,750 for fiscal year 1988;
"(iii) $1,736,437 for fiscal year 1989;
"(iv) $1,823,260 for fiscal year 1990; and
"(v) $1,914,422 for fiscal year 1991;
for Pacific Basin institutions and Asian American institutions as defined in section 312(2)(E); and
"(3) the remainder to institutions that plan to award a bachelor's degree during that year.".

PART D—TEACHER TRAINING AND DEVELOPMENT

SUBPART 1—TEACHER TRAINING PROGRAMS FOR HIGHER EDUCATION PERSONNEL

REPEAL OF PART B

SEC. 231. Part B of title V of the Act is repealed.

SUBPART 2—TRAINING FOR SCHOOL TEACHERS TO TEACH HANDICAPPED CHILDREN

REPEAL OF PART C

SEC. 232. Part C of title V of the Act is repealed.

SUBPART 3—COORDINATION

REPEAL OF PART D

SEC. 233. Part D of title V of the Act is repealed.

SUBPART 4—CARL D. PERKINS SCHOLARSHIP PROGRAM

EXTENSION OF AUTHORIZATION

SEC. 234. Section 561(b) of the Act is amended to read as follows:
"(b) There are authorized to be appropriated to carry out the provisions of this part $10,500,000 for fiscal year 1987, $11,050,000 for fiscal year 1988, $11,570,000 for fiscal year 1989, $12,150,000 for fiscal year 1990, and $12,760,000 for fiscal year 1991.".

SUBPART 5—NATIONAL TALENTED TEACHER FELLOWSHIP PROGRAM

EXTENSION OF AUTHORIZATION

SEC. 235. (a) AUTHORIZATION.—The first sentence of section 572 of the Act is amended to read as follows: "There are authorized to be appropriated to carry out the provisions of this part $5,250,000 for fiscal year 1987, $5,513,000 for fiscal year 1988, $5,788,000 for fiscal year 1989, $6,080,000 for fiscal year 1990, and $6,380,000 for fiscal year 1991.".
(b) TECHNICAL AMENDMENT.—The heading of section 572 is amended to read as follows:
"AUTHORIZATION OF APPROPRIATIONS".

PART E—INTERNATIONAL EDUCATION

FINDINGS AND PURPOSE; INTERNATIONAL EDUCATION

SEC. 241. Section 601 of the Act is amended to read as follows:

"FINDINGS AND PURPOSE

"SEC. 601. (a) The Congress finds that—
"(1) the well-being of the United States, its economy and long-range security, is dependent on the education and training of Americans in international and foreign language studies and on a strong research base in these areas;
"(2) knowledge of other countries and the ability to communicate in other languages is essential to the promotion of mutual understanding and cooperation among nations; and
"(3) present and future generations of Americans must be afforded the opportunity to develop to the fullest extent possible their intellectual capacities in all areas of knowledge.
"(b) It is the purpose of this part to assist in the development of knowledge, international study, resources, and trained personnel, to stimulate the attainment of foreign language acquisition and fluency, and to coordinate the programs of the Federal Government in the areas of foreign language and international studies and research.".

LANGUAGE AND AREA CENTERS

SEC. 242. (a) GRADUATE CENTERS.—(1) Section 602(a)(1) of the Act is amended—
(A) by striking out ", and enter into contracts with,";
(B) by striking out "and undergraduate"; and
(C) by inserting before "aspects" the following: "and foreign language"; and
(D) by inserting before the period at the end thereof a comma and the following: "or for instruction and research on issues in world affairs which concern one or more countries.".
(2) Section 602(a)(2) of the Act is amended by striking out "or contract".
(3) Section 602(a) of the Act is amended by adding at the end thereof the following new paragraphs:
"(4)(A) The Secretary is authorized to make grants to institutions of higher education or combinations of such institutions for the purpose of paying stipends to individuals undergoing advanced training under this subsection in any center or program approved by the Secretary under this part.
"(B) Stipend recipients must be individuals who are engaged in a program of competency-based language training in combination with area studies, international studies, or the international aspects of a professional studies program.
"(C) Stipends awarded to graduate level recipients may include allowances for dependents and for travel for research and study in the United States and abroad.
"(5)(A) The Secretary is also authorized to award, on the basis of a national competition, stipends to students beginning their third year of graduate training under this subsection.
"(B) Stipend recipients will be selected by a nationally recognized panel of scholars on the basis of exceptional performance (on a nationally referenced test, if available) in the specialty language and evidence of substantial multidisciplinary area training.
"(C) Stipends may be held for up to a maximum 4 years contingent on periodic demonstration of a high level of language proficiency.
"(D) Stipends are tenable for continuation of studies at the institution where the recipient is currently enrolled and for the conduct of research and advanced language study abroad.".
(b) UNDERGRADUATE CENTERS.—Section 602(b) of the Act is amended to read as follows:
"(b)(1) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating undergraduate centers and programs which will be national resources for the teaching of any modern foreign language, for instruction in fields needed to provide a full understanding of the areas, regions, or countries in which such language is commonly used, or for research and training in international studies and the international and foreign language aspects of professional and other fields of study, or for instruction and research on issues in world affairs which concern one or more countries.
"(2) Any such grant may be used to pay all or part of the cost of establishing or operating a center or program, including the cost of faculty and staff travel in foreign areas, regions, or countries, the cost of teaching and research materials, the cost of curriculum planning and development, the cost of bringing visiting scholars and faculty to the center to teach or to conduct research, and the cost of training and improvement of the staff, for the purpose of, and subject to such conditions as the Secretary finds necessary for carrying out the objectives of this section.
"(3) The Secretary may make grants to centers described in paragraph (1) having important library collections for the maintenance of such collections.".

FOREIGN LANGUAGE RESOURCE CENTERS

SEC. 243. Section 603 of the Act is amended to read as follows:

"LANGUAGE RESOURCE CENTERS

"SEC. 603. (a) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating centers, which shall serve as resources to improve the capacity to teach and learn foreign languages effectively. Activities carried out by such centers may include—
"(1) the conduct of research on new and improved teaching methods, including the use of advanced educational technology;
"(2) the development of new teaching materials reflecting the use of such research in effective teaching strategies;
"(3) the development and application of proficiency testing appropriate to an educational setting for use as a standard and comparable measurement of skill levels in all languages;
"(4) the training of teachers in the administration and interpretation of proficiency tests, the use of effective teaching strategies, and the use of new technologies;
"(5) the publication of instructional materials in the less commonly taught languages; and
"(6) the widespread dissemination of research results, teaching materials, and improved pedagogical strategies to others within the postsecondary education community.
"(b) Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the provisions of this section.".

INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAMS

SEC. 244. (a) CLARIFYING PROVISION.—The matter preceding clause (1) of section 604 of the Act is amended by striking out "comprehensive" each time it appears.
(b) TYPE OF TRAINING.—Section 604(a)(7) of the Act is amended by inserting before "teacher" the following: "pre-service and in-service".

SUMMER INSTITUTES FOR FOREIGN LANGUAGES

SEC. 245. The Act is amended—
(1) by redesignating sections 605, 606, and 607 as sections 606, 607, and 608, respectively; and
(2) by inserting after section 604 the following new section:

"INTENSIVE SUMMER LANGUAGE INSTITUTES

"SEC. 605. (a)(1) The Secretary is authorized to make grants to institutions of higher

education, or combinations of such institutions, for the purpose of establishing and conducting intensive summer language institutes.

"(2) Training authorized by this section shall be provided through—

"(A) institutes designed to meet the needs for intensive language training by advanced students; or

"(B) institutes designed to provide professional development and improve instruction through pre-service and in-service training for language teachers.

"(3) Grants made under this section may be used for—

"(A) intensive training in languages critical to the national economic and political future;

"(B) training in neglected languages; and

"(C) stipends for students and faculty attending the institutes authorized by this section.

"(4) Institutes supported under this section may provide instruction on a full-time or part-time basis to supplement instruction not fully available in centers supported under section 602.

"(b) Grants made under this section shall be awarded on the basis of recommendations made by peer review panels composed of broadly representative professionals.".

RESEARCH

SEC. 246. Section 606(a) of the Act (as redesignated by section 245 of this Act) is amended—

(1) by striking out "and part N of title III of the Elementary and Secondary Education Act of 1965";

(2) by striking out "and" at the end of clause (2);

(3) by redesignating clause (3) as clause (4); and

(4) by inserting after clause (2) the following new clause:

"(3) the application of proficiency tests and standards across all areas of instruction and classroom use; and".

DISTRIBUTION OF FUNDS

SEC. 247. Section 607 of the Act (as redesignated by section 245) is amended to read as follows:

"EQUITABLE DISTRIBUTION OF FUNDS

"SEC. 607. (a) The Secretary shall establish criteria based on excellence for the selection of grants awarded under section 602, employing separate but no less rigorous criteria for undergraduate and graduate programs.

"(b) The Secretary shall, to the extent practicable, award grants under this part in such manner as to achieve an equitable distribution of assistance throughout the Nation, based on the merit of a proposal with peer review by broadly representative professionals.".

REAUTHORIZATION OF PART A

SEC. 248. Section 608 of the Act (as redesignated by section 245) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 608. There are authorized to be appropriated to carry out the provisions of this part $35,000,000 for fiscal year 1987, $36,750,000 for fiscal year 1988, $38,587,500 for fiscal year 1989, $40,576,875 for fiscal year 1990, and $42,775,312 for fiscal year 1991.".

REAUTHORIZATION OF PART B

SEC. 249. Section 613 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 613. There are authorized to be appropriated to carry out the provisions of this part $2,100,100 for fiscal year 1987, $2,205,000 for fiscal year 1988, $2,315,000 for fiscal year 1989, $2,430,750 for fiscal year 1990, and $2,551,750 for fiscal year 1991.".

ADVISORY BOARD RESTRUCTURED

SEC. 250. Section 621 of the Act is amended to read as follows:

"ADVISORY BOARD

"SEC. 621. (a) Not less than two times each year, the Secretary shall convene an advisory board on the conduct of programs under this title. The Advisory Board shall consist of—

"(1) five members selected by the Secretary from among members of the postsecondary educational community, at least two of whom shall be considered by their peers to be specialists in one or more fields of language, area or international studies;

"(2) two members selected by the Secretary from among members of the public; and

"(3) two members selected by the Secretary from among representatives of the business community.

"(b) The Secretary may consult with or include as ad hoc ex officio participants in Advisory Board meetings a representative from any appropriate executive agency.

"(c) The Advisory Board shall advise the Secretary on—

"(1) any geographic areas of special concern to the United States;

"(2) innovative approaches which may help to fulfill the purposes of this title;

"(3) changes which should be made in the operation of programs under this part to ensure that the attention of scholars is attracted to problems of critical concern to United Sates international relations;

"(4) emerging trends within various segments—pre-college, undergraduate, graduate, and postgraduate—of the international education community;

"(5) administrative and staffing requirements of international education programs in the Department; and

"(6) special needs with regard to the programs operated under part B.

"(d) The Advisory Board shall advise the Secretary and the Congress on adequate budget levels for part A and part B of this title.".

PART F—CONSTRUCTION AND RENOVATION (RESERVED)

PART G—COOPERATIVE EDUCATION

COOPERATIVE EDUCATION REAUTHORIZED

SEC. 261. Title VIII of the Act is amended to read as follows:

"TITLE VIII—COOPERATIVE EDUCATION

"APPROPRIATIONS AUTHORIZED; RESERVATIONS

"SEC. 801. (a) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated $15,120,000 for fiscal year 1987, $15,876,000 for fiscal year 1988, $16,670,000 for fiscal year 1989, $17,500,000 for fiscal year 1990, and $18,380,000 for fiscal year 1991 to carry out the cooperative education program authorized by this title.

"(b) RESERVATIONS.—Of the amounts appropriated in each fiscal year—

"(1) not less than 75 percent shall be available for carrying out grants to institutions of higher education and combinations of such institutions for cooperative education under section 802;

"(2) not to exceed 12 1/2 percent shall be available for demonstration projects under clause (1) of section 803(a);

"(3) not to exceed 10 percent shall be available for training and resource centers under clause (2) of section 803(a); and

"(4) not to exceed 2 1/2 percent shall be available for research under clause (3) of section 803(a).

"(c) AVAILABILITY OF APPROPRIATIONS.—Appropriations under this title shall not be available for the payment of compensation of students for employment by employers under arrangements pursuant to this title.

"GRANTS FOR COOPERATIVE EDUCATION PROGRAMS

"SEC. 802. (a) GRANTS AUTHORIZED; MAXIMUM AMOUNT OF GRANT.—(1) The Secretary is authorized, from the amount available under section 801(b)(1) in each fiscal year and in accordance with the provisions of this title, to make grants to institutions of higher education, or to combinations of such institutions, to pay the Federal share of the cost of planning, establishing, expanding, or carrying out programs of cooperative education by such institutions or combinations of institutions.

"(2)(A) Cooperative education programs assisted under this section shall provide alternating or parallel periods of academic study and of public or private employment, giving work experience related to their academic or occupational objectives and the opportunity to earn the funds necessary for continuing and completing their education.

"(B) The amount of each grant shall not exceed $500,000 to any one institution of higher education in any fiscal year, and shall not exceed an amount equal to the product of $345,000 times the number of institutions participating in such combination, for any fiscal year.

"(b) APPLICATIONS.—Each institution of higher education, or combination of institutions desiring to receive a grant under this title shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe. Each such application shall—

"(1) set forth the program or activities for which a grant is authorized under this section;

"(2) specify each portion of such program or activities which will be performed by a nonprofit organization or institution other than the applicant and the compensation to be paid for such performance;

"(3) provide that the applicant will expend during such fiscal year for the purpose of such program or activities not less than the amount expended for such purpose during the previous fiscal year;

"(4) describe the plans which the applicant will carry out to assure that the applicant will continue the cooperative education program beyond the 5-year period of Federal assistance described in subsection (c)(1);

"(5) provide that, in the case of an institution of higher education that provides a 2-year program which is acceptable for full credit toward a bachelor's degree, the cooperative education program will be available to students who are certificate candidates and who carry at least one-half the normal full time academic workload;

"(6) provide that the applicant will—

"(A) make such reports as may be essential to insure that the applicant is complying with the provisions of this section, including in the reports for the second and each succeeding fiscal year for which the applicant receives a grant data with respect

to the impact of the cooperative education program in the previous fiscal year, including—

"(i) the number of students enrolled in the cooperative education program,

"(ii) the number of employers involved in the program,

"(iii) the income of the students enrolled, and

"(iv) the increase or decrease of enrollment in the program in the second previous year compared to such previous fiscal year; and

"(B) keep such records as are essential to insure that the applicant is complying with the provisions of this title;

"(7) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the applicant under this title; and

"(8) include such other information as is essential to carry out the provisions of this title.

"(c) DURATION OF GRANTS; FEDERAL SHARE.—(1)(A) Except as provided in paragraph (3), no individual institution of higher education, and no individual participant in a combination of such institutions may receive grants under this section for more than 5 fiscal years.

"(B) The limitation contained in subparagraph (A) shall apply to each institution of higher education or participant in a combination of such institutions whether the grant was received before or after the date of enactment of the Cooperative Education Act of 1985.

"(2) The Federal share of a grant under this section may not exceed—

"(A) 90 percent of the cost of carrying out the application in the first year the applicant receives a grant under this section;

"(B) 80 percent of such cost in the second such year;

"(C) 70 percent of such cost in the third such year;

"(D) 60 percent of such cost in the fourth such year; and

"(E) 30 percent of such cost in the fifth such year.

"(3) Any institution of higher education, or participant in a combination of such institutions which—

"(A) has received a grant for 5 fiscal years under this section;

"(B) has conducted without Federal assistance a cooperative education program for at least 2 academic years subsequent to the end of the fifth such fiscal year;

"(C) has expended for the cooperative education program for each such subsequent academic year an amount at least equal to the total cost of the program in the fifth fiscal year in which the institution, or participant, received assistance under this section; and

"(D) provides statistics in the application required under subsection (b) on the number of students enrolled in the cooperative education program, the number of institutional personnel, including faculty advisers and cooperative education coordinators, and the income of the students enrolled, for each such year;

may apply under subsection (b) as an institution, or participant, to which clause (A) of paragraph (2) applies.

"(4) Any provision of law to the contrary notwithstanding, the Secretary shall not waive the provisions of this subsection.

"(d) FACTORS FOR SPECIAL CONSIDERATION OF APPLICATIONS.—In approving applications under this section, the Secretary shall give special consideration to applications from institutions of higher education for programs which show the greatest promise of success because of—

"(1) the extent to which programs in the academic discipline with respect to which the application is made have had a favorable reception by public and private sector employers,

"(2) the commitment of the institution of higher education to cooperative education has demonstrated by the plans which such institution has made to continue the program after the termination of Federal financial assistance,

"(3) the extent to which the institution is committed to extending cooperative education on an institution-wide basis for all students who can benefit, and

"(4) such other factors as are consistent with the purposes of this section.

"DEMONSTRATION AND INNOVATION PROJECTS; TRAINING AND RESOURCE CENTERS; AND RESEARCH

"SEC. 803. (a) AUTHORIZATION.—The Secretary is authorized, in accordance with the provisions of this section, to make grants and enter into contracts for—

"(1) the conduct of demonstration projects designed to demonstrate or determine the feasibility or value of—

"(A) innovative methods of cooperative education, and

"(B) partnerships under which an institution carrying out a comprehensive cooperative education program joins with another institution of higher education in order to (i) assist the institution other than the comprehensive cooperative education institution to develop and expand an existing program of cooperative education or (ii) establish and improve or expand comprehensive cooperative education programs,

from the amounts available in each fiscal year under section 801(b)(2);

"(2) the conduct of training and resource centers designed to—

"(A) train personnel in the field of cooperative education;

"(B) improve materials used in cooperative education programs;

"(C) furnish technical assistance to institutions of higher education to increase the potential of the institution to continue to conduct a cooperative education program without Federal assistance; and

"(D) encourage model cooperative education programs which furnish education and training in occupations in which there is a national need,

from the amounts available in each fiscal year under section 801(b)(3); and

"(3) the conduct of research relating to cooperative education, from the amounts available in each fiscal year under section 801(b)(4).

"(b) ADMINISTRATIVE PROVISION.—To carry out this section, the Secretary may—

"(1) make grants to or contracts with institutions of higher education, or combinations of such institutions, and

"(2) make grants to or contracts with other public or private nonprofit agencies or organizations, whenever such grants or contracts will make an especially significant contribution to attaining the objectives of this section.

"(c) SUPPLEMENT NOT SUPPLANT.—A recipient of a grant or contract under this section may use the funds provided only so as to supplement and, to the extent possible, increase the level of funds that would, in the absence of such funds, be made available from non-Federal sources to carry out the activities supported by such grant or contract, and in no case to supplant such funds from non-Federal sources.".

PART H—GRADUATE AND PROFESSIONAL PROGRAMS

SUBPART 1—GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

REPEAL OF PART A

SEC. 271. Part A of title IX of the Act is repealed.

SUBPART 2—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY

INSTITUTIONAL AND INDIVIDUAL GRANT AMOUNTS

SEC. 272. (a) MAXIMUM INSTITUTIONAL AMOUNT.—Section 922(b)(2) of the Act is amended by striking out "$75,000" and inserting in lieu thereof "$115,000".

(b) MINIMUM INSTITUTIONAL PAYMENT.—Section 922(f) of the Act is amended by inserting at the end thereof the following new sentence: "The amount paid to an institution of higher education under this subsection for any such person may not be less than $4,200".

(c) MAXIMUM INDIVIDUAL AWARD.—Section 923(a) of the Act is amended by striking out "$4,500" and inserting in lieu thereof "$7,000".

APPLICATION PROCEDURES

SEC. 273. Section 922(c) of the Act is amended by adding at the end thereof the following: "Each such application may be made on behalf of any professional school, academic department or similar organizational unit, or interdisciplinary or interdepartmental program within the institution of higher education meeting the requirements of this subsection.".

REAUTHORIZATION

SEC. 274. Section 924 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 924. There are authorized to be appropriated to carry out the provisions of this part $18,480,000 for fiscal year 1987, $19,404,000 for fiscal year 1988, $20,374,000 for fiscal year 1989, $21,393,000 for fiscal year 1990, and $22,463,000 for fiscal year 1991.".

SUBPART 3—NATIONAL GRADUATE FELLOWS PROGRAM

REAUTHORIZATION; DESIGNATION OF AWARDEES

SEC. 275. (a) EXTENSION OF PROGRAM.—Section 931(a) of the Act is amended by striking out "1985" and inserting in lieu thereof "1991".

(b) DESIGNATION OF FELLOWS.—Section 931(a) of the Act is further amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) Students receiving awards under this part shall be known as 'Jacob J. Javits Fellows'.".

(c) LIMITATION ON APPROPRIATIONS.—Section 932(c) of the Act is amended by adding at the end thereof the following new sentence: "No sums are authorized to be appropriated to carry out the provisions of this part in excess of $2,625,000 for fiscal year 1987, $2,756,000 for fiscal year 1988, $2,894,000 for fiscal year 1989, $3,039,000 for fiscal year 1990, and $3,191,000 for fiscal year 1991.".

SUBPART 4—TRAINING IN THE LEGAL PROFESSION

REAUTHORIZATION

SEC. 276. Section 942 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 942. There are authorized to be appropriated to carry out the provisions of this part $1,575,000 for fiscal year 1987, $1,653,750 for fiscal year 1988, $1,736,437 for fiscal year 1989, $1,823,259 for fiscal year 1990, and $1,874,421 for fiscal year 1991.".

SUBPART 5—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS

REAUTHORIZATION

SEC. 277. Section 953 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 953. There are authorized to be appropriated to carry out the provisions of this part $1,575,000 for fiscal year 1987, $1,653,750 for fiscal year 1988, $1,736,437 for fiscal year 1989, $1,823,259 for fiscal year 1990, and $1,874,421 for fiscal year 1991.".

PART I—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

REAUTHORIZATION

SEC. 281. Section 1005 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1005. There are authorized to be appropriated to carry out this title $13,350,000 for fiscal year 1987, $14,010,000 for fiscal year 1988, $14,710,000 for fiscal year 1989, $15,450,000 for fiscal year 1990, and $16,220,000 for fiscal year 1991.".

INNOVATIVE PROJECTS FOR COMMUNITY SERVICES AND STUDENT FINANCIAL INDEPENDENCE

SEC. 282. (a) INNOVATIVE PROJECTS AUTHORIZED.—Part B of title X of the Act is amended to read as follows:

"STATEMENT OF PURPOSE

"SEC. 1021. It is the purpose of this part to support innovative projects in order to determine the feasibility of encouraging student participation in community service projects in exchange for educational services or financial assistance and thereby reduce the debt acquired by students in the course of completing postsecondary educational programs.

"INNOVATIVE PROJECTS FOR COMMUNITY SERVICES AND STUDENT FINANCIAL INDEPENDENCE

"SEC. 1022. (a) GENERAL AUTHORITY.—The Secretary is authorized, in accordance with the provisions of this part, to make grants to and contracts with institutions of higher education (including combinations of such institutions) and with such other public agencies and nonprofit private organizations as the Secretary deems necessary for innovative projects designed to carry out the purpose of this part.

"(b) APPLICATIONS.—No grant may be made and no contract may be entered into under this section unless an application is made at such time, in such manner, and contained or accompanied by such information as the Director may require.

"(c) APPLICABLE PROCEDURES.—(1) No application may be approved under subsection (b) unless the National Board Fund for Improvement of Postsecondary Education, under procedures established by the Director, approves the application.

"(2) The provisions of section 1004(b) shall apply to grants made under this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1023. There are authorized to be appropriated to carry out this part, $3,800,000 for fiscal year 1987, $4,000,000 for fiscal year 1988, $4,200,000 for fiscal year 1989, $4,400,000 for fiscal year 1990, and $4,600,000 for fiscal year 1991.".

(b) CONFORMING AMENDMENT.—Section 205 of the Department of Education Organization Act is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) There is established, in the Office of Postsecondary Education, a Community College Unit (hereafter in this section referred to as the 'Unit') which shall have the responsibility for coordinating all programs administered by the Secretary which affect, or can benefit, community colleges, including such programs assisted under this Act, and the Carl D. Perkins Vocational Educational Act.

"(2) The Unit shall be headed by a Director who shall be placed in grade 17 of the General Schedule under section 5332 of title 5, United States Code.".

MINORITY INSTITUTIONS SCIENCE IMPROVEMENT PROGRAM REAUTHORIZATION

SEC. 283. Title X of the Act is amended by adding at the end thereof the following new part:

"PART C—MINORITY INSTITUTIONS SCIENCE IMPROVEMENT PROGRAM

"PROGRAM AUTHORIZED

"SEC. 1031. There are authorized to be appropriated for the purpose of carrying out the Minority Institutions Science Improvement Program transferred to the Secretary from the National Science Foundation by section 304 of the Department of Education Organization Act, $3,000,000 for the fiscal year 1987, $3,150,000 for fiscal year 1988, $3,307,500 for fiscal year 1989, $3,472,875 for fiscal year 1990, and $3,646,519 for fiscal year 1991.".

PART J—URBAN UNIVERSITY PROGRAM

REPEAL OF TITLE XI

SEC. 286. Title XI of the Act is repealed.

TITLE III—REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS

REAUTHORIZATION

SEC. 301. (a) AUTHORIZATION.—Section 405(f) of the General Education Provisions Act is amended by adding at the end thereof the following new paragraph:

"(4) There are authorized to be appropriated to carry out this subsection $30,000,000 for fiscal year 1987 and such sums as may be necessary for the fiscal year 1988 and for each succeeding fiscal year ending prior to October 1, 1991.".

(b) CONFORMING AMENDMENT.—(1) Section 400(c)(1) of the General Education Provisions Act is amended—

(A) by inserting after clause (D) the following new clause:

"(E) 'Department' means the Department of Education;

(B) by redesignating clauses (E) and (F) as clauses (F) and (G), respectively;

(C) by amending clause (G) (as redesignated by this paragraph) to read as follows:

"(G) 'Secretary' means the Secretary of Education.

(2) Section 405(f)(1) of the General Education Provisions Act is amended—

(A) by striking out "Institute" and inserting in lieu thereof "Department"; and

(B) by striking out "Director" and inserting in lieu thereof "Secretary".

(3) Section 405(f)(2) of the Act is amended—

(A) by striking out "Director" in clause (A) and inserting in lieu thereof "Secretary";

(B) by striking out "Director" in clause (B) and inserting in lieu thereof "Secretary";

(C) by striking out "Director" in clause (D) and inserting in lieu thereof "Secretary"; and

(D) by striking out "Institute" in clause (D) and inserting in lieu thereof "Department".

(4) Section 405(f)(3) of the General Education Provisions Act is amended by striking out "Institute" and inserting in lieu thereof "Department".

By Mrs. KASSEBAUM (for herself, Mr. DANFORTH, Mr. HOLLINGS, Mr. EXON, Mr. FORD, Mr. ROCKEFELLER, Mr. KASTEN, Mr. GOLDWATER, Mr. PROXMIRE, Mr. METZENBAUM, Mr. ABDNOR, Mr. NUNN, Mr. SIMON, Mr. BURDICK, Mr. LAUTENBERG, and Mr. DECONCINI):

S. 1966. A bill to provide for efficient and equitable use of operating rights at congested airports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

USE OF OPERATING RIGHTS AT CONGESTED AIRPORTS

Mrs. KASSEBAUM. Mr. President, I am introducing legislation today that will prohibit the implementation of a regulation issued yesterday by the Department of Transportation. That rule would permit airlines to buy and sell valuable landing rights at the four busiest airports in this country. I believe this rule is the wrong policy at the wrong time—it should never get off the ground.

DOT's action yesterday came in the face of substantial congressional criticism. Members of both parties and both Houses had expressed serious concerns about the wisdom of transferring a Federal property license to private parties at no cost. Although I agree with DOT that something must be done to alleviate the problems at La Guardia, JFK, O'Hare, and Washington National, I cannot agree that our first try should include abandoning takeoff and landing privileges to the auction block.

These crowded airports face the problem of too little airport capacity and too much demand. This dilemma has been addressed in the past through airport scheduling committees made up of representatives of each airline using that particular airport. The scheduling committees, with explicit exemption from our antitrust laws, determine how takeoff and landing "slots" are allocated among airlines.

Unfortunately, for a variety of reasons including the potential issuance of a buy-sell rule, the scheduling com-

mittees have proven themselves unable to address effectively the allocation of slots to new airline entrants or the reallocation of slots among incumbent carriers. The committees have been unable to reach the required unanimous agreement on which airline gets to fly when. As a result, we have seen an underutilization of some slots which has denied the traveling public access to the full capacity of these airports.

In recognition of this limited Federal resource, airport takeoff and landing slots, the Department of Transportation has chosen to rely on marketplace forces to allocate the slots. I am convinced, however, that many questions about the impact of buy-sell on commercial air travel have yet to be answered. I am also convinced that a free market analogy is inappropriate when the Federal property right is given to some private entities at no cost while subsequent entrants into these limited markets will face costs of up to $750,000 per slot.

I do not advocate accepting the status quo. We should and must take steps to utilize completely the capacity at these airports. The legislation I am introducing today represents such a step. It offers us the opportunity to adopt a more reasonable approach to this thorny problem, without ending for all time the possibility of a buy-sell experiment.

My bill would require the Secretary of Transportation to issue two rules. The first would impose a "use-it-or-lose-it" requirement, meaning that if an airline is not using a slot a certain percentage of the time, the slot would be made available to an airline which would. This eliminates the incentive for a airline to "pocket" a slot in anticipation of future needs or a future right to sell the slot for profit.

The second rule would require DOT to develop a mechanism which would automatically reallocate slots where the scheduling committees are unable to reach agreement. This proposal provides each airline representative on a scheduling committee the incentive to accommodate the needs of new entrants and other competitors.

This legislation would also require the Secretary to repeal the rule issued yesterday.

I am convinced that sensible policy dictates that we try this two-step approach before, in the words of the Washington Post, "creating a significant cash asset for those airlines that already have won, at no cost, takeoff and landing rights." By taking these initial steps, DOT can provide air travelers access to the entire capacity of these crowded airports.

The solution to the deadlock at these airports does not lie in the creation of more serious problems. Among my concerns regarding buy-sell are these: It is good policy to allow private air carriers to obtain a public property right, such as an airport slot, at no cost? Is it equitable to provide such windfalls to incumbents exclusively, or almost exclusively? Assuming buy-sell is implemented, would not competition best be served by requiring that a significant number of existing slots—certainly more than the 5 percent maximum under the rule—be distributed initially to new entrants, or at least redistributed among incumbents, perhaps through a lottery or auction mechanism, How would buy-sell protect the legitimate rights of midsize communities to affordable air service? Wouldn't buy-sell, by putting a price on slots, a limited commodity, create a disincentive to produce additional airport capacity, because incumbents will be unwilling to see the value of their slots diluted? Doesn't converting slots into property rights invite controversy when the Federal Aviation Administration attempts to exercise reasonable control over slots?

I intend to explore these and other questions in a hearing in February. At that time, the Aviation Subcommittee can fully evaluate the potential impact of a buy-sell rule. My legislation provides the interim action necessary to protect the Federal interest in the fullest use of these airports.

I hope my colleagues will join me in this effort. The transformation of the federally provided privilege into a piece of private property will profoundly affect air travel. For those who doubt that statement, I offer the fact that, by the early 1990's, over 30 U.S. airports will require some type of slot allocation during the peak traffic periods. The course we set today will affect all of us, and it will affect us more directly each year.

Mr. President, what has been proposed is akin to holding the Oklahoma land rush but only telling a few people. The remaining homesteaders would then rely on the free market to allocate land for their homes, paying a high cost to the incumbent landholder who would receive an economic windfall. I urge my colleague to consider my legislation which will prohibit such inequity.

I ask unanimous consent that a copy of the bill be inserted in the RECORD following my statement.

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

S. 1966

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Transportation and the Administrator of the Federal Aviation Administration shall—

(1) repeal any rule or regulation or rescind any order issued between December 1, 1985 and the date of enactment of this Act, and

(2) after the date of enactment of this Act, not promulgate any rule or regulation or issue any order, relating to High Density Traffic Airports designated as Subpart K of part 93 of title 14, Code of Federal Regulations (14 CFR 93.121 et seq.), that is inconsistent with the provisions of this Act.

SEC. 2. Consistent with aviation safety, the Administrator of the Federal Aviation Administration shall, not later than 120 days after the date of enactment of this Act, provide by rule or otherwise that any domestic air carrier or commuter air carrier operating right (departure or arrival) regulated at High Density Traffic Airports in accordance with Subpart K of part 93 of title 14, Code of Federal Regulations (14 CFR 93.121 et seq.), hereinafter referred to as a "slot", which is substantially unused shall be recalled by the Administrator of the Federal Aviation Administration for reallocation pursuant to section 3 of this Act.

SEC. 3. (a) Consistent with aviation safety, the Administrator of the Federal Aviation Administration shall, not later than 120 days after the date of enactment of this Act, provide by rule or otherwise for a mechanism for the allocation and reallocation of domestic slots in accordance with the provisions of this section.

(b) The allocation and reallocation of slots (other than on a lottery basis pursuant to subsection (d) of this section) shall be made by a separate air carrier or commuter air carrier Scheduling Committee established for each of such High Density Traffic Airports. Each such Scheduling Committee shall be composed of a representative of each air carrier or commuter air carrier operating from such Airport, and a representative of each air car er or commuter air carrier that desires to commence air carrier operations from such Airport within six months after the date of application for membership on such Scheduling Committee.

(c) The Scheduling Committee shall allocate and reallocate slots semi-annually, unless the Scheduling Committee unanimously agrees on another allocation interval.

(d) If a Scheduling Committee is unable to reach unanimous agreement on the allocation of slots, the Secretary shall, on a lottery basis, allocate—

(1) all new slots, voluntarily-returned slots, and unused slots; and

(2) a reasonable percentage of slots currently in use at such Airport.

The mechanism for such reallocation shall be adequate to ensure the opportunity for new entry, shall maintain essential air transportation (as defined in section 419 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389)), and shall protect the access rights of commuter carriers. In addition, the Administration of the Federal Aviation Administration shall employ a method for the recall of slots currently in use that ensures that no air carrier incurs the loss of an undue proportion of its slots currently in use.

SEC. 4. The Secretary of Transportation or the Administrator of the Federal Aviation Administration shall not, by rulemaking or otherwise, provide or permit the transfer of slots for consideration or in a manner inconsistent with this Act. In addition, the Secretary shall declare null and void any transfer of slots which occurred between December 1, 1985 and the date of enactment of this Act, if such transfer was for consideration or occurred in a manner inconsistent with this Act.

Mr. HOLLINGS. Mr. President, what has gotten into the Secretary of

Transportation? I've had great respect for her abilities and her handling of Federal transportation policies. But lately she seems to have become possessed with the notion that virtually everything in her department is for sale and should be unloaded at bargain basement prices.

Her latest proposal to allow the buying and selling of airport landing rights is one of the worst ideas I've heard in a long time. Right to the point, it amounts to a giveaway of valuable Federal assets.

When Secretary Dole came forth with her proposal to sell Conrail to Norfolk Southern, I lined up right behind her with my full support. I still support it, because it's in the best interests of the public and the transportation industry. It's also in the best interests of the Federal Government, which will receive a $1.2 billion purchase price.

Then the Secretary called and asked me to support her plan to sell National and Dulles Airports to a local authority for the grand total of $47 million. Sell the airports, she said, and the local authority could issue bonds to finance the badly needed improvements at the airports. This time I hesitated. Forty-seven million dollars? Why, the Grace Commission has estimated the airports to be worth at least $300 million. In addition, having been a governor, I know what it costs to issue bonds. I got out the calculator and figured out that it would cost more than $700 million to finance $250 million in improvements. The Congressional Budget Office supports me on this.

What's more, we have a $7 billion trust fund which was created for the expressed purpose of airport improvement. It would be far more sensible to take $250 million out of that fund, make the improvements, and be done with it. But no, says our Secretary. "Sell the airports! Get rid of 'em! At whatever the price! And if the State of Maryland objects, give them $36 million to keep their mouths shut."

I didn't think Secretary Dole could top that one, but I believe she's done it with this new buy/sell rule. This isn't merely a fire-sale of Federal assets, it's an outright giveaway.

If allowed to go into effect as planned on April 1, 1986, this rulemaking will relinquish FAA ownership of airport landing rights—commonly known as "slots"—to the air carriers that now hold them at the four airports restricted by the High Density Rule (Chicago O'Hare, Washington National, and LaGuardia and JFK in New York). Thus, the airlines that now hold those landing rights at no cost would be allowed to sell them and retain all proceeds.

Well, ho, ho, ho! Merry Christmas! It seems that Santa Claus has been making a list and checking it twice, and now the stockings of some in the airline industry are going to end up mighty full.

These slots are estimated to be worth close to $1 million apiece. They are public property rights which are properly held by the Federal Government. And I'm not going to stand by and watch the Department Transportation cede those rights to a few airlines which are fortunate enough to be holding them now.

This rule has been completed in direct defiance of a letter I and six other members of the Commerce Committee sent 2 weeks ago to Secretary Dole. In that letter, we strongly urged the Secretary to withhold the issuance of the final buy/sell rule until the Committee would have a chance to review it early next year.

Apparently, however, there's no stopping Secretary Santa on Christmas Eve. Within hours after our letter was sent, the elves at DOT and OMB cranked into high gear and worked overtime to complete the buy/sell proposal and make it effective.

It's time to come back to reality and end the fantasy world at DOT.

Very simply, this legislation, which I am pleased to join Senator KASSEBAUM in sponsoring, would repeal any rule allowing the buying and selling of airport slots, as well as prohibit the future imposition of such a rule. It would direct the Secretary of Transportation to instead issue rules requiring carriers either to "use or lose" the operating rights they currently hold. This would end the hoarding of slots, a practice which has hampered the access of new entrants to these four airports. Finally, this legislation would direct the Secretary to impose a deadlock-breaking mechanism on the scheduling committees which currently allocate the slots among carriers at each of these airports.

If Congress doesn't act quickly to stop the buy/sell rule from going into effect, we will be allowing the administration to severely distort the aviation marketplace by allowing the "haves" to gain tens of millions of dollars in windfall profits, while the "have-nots" get nothing.

In addition, there is the question of what effect this rulemaking would have on air carrier service to the smaller and medium-sized markets. If a carrier had to pay for its access to National Airport, for example, what would keep it from flying only the most lucrative, long-haul, high density routes where the rate of return would be high enough to cover these new costs?

Finally, we must not forget the fact that while this rule currently would apply to only four high density airports, the potential of its ultimate impact is considerable. The FAA is currently considering plans that would expand the high density rule, thereby limiting access, to some 32 airports within the next 5 years. Thus, a buy/sell rule could significantly alter the service patterns at not only these airports, but at every other city in this country that has connecting airline service.

Secretary Dole and the administration have left us no choice but to introduce this legislation and work for its quick approval by the Congress. It is incumbent upon us to draw the line and prevent this ridiculous divestiture of public property from being implemented. For if we do not, who knows what else Santa has in her bag?

By Mr. DURENBERGER (for himself and Mr. BAUCUS):

S. 1967. A bill to amend the Toxic Substances Control Act to protect the environment and human health from adverse effects caused by the release of genetically engineered micro-organisms into the environment, to promote the safe use of genetically engineered micro-organisms, and for other purposes; to the Committee on Environment and Public Works.

BIOSAFETY ACT

● Mr. DURENBERGER. Mr. President, I am introducing today a bill to encourage the development of an environmentally safe genetic engineering industry. The proposal is straightforward—it would require a review and approval by the Administrator of the Environmental Protection Agency before a genetically engineered microorganism can be released into the environment or used in a manufacturing process.

We need a viable genetic engineering industry in this country. There is no question in my mind that innovations in genetic engineering will bring enormous social benefits, and that we can achieve these benefits without suffering adverse health or environmental effects. However, in order to flourish, this fledgling industry needs an element of certainty in its future. Companies need the assurance of a reasonably stable regulatory regime, one that is based on a solid statutory framework with consistent requirements that are equitably applied. Facing a regulatory future clouded by uncertainty, companies will find it more difficult to attract capital, and innovation will be hindered.

Mr. President, if we want to develop a viable genetic engineering industry, we must develop a safe industry. We must assure that careless or irresponsible individuals do not jeopardize the industry by making mistakes at this critical stage. Frankly, Mr. President, loss of public confidence is one of the worst things that could happen to this industry. That is why a regulatory framework that will help assure safe development of the technology and provide regulatory consistency is so important.

Mr. President, I want to stress that this bill is not an expression of distrust of the industry or of the Environmental Protection Agency. By all accounts, both are proceeding responsibly. The Agency has announced its intention to regulate using its existing authorities, and the industry appears to be cooperating. However, for reasons that I will explain in a moment, I believe that existing statutory authorities, while they do exist, are inappropriate for this new industry. In the long run, it will be better, I believe, to go ahead and make the necessary statutory improvements. This bill proposes to do that, to strengthen statutory authority while according enough flexibility to adjust to a developing industry.

For the most part, this bill, which would add a new section to the Toxic Substances Control Act [TSCA] is intended to clarify and expand authorities that the Administrator already has under that act. The Administrator has asserted that the definition of "chemical substance" in TSCA is broad enough to include micro-organisms. Therefore, the Administrator can review genetically engineered micro-organisms under the premanufacture notification program designed for review of new chemicals. I agree with the Administrator that he has this authority. But that only raises the next question, which is just as important: Are the premanufacture notice provisions of TSCA, which were crafted with toxic chemicals in mind, adequate and appropriate for assessing the risk to health and the environment that might be caused by the release of genetically engineered micro-organisms? I believe there is room for improvement in this regard, and that is the purpose of this bill. It is intended to replace certain aspects of the TSCA premanufacture notification system with a separate system of review of genetically engineered micro-organisms under TSCA, with information requirements and decision criteria that are more appropriate for micro-organisms.

Mr. President, there is every indication that in the next few years we will see tremendous advances in the genetic engineering of micro-organisms. Genetic information from entirely different organisms will be combined to create in the laboratory micro-organisms with new physiological capabilities or combinations of capabilities. For example, research is underway on bacteria to degrade oil spills and residues of toxic chemicals, to leach minerals from the soil, to accelerate the decomposition of plant matter, and to alter fundamental soil nutrient cycling. A recent survey of genetic engineering research supported by the Department of Agriculture identified 87 projects that are expected to involve the release of genetically engineered organisms within the next 5 years. Of these, over 20 appear to involve micro-organisms, including an array of pathogenic bacteria and viruses.

Of course this survey did not cover the vast amount of research going on in the private sector and in many universities.

We can conclude, I believe, that there will be many releases of entirely novel bacteria, viruses, and other micro-organisms during the next few years. In the great majority of these cases, these micro-organisms will be highly beneficial to society while not causing any adverse effects on human health or ecological processes. But we should have learned from our experience with the organic chemicals industry that social progress can come with a high price tag. In some ways, risks from genetically engineered micro-organisms are more troubling than risks from chemicals, because organisms have the capacity to reproduce and, in many instances, to exchange genetic material with other organisms. Thus, if a mistake is made, the problem can grow bigger over time. Put another way, release of a small amount of a toxic chemical often will have a local and transient effect. Release of a dangerous micro-organism could lead to permanent and expanding damage to the environment.

The bill that I am introducing today represents a starting point for constructing a review system that will allow the use of genetically engineered micro-organisms that can be demonstrated to be safe, while restricting those that may be dangerous to man or the environment.

How serious is the risk from this new technology? No one knows for sure, precisely because it is so new. The closest analogy to the introduction of new micro-organisms from a laboratory is the introduction of new organisms from other countries. In both cases, the ecosystem into which the organisms is introduced must respond in some way. In most cases, the exotic species will be ill adapted to its new habitat and will die out. In some cases, however, the new habitat may be amenable, in which case the introduced organism will survive, reproduce, and perhaps spread to other areas. We have seen this phenomena occur with Dutch Elm disease, starlings, and many exotic weeds.

The bill that I am introducing today would require persons intending to release a genetically engineered micro-organism for experimental purposes to obtain a permit to do so. Similarly, a permit would be required before a person could distribute a genetically engineered micro-organism intended for release by other persons. In each case, the Administrator could establish permit conditions and restrictions to assure that adverse effects do not occur.

The bill describes base line information and assessments that must be submitted by permit applicants. These are modeled on the "points to consider" approach to assessment developed by the EPA and the Recombinant Advisory Committee of the National Institutes of Health. The information requirements are described in general terms to allow the flexibility necessary to accommodate this rapidly changing technology. The Administrator is authorized and expected to develop regulations to articulate further his information needs as more experience is gained.

The bill also requires a permit to use a genetically engineered micro-organism for manufacturing purposes. The purpose of this permit is to assure that use of such micro-organisms will not have an adverse effect on human health or the environment if released from the manufacturing equipment.

Mr. President, many ecologists who have examined the implications of this new technology are concerned. In hearings and published reports, they have pointed to possible adverse ecological consequences that could result from releasing genetically engineered micro-organisms into the environment. What is needed is a regulatory framework that is tailored to the specific information needs and assessments needs of this new kind of environmental manipulation. I believe this bill provides such a framework.

But this bill addresses only part of the problem. There are other issues that are not included here, but which should play a part in discussions of further legislative proposals. One is the issue of good laboratory practice and good manufacturing practice. Consideration should be given to requiring that individuals performing genetic engineering experiments comply with containment and safety guidelines like those developed by the National Institutes of Health. Consideration should be given to similar guidelines governing use of genetically engineered micro-organisms in manufacturing processes.

Another area for discussion is the development of international harmony of regulation in this area. Within a short while, the Organization for Economic Cooperation and Development will release its regulatory recommendations. This document will help assure that countries do not use regulatory regimes as nontariff trade barriers hindering international commerce. U.S. companies need assurance that their products will be treated fairly in international trade.

Mr. President, I believe this bill will help define an agenda for consideration of needed legislation. I do not expect that it is without flaws. I am sure it can be improved, and I invite

comments from interested persons on how to do so.

I ask unanimous consent that a copy of the bill and a brief description of its contents be printed in the RECORD.

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

S. 1967

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Toxic Substances Control Act, is amended by adding at the end thereof the following new section:

"SEC. 32. REGULATION OF GENETICALLY ENGINEERED MICROORGANISMS.

"(a) IN GENERAL.—(1) Microorganisms subject to this section are not subject to the provisions of section 5(a)(1)(A) of this Act.

"(2) Except in compliance with a permit issued under this section, no person may—

"(A) intentionally release a genetically engineered micro-organism into the environment for experimental purposes;

"(B) distribute in commerce a genetically engineered micro-organism intended for release into the environment; or

"(C) use a genetically engineered micro-organism for manufacturing purposes.

"(3) The administrator is authorized to issue permits for the activities described in paragraph (1). The Administrator shall include in a permit issued under this section such conditions and restrictions as the Administrator deems necessary to protect human health and the environment. Such conditions and restriction may include, but are not limited to,

"(A) restrictions on the quantity of genetically engineered micro-organisms manufactured or released, the method of manufacture or release, and training or certification of persons who may come into contact with the genetically engineered micro-organisms;

"(B) requirements for labeling or restrictions or conditions on use, including designation of authorized uses, manner and method of applications, and geographic, temporal, or seasonal restriction on application or use;

"(C) requirements for containment or control of the genetically engineered micro-organisms or of other methods of limiting environmental movement or human exposure;

"(D) monitoring requirements; and

"(E) restrictions or conditions on disposal.

"(4) The Administrator shall not issue a permit to authorize the activities described in paragraph (2) if the Administrator determines, after review of an application submitted under subsection (b), (c) or (d) and such other information as is brought to the attention of the Administrator, that the activity authorized by permit may cause an adverse effect on human health or the environment. The applicant or permit holder shall at all times have the burden of demonstrating that the activity in question will not cause an adverse effect on human health or the environment.

"(5) The Administrator may revoke or modify a permit issued under this section at any time if the Administrator determines that activities undertaken pursuant to the permit may cause an adverse effect on human health or the environment.

"(6) The Administrator may waive the requirements of this subsection for classes and categories of micro-organisms or for classes and categories of activities described in paragraph (1) if the Administrator determines, on the basis of known lack of pathogenicity, inability to persist in the environment, or other factors related to potential effects on human health or the environment, that such waiver will not cause an adverse effect on human health or the environment.

"(b) EXPERIMENTAL RELEASE. Applications for permits to release a genetically engineered micro-organism for experimental purposes shall include the following information:

"(1) an identification of the organisms subject to the genetic manipulation and the micro-organisms created by such manipulation.

"(2) a description of the process or processes by which the genetically engineered micro-organism was created, including an identification, to the extent feasible, of the function and location of the manipulated genetic material in the genetically engineered micro-organism.

"(3) a description of the intended release experiment, including provisions for monitoring, containment, and control of the released micro-organism;

"(4) any information in the possession or control of, or reasonably ascertainable by, the manufacturer related to potential adverse human health or environmental effects that might be caused by micro-organisms; and

"(5) an assessment, based on submitted test results or other information available to or reasonably ascertainable by the applicant, of the potential adverse effects on human health or the environment at the location of the intended release or at other locations to which the genetically engineered micro-organisms might be transported. Such assessment shall take into account the potential for survival, growth, and reproduction of the genetically engineered micro-organism at the location of release, the potential for transport to other locations and the potential for transfer of genetic material from the released micro-organisms to other organisms.

"(c) DISTRIBUTION IN COMMERCE. (1) Applications for a permit to distribute in commerce a genetically engineered micro-organism for purposes of release into the environment shall be made by the manufacturer of such micro-organisms. The permit issued by the Administrator may authorize releases of such micro-organisms by other persons, including future purchasers of the micro-organisms, consistent with the terms and conditions of the permit.

"(2) Any person who purchases or otherwise acquires micro-organisms for which a permit has been issued under this subsection shall be subject to all permit conditions and restrictions.

"(3) Applications for a permit under this subsection shall include the following information:

"(A) an identification of the organisms subject to the genetic manipulation and the micro-organisms created by such manipulation.

"(B) a description of the process or processes by which the genetically engineered micro-organism was created, including an identification, to the extent feasible, of the function and location of the manipulated genetic material in the genetically engineered micro-organism.

"(C) a description of the uses for which the genetically engineered micro-organisms will be released, the geographical areas and extent of release, and instructions or guidance to users concerning uses or application of the micro-organisms;

"(D) any information in the possession or control of, or reasonably ascertainable by, the manufacturer related to potential adverse human health or environmental effects that might be caused by the micro-organisms; and

"(E) an assessment, based on submitted test results or other information available to or reasonably ascertainable by the applicant, of the potential adverse effects on human health or the environment at the locations of the intended release or at other locations to which the genetically engineered micro-organisms might be transported. Such assessment shall take into account the potential for survival, growth, and reproduction of the genetically engineered micro-organism at the locations of release, the potential for transport to other locations and the potential for survival, growth, and reproduction at such other locations, and the potential for transfer of genetic material from the released micro-organisms to other organisms.

"(d) MANUFACTURING USE.—(1) Applications for the use of genetically engineered micro-organisms for manufacturing purposes shall be made by the person intending to use such micro-organisms for such purposes.

"(2) Applications for a permit under this subsection shall include the following information:

"(A) an identification of the organisms subject to the genetic manipulation and the micro-organisms created by such manipulation;

"(B) a description of the process or processes by which the genetically engineered micro-organism was created including an identification, to the extent feasible, of the function and location of the manipulated genetic material in the genetically engineered micro-organisms.

"(C) a description of the manufacturing process in which the genetically engineered micro-organisms will be used, including circumstances of deliberate release and measures to prevent accidental human exposure to or environmental release of the genetically engineered micro-organisms;

"(D) any information in the possession or control of, or reasonably ascertainable by, the manufacturer related to potential adverse human health or environmental effects that might be caused by the micro-organisms; and

"(E) an assessment, based on submitted test results or other information available to or reasonably ascertainable by the applicant, or the potential adverse effects on human health or the environment at the location of the manufacturing facility or at other locations to which the genetically engineered micro-organisms might be transported. Such assessment shall take into account the potential for survival, growth, and reproduction of the genetically engineered micro-organism at the location of release, the potential for transport to other locations and the potential for survival, growth, and reproduction at such other locations and the potential for transfer of genetic material from the released micro-organisms to other organisms.

"(e) The Administrator is authorized to require—

"(1) such additional information or assessments to be included in an application submitted under this section as the Administrator deems necessary; and

"(2) the performance of specific tests either prior to or in conjunction with release or use permitted under this section

that the Administrator determines, in the Administrator's discretion, are needed to provide information to support an assessment of the potential for adverse effects on human health or the environment.

"(f) Except as specifically provided in this section, nothing in this section is intended to restrict or otherwise affect the authorities of the Administrator under this Act.

"(g) The Administrator may, in the Administrator's discretion, regulate under this Act the release of a genetically engineered micro-organism subject to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act. Releases thus regulated under this Act shall not be subject also to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act.

"(h) The Administrator is authorized to publish regulations to implement the provisions of this section.

"(i) DEFINITIONS. As used in this section, the term "genetically engineered micro-organism" means a bacterium, virus, fungus, blue-green alga, or protist, the genetic material of which has deliberately been altered by human intervention.

"(j)(1) There is established a Biotechnology Science Coordinating Committee within the Federal Coordinating Council for Science, Engineering and Technology. The purposes of the Committee shall be:

"(A) to serve as a coordinating forum for addressing scientific problems, sharing information, and developing concensus related to methods for evaluating potential adverse effects on human health or the environment caused by genetically engineered organisms;

"(B) to promote consistence in the development of review procedures and assessments by Federal agencies.

"(C) to facilitate continuing cooperation among Federal agencies on emerging scientific issues; and

"(D) to identify gaps in scientific knowledge.

The Committee is not authorized to review the regulatory decisions of individual agencies for the purposes of approving or disapproving such decisions, nor may the activities of the Committee serve to delay regulatory decisions by the individual agencies.

"(2) Members of the Biotechnology Science Coordinating Committee shall include:

"(A) from the Department of Agriculture, the Assistant Secretary for Marketing and Inspections Services and Assistant Secretary for Science and Education;

"(B) from the Department of Health and Human Services, the Commissioner, Food and Drug Administration and the Director, National Institutes of Health;

"(C) from the Environmental Protection Agency, the Assistant Administrator for Pesticides and Toxic Substances and the Assistant Administrator for Research and Development; and

"(D) from the National Science Foundation, the Assistant Director for Biological, Behavioral and Social Sciences.

The President may appoint additional members.

"(3) Meetings of the Committee shall be announced at least one week in advance in the Federal Register.

"(4) Meetings of the Committee shall be open to the public, except that meetings or portions of meetings may be closed to the public in order to protect confidential business information. Summaries of the public portions of meetings shall be made available to the public.".

DESCRIPTION OF BILL

The bill adds a new section 32 to the Toxic Substances Control Act for the purposes of regulating the release of genetically engineered micro-organisms.

Subsection (a) describes the relationship between the new section 32 and existing section 5 of the TSCA, which is the authority EPA now is relying upon to regulate the environmental release of genetically engineered micro-organisms. It also describes the activities for which a permit must be obtained and the authorities of the Administrator to issue permits and to waive permit requirements.

Paragraph (1) states that the release of these organisms would be regulated under section 32 rather than the premanufacture notification component of section 5.

Paragraph (2) defines the three activities for which a permit must be obtained. These are experimental release, distribution in commerce for purposes of release, and use for manufacturing purposes.

Paragraph (3) authorizes the Administrator to issue permits and gives the Administrator broad authority to include conditions and restrictions in a permit.

Paragraph (4) places the burden of proof on the applicant and prohibits the Administrator from issuing a permit if he determines that the activity authorized by permit may cause an adverse effect on human health or the environment.

Paragraph (5) authorizes permit revocation or modification.

Paragraph (6) authorizes the Administrator to waive the requirements of this section upon a determination that doing so will not cause an adverse effect on human health or the environment. The purpose of this paragraph is to provide a mechanism to avoid unnecessary review of safe micro-organisms and activities, thereby reducing the regulatory burden of both the industry and the EPA.

Subsections (b), (c), and (d) establish the information and assessment requirements for the three types of activities for which a permit is required.

For experimental releases, the applicant must describe the genetically engineered micro-organism, the organisms from which it was created, and the type of genetic engineering method used. The application also must describe the intended release experiment and submit the results of any tests that have been performed to evaluate the potential for environmental effects and genetic stability. Also, the application is to include an assessment of potential adverse effects.

The requirements in subsection (c) regarding permits for distribution in commerce are similar, but stress intended uses and the intended locations and manner of release. A similar assessment is required.

A permit under this section is obtained by the manufacturer of the micro-organism, but the permit conditions apply to purchasers and users as well. Therefore, the permit establishes the authorized conditions of use as needed to assure safety.

Subsection (d) defines the information and assessment requirements affecting the use of genetically engineered micro-organisms for manufacturing purposes. The application must contain information on the genetically engineered micro-organism and the organisms from which it was created, as well as a description of the manufacturing process including measures to prevent release. The assessment must consider the potential for adverse effects from intentional or accidental release from the manufacturing equipment.

Subsection (e) authorizes the Administrator to require applicants to submit additional information or perform specific tests when additional information is needed for an assessment.

Subsection (f) clarifies that the new section 32 is supplementary to the other provisions of TSCA and does not affect any TSCA authorities not specifically referred to.

Subsection (g) gives the Administrator the discretion to regulate under TSCA genetically engineered micro-organisms that otherwise could be regulated under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

Subsection (h) provides general authority to promulgate regulations needed to implement this section.

Subsection (i) contains definitions for the purposes of this new section of TSCA.

Subsection (j) provides a statutory authorization for the recently created Biotechnology Science Coordinating Committee, the announcement of which appeared in the Federal Register on November 14 of this year. The bill follows the announced structure and function of the Committee, and is not intended to redirect the Committee from the function ascribed to it.●

ADDITIONAL COSPONSORS

S. 1220

At the request of Mr. HATFIELD, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of S. 1220, a bill entitled the "Renewable Energy and Conservation Transition Act of 1985."

S. 1250

At the request of Mr. HEINZ, the names of the Senator from Michigan [Mr. LEVIN], the Senator from Iowa [Mr. HARKIN], the Senator from Alabama [Mr. DENTON], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of S. 1250, a bill to amend the Internal Revenue Code of 1954 to extend the targeted jobs tax credit for 5 years, and for other purposes.

S. 1286

At the request of Mr. DOMENICI, the name of the Senator from Wisconsin [Mr. PROXMIRE] was added as a cosponsor of S. 1286, a bill to limit the amount of "junk" securities which may be held by federally insured institutions, and for other purposes.

S. 1640

At the request of Mr. GRASSLEY, the names of the Senator from Florida [Mrs. HAWKINS], the Senator from Maine [Mr. MITCHELL], the Senator from New York [Mr. MOYNIHAN], the Senator from Vermont [Mr. STAFFORD], and the Senator from Nebraska [Mr. ZORINSKY] were added as cosponsors of S. 1640, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medi-

care Program of services performed by a physician assistant.

S. 1679

At the request of Mr. GRASSLEY, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 1679, a bill to strengthen provisions of the law that provide safeguards when imports threaten to impair the national security.

S. 1820

At the request of Mr. DECONCINI, the names of the Senator from New York [Mr. D'AMATO], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of S. 1820, a bill to provide financial assistance to State and local educational agencies for the development and expansion of demonstration chemical substance abuse prevention programs in the public elementary and secondary schools of such agencies, and for other purposes.

S. 1871

At the request of Mr. GRASSLEY, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1871, a bill to strengthen provisions of the Trade Expansion Act of 1962 that provide safeguards when imports threaten national security.

S. 1914

At the request of Mr. GORTON, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1914, a bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit cooperative agreements between industry and laboratories owned and operated by the Federal Government, and for other purposes.

S. 1919

At the request of Mr. ANDREWS, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 1919, a bill to establish a task force to examine the issues associated with abuse of the elderly.

S. 1920

At the request of Mr. LAUTENBERG, the names of the Senator from Washington [Mr. GORTON], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 1920, a bill to extend the superfund taxes.

S. 1923

At the request of Mr. THURMOND, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1923, a bill to provide for additional bankruptcy judges.

S. 1952

At the request of Mr. GARN, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 1952, a bill to provide for the striking of medals to commemorate the Young Astronaut Program.

SENATE JOINT RESOLUTION 25

At the request of Mr. PACKWOOD, the name of the Senator from Colorado [Mr. ARMSTRONG] was added as a cosponsor of Senate Joint Resolution 25, a joint resolution to designate March 16, 1985, as "Freedom of Information Day."

SENATE JOINT RESOLUTION 74

At the request of Mr. THURMOND, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of Senate Joint Resolution 74, a joint resolution to provide for the designation of the month of February 1986, as "National Black (Afro-American) History Month."

SENATE JOINT RESOLUTION 220

At the request of Mr. MATTINGLY, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 220, a joint resolution to provide for the designation of September 19, 1986, as "National P.O.W./M.I.A. Recognition Day."

SENATE JOINT RESOLUTION 231

At the request of Mr. RIEGLE, the names of the Senator from Montana [Mr. BAUCUS], the Senator from South Carolina [Mr. THURMOND], the Senator from California [Mr. WILSON], the Senator from Oklahoma [Mr. NICKLES], the Senator from Illinois [Mr. SIMON], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of Senate Joint Resolution 231, a joint resolution to designate the period commencing January 1, 1986, and ending December 31, 1986, as the "Centennial Year of the Gasoline Powered Automobile."

SENATE JOINT RESOLUTION 244

At the request of Mr. DECONCINI, the names of the Senator from Indiana [Mr. LUGAR], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of Senate Joint Resolution 244, a bill to designate October 8, 1986, as "National Fire Fighters Day."

SENATE CONCURRENT RESOLUTION 69

At the request of Mr. DANFORTH, the names of the Senator from Illinois [Mr. SIMON] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Concurrent Resolution 69, a concurrent resolution to recognize the National Camp Fire Organization for 75 years of service.

SENATE CONCURRENT RESOLUTION 97—REQUESTING THE PRESIDENT TO NEGOTIATE A NORTH AMERICAN TREATY ON AIR POLLUTION

Mr. BAUCUS (for himself, Mr. BENTSEN, Mr. BURDICK, Mr. CHAFEE, Mr. DODD, Mr. DURENBERGER, Mr. HART, Mr. HUMPHREY, Mr. KERRY, Mr. MITCHELL, Mr. MOYNIHAN, Mr. PELL, Mr. STAFFORD, Mr. LAUTENBERG, Mr. BINGAMAN, and Mr. LEAHY) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations.

S. CON. RES. 97

Whereas air pollution is a serious concern throughout all of North America, threatening public health, forest resources, manmade structures, and aquatic ecosystems;

Whereas air pollution emanating in Canada, Mexico, and the United States moves across borders and may affect areas great distances from the source of the emissions;

Whereas there is a need for an effective international institution to resolve conflicts concerning transboundary air pollution concerns;

Whereas the Boundary Waters Treaty has provided an effective institution to address transboundary water pollution concerns between Canada and the United States;

Whereas the United States, Canada, and Mexico have mutual environmental concerns regarding water quantity, water quality, and air quality;

Whereas there is a need for uniform monitoring standards and the establishment of an ongoing North American monitoring network;

Whereas there is a need for a sharing of research data and an exchange of ideas over how to protect air quality;

Whereas there is a need for uniform air quality standards to provide comparable protection and protocols to assure protection of North American air quality;

Whereas there is a need for increased understanding of health effects caused by air pollution in North America;

Whereas there is a need to apply equal standards to facilities and products which produce air pollution;

Whereas there is a need to protect existing air quality as well as to seek and implement ways to reduce existing levels of international air pollution; and

Whereas Canada and the United States, and Mexico and the United States, have entered into discussions over concerns about transboundary transport of air pollution: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should institute negotiations with Canada and Mexico for the purpose of concluding a tripartite agreement—

(1) to reduce projected and existing levels of air pollution;

(2) to create an institutional framework to control sources of transboundary air pollution;

(3) to establish a North American air quality monitoring network;

(4) to encourage increased research and dissemination of information on air pollution control strategies; and

(5) to develop uniform minimum levels of protection for public health and the environment.

Mr. BAUCUS. Mr. President, today I am introducing a concurrent resolution calling for the negotiation of an Air Pollution Treaty to cover all of North America.

Evidence continues to grow that air pollution and, in particular, acid rain is causing a major problem throughout all of North America. Canada continues to press for greater action to address existing transboundary air

pollution. Many throughout the United States have raised their voices in concern.

The President and the Prime Minister of Canada entered into historic talks on March 17, 1985, to study ways to address acid rain pollution. At this meeting, the Prime Minister for Canada, Mr. Mulroney, stated

> We have broken a 3-year deadlock by agreeing to our common and shared responsibility to preserve our common environment.

President Reagan stated:

> It is very significant that our two countries should work together on all matters of environment because entrusted to us is the care of a very unique continent and a very beautiful continent.

This meeting was a significant beginning. There is a need to build on this beginning.

While these discussions are to address problems caused by existing levels of air pollution, there are no institutions or agreements on how to address new air pollution sources.

At the same time Canada and the United States were beginning talks to consider pollution problems along our northern border, the United States was expressing concerns to Mexico over new air pollution sources south of the border.

Mexico is now preparing to open a new smelter with no pollution controls. The Nacozari smelter is expected to begin operation in the near future.

The Nacozari smelter will be the single largest source of sulfur dioxide pollution in North America. It is projected to emit 550,000 tons of SO_2 per year into the atmosphere. Pollution can be expected to fall out from the Mexican border all the way into Canada.

The United States requested that the Nacozari smelter not begin operation until permanent emission controls have been installed, but the Mexican Government rejected this plea. Without an air pollution agreement, there was little we could do.

There is a need for a formal mechanism to assure that public health and the environment is protected from transboundary air pollution. The United States should take the leadership and immediately call for the commencement of trilateral talks to establish a North American Treaty on Air Pollution.

The United States and Canada have a useful model in place to address transboundary water pollution. This model could provide a guide for how to address air pollution. Its scope could include all of North America.

The Boundary Waters Treaty has been an effective mechansim to address transboundary water pollution since the beginning of this century. It provides for a zero standard of pollution. It is a model of international cooperation.

The International Joint Commission under the Boundary Waters Treaty has proven itself to be a useful institutional mechanism. A similar institutional mechanism is needed for air.

The pending threat of air pollution from Mexico threatens all of the Western United States and highlights the critical need for a North American treaty.

We have had great difficulty coming to grips with existing levels of pollution. A formal mechanism addressing these problems can look for new and innovative ways to address existing levels of air pollution. It can insure that future air pollution problems are not inadvertently being created.

There is tremendous potential for development of additional coal-fired generation capacity in close proximity to borders. Long-range transport concerns continue to grow.

This week, Canada is embarking on a major acid rain control program. Emission levels from four major smelter and coal-fired electrical generation facilities will be reduced 94 percent by 1994.

The Inco smelter, the largest point source in North America with current emissions of 728,000 tons per year, will be reduced to 765,000 tons by 1994.

Canada is demonstrating a willingness to face up to its responsibility for existing air pollution problems. This action will reduce acid loading in the Adirondacks and the Northeastern United States by 5 to 10 percent.

This unilateral action on the part of Canada is a commendable first step to address the acid rain problem.

The United States needs to join with Canada and take similar steps.

But we can ill-afford to play a zero-sum game as other new sources come on line throughout North America.

The President needs to build upon the ongoing talks with Canada and Mexico.

The stage is set for action with Canada. An aggressive posture needs to be taken with Mexico.

The need, the opportunity, and the timing for the development of a North American Treaty on Air Pollution is right. The President needs to seize the initiative and move forward.

Action is needed now. Talks should be undertaken immediately and should involve the United States, Canada, and Mexico. These talks should lead to the establishment of an international treaty to reduce projected and existing levels of air pollution.

This treaty should provide an institutional framework in which to consider these types of disputes. Air quality monitoring, increased dissemination of research, and uniform minimum technologies and levels of protection for public health and the environment should be included in this agreement.

Mr. MITCHELL. I am pleased to join Senator BAUCUS and others in sponsoring this concurrent resolution calling for the negotiation of a North American treaty for the control of air pollution and acid rain.

Events of the past several days have highlighted the need for a commitment from the Reagan administration to bring about significant reductions in acid rain, both in this country and in Canada.

At a hearing in the Environment and Public Works Committee last week, EPA Administrator Lee Thomas indicated that at least 3 more years of research will be needed before the administration will consider supporting a program of controls over acid rain. While I do not oppose continued research, the information we have today confirms that acid rain is a serious environmental problem that places our lakes and forests at great risk.

At the same time that the Reagan administration is delaying needed action to control acid rain, the Canadian Government is moving aggressively to address the problem. Just today, the Province of Ontario announced a specific program to cut acid rain levels in half by 1994. This program is expected to be matched by other Canadian Provinces.

The Ontario acid rain control program will benefit Ontario, but it will also benefit the United States. As a direct result of the Ontario action, acid rain levels in my home State of Maine are expected to decline substantially. Pollutant reductions in other New England States and the Adirondacks are also expected.

While Ontario's program will bring about drastic reductions of acid rain related air pollutants, these steps will not be sufficient to protect the great majority of lakes throughout the Province. Half the acid rain in Ontario comes from emission sources inside the United States. Protection of aquatic and forest systems in Ontario and the rest of Canada will require significant reductions of emissions here in the United States.

In only the past few days, we have heard the Reagan administration refuse to develop even a modest program to deal with acid rain in this country and Canada. And, we have heard the Ontario government announce a dramatic new initiative to control air pollutants related to acid rain.

I cannot conceive of more convincing circumstances to support improved coordination of Canadian and United States air pollution control programs. We have an obligation to take prompt action to develop acid rain control programs to complement the Canadian initiative.

A North American Treaty on Air Pollution would build on the discussions which have occurred to date. And, a treaty would provide a forum

for resolving disputes and assuring the on-going coordination of air quality monitoring, research, and control programs.

The exchange of acid rain related pollutants is our most serious international air pollution problem. But, the potential for development of utility and other facilities close to our northern and southern borders is substantial. Further, we now have a better understanding of the long range transport of pollutants. For these reasons, we need to include Mexico, and well as Canada, in a North American Air Pollution Treaty.

The importance of including Mexico in such a treaty is illustrated by the case of the Nacozari smelter, which is expected to begin operation shortly just south of the border. Despite U.S. objections, the smelter will have few pollution controls. Air pollution form the smelter is expected to fall in this country and as far north as Canada.

Mr. President, I urge my colleagues to join in support of this important resolution.

Mr. BURDICK. In the past, the Canadian Government has severely criticized United States efforts and achievements in reducing SO_2 emissions. However, since the election of Brian Mulroney as Prime Minister, there have been indications that Canada is adopting a new and more rational approach in its acid rain negotiations with the United States. In fact, in February of this year, Mr. Mulroney pointedly stated that Canada needs to "clean up its own act first" before expecting the United States to impose stronger American controls. He also stated that Canadians must stop blaming the United States exclusively "for a problem which is not insignificantly of our own creation and about which we have done very little."

Canada is moving in the direction of "cleaning up its own act." The new Government has adopted a major environmental control program to reduce emissions of SO_2 and NO_2, which are thought by many scientists to form acid rain. The Canadian Government wants to reduce SO_2 emissions in eastern Canada by 50 percent by 1994.

Major elements of the Canadian plan are:

First, to reduce SO_2 emissions east of the Saskatchewan/Manitoba border by 1994 to no more than 2.3 million tons.

Second, to require unleaded gas in all 1988 car models to reduce NO_2 emissions by 45 percent by the end of the century.

Third, to provide $150 million to assist the smelting industry in paying for pollution control devices.

Fourth, to promote research by providing $25 million for improved smelting technology and $70 million for clean coal technology.

Fifth, to monitor acid rain effects under an $18 million annual program.

Sixth, to continue its role in the international community by seeking cooperative agreements on acid rain control.

Under this new effort, Canada will now begin to match America's efforts made over the past 15 years. Passage of the Clean Air Act has resulted in reducing SO_2 and NO_2 emissions by 26 percent, and strict car emissions standards has dramatically reduced NO_2.

Success has been linked to a combination of several measures—increased use of fuel substitution, expanded clean coal technology, and installation and operation of 119 scrubbers at utility power generation plants across the country. The cost to American consumers, businesses, and industries of meeting the requirements of the Clean Air Act has been estimated to exceed $25 billion a year. Canada should consider adding to its acid rain program the implementation of scrubbers on its coal utility plants.

If Canada's new program succeeds, and coupled with the continued reductions in SO_2 and NO_2 emissions that will be achieved in the United States under the existing Clean Air Act, their program should achieve substantially reduced acid rain on our common border. In working together, both countries should see great improvement in the hazardous threat to environment by acid rain.

While the United States has made gains in curbing air pollution, it cannot halt its efforts. This administration needs to assess its policy of conducting more research on the causes of acid rain against the need to develop and implement a comprehensive national program. On December 11, the Senate Environment and Public Works Committee held an oversight hearing on the National Acid Precipitation Assessment Program. The taskforce has been working since 1980 to develop and implement a comprehensive national program. The administration should use the information gained from such research, monitoring, and assessment activities to develop a national program.

In order to continue to do our fair share, the United States needs a stronger approach on acid rain. A North American treaty would establish a process whereby the United States, Canada, and Mexico could combine their efforts to prevent further deterioration of North America's environment. I would encourage the administration to recommend a national program and approach the acid rain problem on a continental basis.

Mr. MOYNIHAN. Mr. President, I rise to join with my good friend and colleague from Montana to cosponsor this Senate Concurrent Resolution, which calls on the President to negotiate a North American Treaty on Air Pollution. Surely, there are few ideas that are more self-evidently good ones.

Mr. President, the only acid rain legislation we have got is the Acid Precipitation Act, which I introduced on September 14, 1979. My purpose was to establish some facts about this matter—facts that we were sorely lacking at that time. Even then, however, we knew enough to suspect that long-range transport of airborne pollutants meant no one country could solve the acid rain problem on its own. In enacting legislation that became Public Law 96-294, Congress found that "acid precipitation resulting from other than natural sources * * * could affect areas distant from sources and thus involve issues of national and international policy." And the comprehensive plan for the next decade's research was to include programs for "effecting cooperation in acid precipitation research and development programs * * * with other sovereign nations having a commonality of interest."

We have had cooperative research with Canada—although not enough. We have discussed our concerns with both Canada and Mexico—although without sufficient results. And most recently, we have named the most capable Mr. Drew Lewis as a special envoy to discuss our concerns at the highest level with a representative of the Government of Canada. But Mr. Lewis has yet to provide us with an indication that the United States and Canada will be able to resolve all of their concerns about transboundary air pollution in such discussions—and, with the opening of the new smelter in Nacozari, Mexico, our attention surely ought to be turned toward the south as well.

Mr. President, we know how difficult it is for each country to make reductions in sulfur dioxide emissions on its own. While our own emissions have declined since controls on the so-called criteria pollutants were required by the Clean Air Act, we have failed to take simple and direct action to reduce these emissions by promulgating strict regulations to control "tall stacks."

Canada is justly concerned by the sulfurous emissions we send northward, as now we are beginning to worry about emissions sent northward to us by Mexican smelters. It is long past time for all concerned to realize that a unified approach for the continent as a whole is the only option for a truly successful acid rain program. And it is long past time for us to begin pursuing one.

I commend Mr. BAUCUS for his resolution, and I support it wholeheartedly.

Mr. LAUTENBERG. Mr. President, I commend Senator BAUCUS for authoring this resolution requesting the President to negotiate a North Ameri-

can Treaty on Air Pollution. I am pleased to join many of my colleagues from the Senate Environment and Public Works Committee in cosponsoring this resolution, and look forward to taking up the issue of acid rain and other transboundary air pollution issues early next year.

I am also pleased to note that a number of members of the Senate Foreign Affairs Committee have joined as cosponsors of this resolution. Their role as shapers of U.S. policy regarding North American issues is of utmost importance in helping to resolve the stalemate that we find ourselves in with respect to transboundary air pollution.

Mr. President, there could not be a more appropriate time to call upon the President to negotiate a North American Air Pollution Treaty. It is almost 6 years now since President Carter entered into a Memorandum of Intent with Canada. The MOI set out a course of bilateral cooperation in research and in negotiating a treaty for controlling transboundary air pollution. The MOI also stated as a policy that the two countries should work to reduce their emissions of sulfur and nitrogen oxides while negotiating the treaty.

There are few words that can adequately express the exasperation that the Canadians, and those of us in Congress concerned with controlling these pollutants, have felt over the last several years. The research efforts under the MOI were thwarted by those in the administration that would like to argue that not enough is known about the causes and effects of acid rain to justify more stringent controls. The treaty negotiations fumbled when Canada offered to cut its emissions by 50 percent for a similar reduction in emissions generated in the United States. In the meantime, emissions have been on the rise in the United States and in Mexico, where a smelter, financed by the International Monetary Fund, will begin operation without pollution controls and assume the dubious distinction as the largest single emitter of sulfur dioxide in North America.

Mr. President, we have the opportunity to turn the debate around on controlling transboundary air pollution. We must join with our colleagues in Canada and Mexico to negotiate in earnest a North American Air Pollution Treaty. The first opportunity will come early next year, when the envoys appointed by the President and Prime Minister are expected to make a recommendation for action before the next bilateral summit with Canada. In the interim, we must show good faith in these negotiations by reducing harmful emissions of sulfur and nitrogen oxides.

Mr. President, we should follow Canada's impressive example. This week, Canada will announce the details of the final leg of their program to reduce sulfur dioxide by 50 percent. This is not an impossible goal for other industrial countries. Several European countries, including France and West Germany, have announced plans to reduce emissions by 50 percent. The USSR has joined the so-called 30 percent emissions reduction club, and pledged in a recent environmental summit with EPA Administrator Lee Thomas to work on solutions to the acid rain problem plaguing both our countries.

I urge my colleagues to cosponsor this important resolution, and join in the effort to reduce transboundary air pollution for the sake of all North America.

SENATE RESOLUTION 276—RELATING TO THE REHIRING OF AIR TRAFFIC CONTROLLERS

Mr. LAUTENBERG (for himself, Mr. DIXON, Mr. SIMON, Mr. BRADLEY, Mr. KERRY, Mr. DODD, and Mr. MOYNIHAN) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 276

Whereas safe and efficient air transportation is essential to the economy of the nation;

Whereas the margin of safety in the skies is jeopardized by a serious experience drain in the air traffic control system;

Whereas the total number of air traffic controllers is significantly below the level employed in 1981; and

Whereas at a time of rising air travel, the air traffic controller system is at 59 percent of full performance level as of September 30, 1985 as contrasted to 82 percent in 1981 and is subject to further experience drain due to expected retirement: Now, Therefore, be it Resolved, That

(1) it is the sense of the Senate that the Executive Branch should employ the quickest and most cost efficient means to return the air traffic control system to pre-strike experience levels; and

(2) the Executive Branch should, to the extent required, rehire those experienced air traffic controllers fired from the Federal Aviation Administration in 1981, who meet standards for employment in the Federal civil service, necessary to fulfill this objective.

● Mr. LAUTENBERG. Mr. President, today I am submitting a sense of the Senate resolution regarding our Nation's air traffic control system. This resolution is cosponsored by Senators DIXON, SIMON, BRADLEY, KERRY, DODD, and MOYNIHAN. The thrust of the resolution is that, in order to return this Nation's aviation safety program to the experience level which existed in 1981, the executive branch should immediately rehire, on a selective basis, those air traffic controllers fired in the aftermath of the PATCO strike.

In 1981, Mr. President, the FAA employed 16,250 air traffic controllers. When the PATCO union went on strike, President Reagan fired 11,700 of those controllers. Of the 16,250 controllers employed in 1981, 82 percent were full performance level controllers capable of performing a variety of tasks in air traffic control facilities around the country.

Administrator Donald Engen of the FAA testified before the Senate Appropriations Subcommittee on Transportation that the administration's goal for restoring the FAA to prestrike levels was to have 14,306 controllers on duty by the end of fiscal year 1985. On September 30, 1985, the FAA was employing only 14,000 controllers, because the washout rate among new recruits was higher than anticipated.

Mr. President, the FAA claims that they can handle air traffic that is running 10 percent above 1981 levels with fewer air traffic controllers. In addition, air traffic controllers are being checked out in 2 years when it used to take 4 or 5 years to fully train a controller. Supervisors continue to control traffic at the expense of the supervisory duties.

Even if one believes that more traffic can be handled with fewer controllers or that controllers trained for 2 years are as capable as those trained for 4 or 5, one would still have to conclude that the FAA faces a critical experience shortfall.

In 1981, 82 percent of the controller work force was at full performance level. As of September 30, only 59 percent of current controllers were at that level. There are many controllers eligible for retirement in the near future. Because the workload and morale in the system has not, according to the FAA's own reports, improved since 1981, these controllers are expected to retire. These retirements can only make the experience drain worse.

Mr. President, the rehiring of air traffic controllers fired in 1981 would be an act of compassion. After all, it has been years since the strike and these people have paid dearly in terms of the disruption to their families, the loss of their income, and pension rights. But they are not the only ones who have suffered. The traveling public has suffered along with them in terms of an eroding margin of safety and inconvenient delays for business and pleasure travelers. It is time the former controllers and the traveling public got a little relief.

The sponsors of this resolution are not contending that the 1981 strike was legal or that the President was wrong to take the action he did. We are contending that whatever the validity of the action in 1981, it is time to bring these people back to work. The President has made his point. It is no longer a time to exercise power; it is time to exercise wisdom and compas-

sion. It is time to exercise common sense.

Mr. President, the Nation invested heavily in the training of a valuable pool of talent that is badly needed at this time. The quickest and most cost-effective way to return the air traffic control system to full performance levels comparable to 1981 is the immediate rehiring of some of those fired on a selective basis.

Just prior to Thanksgiving, Mr. President, I met with a group of former and present air traffic controllers. I had been told that the present controllers did not want the strikers back. Administrator Engen told me that there would be chaos in the towers if rehiring occurred. But present controllers told me that there is chaos in the towers and the way to eliminate it is to get as many people back to work as soon as possible. My experience in meeting with controllers is confirmed by the Jones report, commissioned by the FAA, which found little opposition and some support for rehiring.

Mr. President, the cost of losing the margin of safety in our skies is not measured in man-hours or other bureaucratic measurements, it is measured in the loss of human lives; 1985 has been the worst year on record for commercial aviation worldwide. We have vitally important work to be done and an available pool of talent ready, willing, and able to do it. Let us put the past behind us and get this job done.●

Mr. SIMON. Mr. President, this morning, Senator LAUTENBERG, Senator DIXON, a few others, and I have introduced a resolution regarding the air safety situation. We do face a serious problem. It is still safer to fly by air in this country than it is to drive on the street, but it is not as safe as it should be. Air traffic is growing. Our air traffic management system is frankly not where it should be.

The Nation's air traffic control system is flirting with disaster. Air traffic is growing, our air traffic management system is not up to speed, and there is mounting evidence that the safety margin is suffering deep erosion.

That leaves us with three realistic options: First, increase the capacity of the air safety system; second, impose limits on air traffic; or third, risk the consequences of continued reduction in the margin of safety we all have taken for granted in American civil aviation. Obviously, I think the latter two are not realistic options. The sensible course is the first option: To boost the capacity of the system by raising staffing and experience levels in the control centers and in the airport towers to adequate levels, and to waste no time doing that.

To reach that goal, it is time to consider rehiring some of the best-qualified controllers among those fired during the air traffic controllers' strike of 1981.

I supported President Reagan's decision to fire the controllers on August 3, 1981, when their union implemented an illegal strike. While more could have been done to acknowledge and address the controllers' valid concerns about stressful working conditions, once the strike took place the President made the right decision to fire them. We cannot tolerate strikes against the Federal Government. But now 4 years have passed. Those who lost their jobs have lost much more in pay and retirement benefits than they would have paid in court fines for their missteps. If we rehire some of them, no one would get the idea that you can strike against the Federal Government and go unpunished.

Before the strike there were 13,000 fully qualified controllers. Today there are only 8,000 fully qualified controllers among the 14,300 who are on the job. Fewer fully qualified controllers and an experience level that is far lower—that is a formula for declining air safety.

In fact, Mr. President, that is just what we are reaping today. Near-misses are gaining in frequency. In 1984 the total reached 592, the highest in the history of the airline industry. For the first 7 months of this year, near-misses already were 40 percent ahead of last year's total.

Can we afford that narrowing margin of error? The answer should be obvious.

Rehiring some of the former controllers is no panacea, but it is one of several realistic steps we should consider. The FAA clearly has not been completely realistic in its assessment of the current air safety situation.

The agency has resisted acknowledging that there are too few controllers, too little experience, and too little supervision in the air control centers, and in some of our airport towers as well. But the pilots of the Nation know it, and their association has spoken our firmly of their concerns. In recent days a newspaper's opinion survey of airline pilots underscored this consensus.

FAA does not have any office solely responsible for collecting and analyzing—for safety purposes—the near-miss information the agency generates. The FAA this year was found to have underreported its near-miss figures. In what I fear is an increasing pattern, one controller in the Midwest has told my office of several unreported incidents at his facility.

The staffing and experience problem needs immediate attention. At the Chicago Center in Aurora, IL, for example, which handled 2 million flights last year in the Midwest, the number of controllers is down from 525 in 1981 to some 360 today, even though the center handles 6 percent more traffic daily than it did in 1981. Controllers at Aurora must rely on outdated equipment, much of it is so old it uses vacuum tubes instead of transistors.

Only in recent weeks has the agency begun to address that concern. And as at similar facilities, some of the most experienced professionals are moved from supervisory posts to controller posts because of staff shortages, and under that kind of arrangement, supervision suffers.

Recently the Aurora facility logged a record 5 controller errors in 18 hours, resulting in 10 planes flying too close to each other.

For much too long the FAA has not publicly acknowledged, let alone acted on, this serious staffing and experience problem. The traveling public should commend Transportation Secretary Elizabeth H. Dole for breaking this pattern through her recent announcement that FAA intends to phase in 960 new controllers over the 2 years.

That is a welcome change, but the air traffic control system desperately needs experience just as much as it needs more adequate staffing. Some refresher training would be needed for the older hands, but they would be fully on the job sooner, and the taxpayers would save some of the money that would be used to train fresh recruits. We would get some of that valuable experience back behind the radar screens.

Other experienced voices in the airline industry, including the Airline Pilots Association, the Air Transport Association, and recently the chairman and president of USAir, have called for increased air traffic controller staffing in the interest of public safety and improving the performance of our airtraffic control system. Edwin I. Colodny of USAir wrote in his airline's in-flight magazine for November, "* * * the airlines and Congress are concerned that the system is not up to the increasing demands being placed upon it. Safe operation of the system is the primary objective of the FAA, an objective we all share."

The FAA is not adequately addressing the question of air controller experience, nor is the continued use of supervisors "on the boards" easily explained. In October 1983, there were about 3,000 supervisors doing the work of controllers, and the FAA has not yet made a commitment to return them to full-time supervisory posts.

Mr. President, the Chicago Tribune recently carried an article by Lloyd Martinez titled, "A Fired Controller Talks Safety." I ask unanimous consent that this article, as well as an editorial titled, "Air Safety Demands FAA Act, Not React," from the Springfield, (IL) State Journal-Regis-

ter, be printed in the RECORD at this point.

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

[From the Chicago Tribune, Dec. 1, 1985]

A FIRED CONTROLLER TALKS SAFETY

(By Lloyd Martinez)

As a former air traffic controller, I have sat quietly by the sidelines for the last four years listening and reading what the "experts" have to say about solving the issues of staffing, equipment and, greatest of all, the safety in flying through the United States air traffic control system. I can no longer keep still.

Why should anyone believe an ex-air traffic controller? I worked 24 years in that profession, lost my retirement benefits and haven't any hope of ever going back. You will say the government doesn't lie and you've got to believe it.

Why did the Federal Aviation Administration in Washington report that there were 299 incidents when there were actually 600 reported and perhaps many more? The FAA was forced to admit there were more incidents that somehow got lost on the way to Washington.

The FAA detested the controllers union. Our union encouraged all controllers to report all incidents, and when the news media were notified, the FAA was forced to give detailed information. When the strike occurred in 1981, the FAA found a perfect solution; bust the union, fire all controllers and just maybe take back only the number that they needed.

However, the hireback couldn't be done, so to this day the agency remains gravely understaffed. Transportation Secretary Elizabeth Dole admitted as much last month when she announced the FAA was going to hire another 1,000 controllers to augment the 14,300 on the payroll.

The FAA, it seems, was trying to run the system with 25 percent fewer controllers. The Air Route Traffic Control Center in Aurora, the FAA said, was being operated with 60 percent of the staff it had in 1981. Aurora, of course, is one of the busiest centers in the nation.

But the FAA's claims don't match the figures. At one point recently there were 130 controllers, including supervisors, at Aurora but only about 30 of them were able to work one or two sectors and were lucky if they could do that.

Prior to August, 1981, there were about 300 journeymen controllers and an additional 30 controllers able to work at least one sector. Minimum staffing required that there be at least 14 controllers per area of specialization. Therefore, seven sectors needed 98 men for each of the two major shifts and another 17 on the midnight shift when traffic was lighter. Another 98 were needed to cover days off without considering vacations, sick leave and personnel detailed to other duties.

Excluding vacations, sick leave and detailed personnel, we had a grand total of 294 controllers needed to make the Aurora center operate successfully and safely.

I'll let you do the arithmetic on both sets of figures, but it sounds as if the FAA has pulled the wool over everyone's eyes. Is there any wonder there are so many delays nationwide even on clear days?

Let's face it, the real issue is outdated equipment, understaffed facilities, hundreds of control towers closed since 1981, too many chiefs in personnel offices that are statisticians, too many lawyers and an old bureaucracy that doesn't seem to care or know about the air traffic system.

The FAA first said it would rebuild the system in six months, then that was lengthened to one year, then two. It is now approaching four years and the end isn't in sight.

Someone should have told the FAA that it takes four to five years to make a controller and then only if there is adequate staffing to start with.

The public deserves, and should demand, the best technology and controllers that can be attracted. At the present time they are not receiving either.

[From the State Journal Register (Springfield, IL), Nov. 26, 1985]

AIR SAFETY DEMANDS FAA ACT, NOT REACT

Congress is justifiably concerned about air safety, given the unprecedented string of commercial airline accidents this year that have claimed more than 1,600 lives. The focal point of congressional scrutiny is the Federal Aviation Administration, which is responsible for the air-traffic controller system that guides planes through the skies and the inspectors who check their condition.

Although FAA Administrator Donald Engen insists that his agency is on top of the air-safety situation, recent evidence suggests otherwise.

Three months ago, a U.S. Department of Transportation task force scored the FAA for not implementing safety rules in a timely manner, citing delays of as much as eight years. Indeed, six years after 273 persons perished in the crash of an American Airlines DC-10 near Chicago—the worst commercial aircraft accident in U.S. history—the FAA has failed to implement most of the safety recommendations following that disaster.

The Transportation Department's findings came on the heels of a critical Government Accounting Office report that suggested the FAA is careless in inspecting commercial aircraft. According to that report, some U.S. passenger planes underwent few, if any, inspections between mid-1983 and mid-1984.

The FAA has since drafted tough new safety-inspection regulations and plans to add 500 new inspectors during the next two years. Nevertheless, nagging doubts persist about the agency's capacity to monitor airline safety effectively.

In 1979, the FAA had 2,000 inspectors who were responsible for monitoring the operations of 237 air carriers, commuter and air taxi operators. Last year, the number of inspectors had dwindled to slightly more than 1,300 while the number of operators had increased to 407.

FAA inspectors have simply been unable to keep pace with the proliferation of commercial carriers in the wake of airline deregulation. That proliferation has produced competitive pressures among carriers to pare costs, including such safety-related services as training and maintenance.

Another weak link in the safety system is the shortage of air-traffic controllers. Before the 1981 strike, there were 16,000 controllers. Of the 14,000 controllers currently on duty, only about 8,000 are fully qualified. This despite the fact that deregulation has increased the number of flights around hub cities and underscored the need for more controllers. Belatedly, the FAA plans to add another 1,000 controllers during the next two years. Meanwhile, stress, fatigue, and a lack of supervision have further compromised public confidence in air-traffic control.

Finally, there is the FAA's foot-dragging on the development of a Doppler radar system that could reduce, if not eliminate, the danger of wind sheer accidents. During the last 15 years, wind shear has been cited as the cause of 17 accidents, which have killed 440 persons.

Although the Federal Aviation Administration is not to blame for all of this year's airline catastrophes, the agency has failed to assume the leadership role that Congress intended for it. Instead of reacting to problems, the agency ought to be anticipating them and then acting to prevent potential disasters.

That exacting role demands scrupulous attention to safety procedures, which in turn will cost millions of dollars. But, the millions of persons who place their lives in the hands of commercial air carriers each year deserve nothing less.

Mr. SIMON. Mr. President, I recently joined five of my colleagues in signing a letter to Secretary Dole asking her to take those steps necessary to bring about the rehiring of the best qualified of those air traffic controllers fired in 1981. I have also urged renewed consideration of this issue in a letter to our colleague Senator JOHN DANFORTH, the chairman of the Commerce Committee.

I am hopeful that, quietly and sensibly, Congress and the administration will take this and other steps that can restore an adequate margin of safety to our air travel.

I just add for my colleagues who are here that there is no question we have a problem.

In the first 7 months of this year we had 41 percent more near-misses than we did all of last year, and last year was a record year in terms of near-misses.

My hope is that we are not going to wait until we have more tragedies before we move on the problem. One of the things we clearly ought to do is to carefully select among the experienced air controllers, and rehire some of them. We have quietly rehired about 750. I am not saying the administration ought to make a big announcement. I happen to think the President did the right thing in firing the controllers. You cannot strike against the Federal Government.

But they have lost 4 years of pay, and 4 years of retirement benefits. The question now is air safety. That ought to be the prime question this administration has. There are those within the administration in high positions who believe it makes sense to carefully select and bring back more of these controllers.

I think it is important that those of us in the U.S. Senate do everything we can to encourage the administration to move in a responsible way on this.

SENATE RESOLUTION 277—REFERRING S. 1962 TO THE CHIEF JUDGE OF THE UNITED STATES CLAIMS COURT FOR A REPORT THEREON

Mr. INOUYE submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 277

Resolved That the bill (S. 1962) entitled "A bill for the relief of Walter Chang" now pending in the Senate, together with all the accompanying papers, is referred to the Chief Judge of the United States Claims Court. The Chief Judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due the claimant from the United States.

AMENDMENTS SUBMITTED

RELIEF OF HAMILTON JORDAN OF LAWRENCEVILLE, GA

HATCH AMENDMENT NO. 1419

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to the bill (S. 1475) for the relief of Hamilton Jordan of Lawrenceville, GA; as follows:

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

SEC. .—(a) Sec. 706 of title 2, United States Code, is amended by inserting after the words "not to exceed $5,000." and before the words "No action" the following:

This civil penalty shall be the exclusive penalty for such knowing and willful violation of section 702 of this title, notwithstanding any other provision of the United States Code, including section 1001 of title 18. This section shall be deemed to be effective on the date of enactment of the Ethics in Government Act.

(b) Sec. 304 of title 28 App., United States Code, is amended by inserting after the words "not to exceed $5,000." the following:

This civil penalty shall be the exclusive penalty for such knowing and willful violation of section 302 of this title, notwithstanding any other provision of the United States Code, including section 1001 of title 18. This section shall be deemed to be effective on the date of enactment of the Ethics in Government Act.

(b) Sec. 204 of title 5 App., United States Code, is amended by inserting after the words "not to exceed $5,000." the following:

This civil penalty shall be the exclusive penalty for such knowing and willful violation of section 202 of this title, notwithstanding any other provision of the United States Code, including section 1001 of title 18. This section shall be deemed to be effective on the date of enactment of the Ethics in Government Act.

FARM CREDIT AMENDMENTS ACT

HELMS (AND ZORINSKY) AMENDMENT NO. 1420

Mr. HELMS (for himself and Mr. ZORINSKY) proposed an amendment to the amendment of the House to the bill (S. 1884) to amend the Farm Credit Act of 1971, to restructure and reform the Farm Credit System, and for other purposes; as follows:

In the House engrossed amendment—

(1) On page 7, strike out line 24 and all that follows through line 25 on page 8 and insert in lieu thereof the following:

"SEC. 4.28c. BOARD OF DIRECTORS OF THE CAPITAL CORPORATION.—(a)(1) The Board of Directors of the Capital Corporation shall consist of five members, of which—

"(A)(i) three members shall be elected by the farm credit banks that own the voting stock in the Corporation, with—

"(I) one such member being elected from an institution and a district that, at the time of such election, is or is projected to be a net contributor of capital to the Corporation;

"(II) one such member being elected from an institution and a district that, at the time of such election, is or is projected to be a net recipient of capital (other than through the sale of loans or other assets at fair market value) from the Corporation; and

"(III) one such member being elected without regard to the restrictions in clauses (i) and (ii).

"(ii) Each such bank shall have the right to cast one vote to fill each such vacancy without regard to the number of voting shares owned by such bank.

"(B) two members shall be appointed by the Chairman of the Farm Credit Administration Board.

"(2) Members appointed by the Chairman under paragraph (1)(B) shall be selected from United States citizens—

"(A) who are not borrowers from, shareholders in, or employees or agents of any institution of the Farm Credit System; and

"(B) who are experienced in financial services and credit.

"(3) The Farm Credit Administration Board shall, in its sole discretion and for purposes of the election of directors to the Capital Corporation only, project whether—

"(A) institutions within a district are or will be a net contributor of capital to the Corporation, or

"(B) the institutions within a district are or are expected to become net recipients of capital from the Corporation.

"(4) The Farm Credit Administration Board shall issue regulations providing for fair and equitable representation of all public and private interests on the Board of Directors of the Capital Corporation. The bylaws of the Corporation shall prescribe the procedures, established pursuant to regulations issued by the Board, under which directors of the Corporation will be nominated and elected.

"(5)(a) Notwithstanding paragraph (1), in the event the Secretary of the Treasury purchases any obligation of the Farm Credit System Capital Corporation under section 4.28J, and for so long as such obligation remains outstanding, the Board of Directors of the Capital Corporation shall be expanded by two members, of which—

"(A) one member shall be appointed by the Secretary of Agriculture; and

"(B) one member shall be selected by the other members of the Board of the Capital Corporation, including the appointee of the Secretary of Agriculture, which member shall not be a—

"(i) borrower from, shareholder in, or employee or agent of any institution of the Farm Credit System; or

"(ii) a government employee.

"(b) Members of the Board of Directors shall serve two-year terms, except that, of the members first elected or appointed to the Board of Directors, one elected member and one appointed member shall serve initial terms of one year.

"(c) The Board of Directors shall elect, on an annual basis, a Chairman from among the members of the Board.

"(d)(1) Members of the Board may succeed themselves and may serve until their successors are duly seated.

"(2) Vacancies on the Board shall be filled in the same manner as the vacant position was previously filled.";

(2) On page 21, line 10, strike out "fective only" and insert in lieu thereof "fective for any fiscal year only";

(3) On page 22, between lines 17 and 18, insert a new section 4.28L as follows:

"SEC. 4.28L. TAX STATUS OF CONSOLIDATED OBLIGATIONS.—Consolidated notes, bonds, debentures, or other obligations, the issuance of which is joined in by the Capital Corporation pursuant to paragraph (13) of section 4.28G, shall have the same tax status as provided by this Act with respect to such obligations issued by the banks.";

(4) On page 33—

(A) in line 13, insert "and certificates of territory" after "charters";

(B) in line 21, after "territory", insert ", unless subsequently agreed to by the board of directors of such association or associations"; and

(C) after the period in line 25, insert "Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged other like associations in the district or (ii) discriminated against in the provision of any financial service and assistance (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the association and its member-borrowers.";

(5) On page 35, line 12, insert "regulate" after "and";

(6) On page 37, between lines 5 and 6, insert the following new paragraph:

"(15) Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer of such institutions: Provided, That no salary scale or rate of compensation shall be approved under this provision unless determined to be fair and reasonable.";

(7) On page 38, line 11, strike out "other" and all that follows through "banks" on line 12 and insert in lieu thereof "other than federally regulated financial institutions";

(8)(A) On page 76, line 24, strike out "System" and all that follows through "committee" in line 25 and insert in lieu thereof "System institution shall establish one or more credit reveiw committee(s), which shall include farmer board representation";

(B) On page 77, line 4, insert "When a loan applicant requests review of an adverse credit decision, a majority of persons serving on such reviews committee must be per-

sons who were not involved in making the adverse decision." after "committee.";

(9) On page 79, between lines 2 and 3, insert a new section 307 as follows:

SEC. 307. Each local lending institution of the Farm Credit System established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) shall—

"(1) review each loan that has been placed in non-accrual status by such institution to determine whether such loan may be restructured based on changes in the circumstances of such institution as the result of this Act and the amendments made by this Act; and

(2) notify in writing the borrower of each such loan of the provisions of this section.";

(10) On page 80—

(A) in line 5, redesignate subsection (c) as subsection (d); and

(B) between lines 4 and 5, insert the following new subsection:

"(c) In carrying out the duties and functions specified in subsections (a) and (b), the Governor of the Farm Credit Administration shall serve at the pleasure of the President."; and

(11) On page 84, after line 14, insert the following new section:

"SEC. 607. Section 5.2 of the Farm Credit Act of 1971 (12 U.S.C. 2223) is amended—

(1) by striking out "; APPOINTMENT" in the caption;

(2) in subsection (a)—

(A) by designating the first and second sentences as paragraphs (1) and (2), respectively; and

(B) by amending paragraph (2) (as so designated) to read as follows:

"(2)(A) The seventh member shall be elected by the borrrowers at large in a district.

"(B) For purposes of this section, the term 'borrowers at large in a district' means—

"(i) a voting shareholder of a Federal land bank association and a direct borrower and a borrower through an agency, from a Federal land banks;

"(ii) a voting shareholder of a production credit association; and

"(iii) a voting shareholder or subscriber to the guaranty fund of a bank for cooperatives.";

(3) in the second sentence of subsection (b)—

(A) by striking out "and" before "in the case"; and

(B) by inserting before the period at the end thereof the following: "; and in the case of an election by the borrowers at large, such notice shall be sent to all borrowers at large in the district"; and

(4) by inserting after fifth sentence of subsection (c) the following new sentence: "Each borrower at large shall be entitled to cast one vote.".

(12) On page 14, line 10, strike out the following: "of the loss of the use of the accumulated net worth of their institution".

(13) On page 14, line 22, strike out the following: "taking into account the relative rates and terms available to them prior to investments in the Capital Corporation".

On page 20 of the House engrossed amendment, strike out lines 15 and 16, and insert in lieu thereof the following: "System institutions, (3) the salaries and benefits of the senior executive officers of System institutions (except associations) will be frozen, such freeze to remain in".

ADDITIONAL STATEMENTS

SENATOR BIDEN'S ADDRESS ON THE ROLE OF ADVICE AND CONSENT

● Mr. SIMON. Mr. President, I submit for the RECORD today a speech given by Senator BIDEN. This speech is an articulate and thoughtful response to the debate that is currently underway between the Attorney General and the Senate over appropriate advice and consent role. This speech raises many of the important issues currently facing the Judiciary Committee and the full Senate. I thought my colleagues would be interested in Senator BIDEN's thoughts in this area. His leadership on this issue has been both vigorous and thoughtful. I am pleased to insert his speech in the RECORD today. I commend it to every Member's attention.

THE ROLE OF ADVICE AND CONSENT IN CONSTITUTION INTERPRETATION

(By Joseph R. Biden, Jr.)

(Quis custodiet ipsus custodes—A Latin Proverb)

When we undertake a critical approach to our basic institutions, we do well to remember the Latin caveat that translates its full impact, through our own language, in our own time, to our own institutions—"Who will keep the keepers?"

No one who aspires to be a member of our profession can ignore the controversy that has erupted recently over the proper role of the Supreme Court in interpreting the Constitution. Like lightning bolts hurled from on high, a thunderous exchange of epithets has taken place between the Attorney General and his friends of the Radical Right and the ordinarily more reticent Justices of the Supreme Court.

I enter an arena contested by such gladiators with some trepidation. But as the Democratic leader of the Senate Judiciary Committee, I have a special responsibility to speak to these matters of the Constitution and of its future as interpreted by the Supreme Court. First, our Committee is charged with oversight of both the Department of Justice and the Supreme Court, and second, through our Constitutional responsibility to advise and consent to Presidential nominations, we stand as gatekeepers to both the Department and the Court.

I want to begin tonight by briefly restating the controversy and summarizing my initial reactions to the arguments on both sides. I will then place the debate within the context of the major tendencies in American jurisprudence. Next, I will attempt to demonstrate how the Radical Right has historically reflected one extreme in American jurisprudence.

It is also my judgment that the Radical Right here is attempting to take one more step in its revisionist agenda, an agenda that it has pursued not only in the current Administration, but throughout the past hundred years. In addition, I believe that those who have rushed to the defense of the Constitution, the Bill of Rights and the Civil War Amendments have also been tempted to over-react.

Finally, I will argue that the proper approach to the delicate problem of interpreting the Constitution requires a middle road and that a similar approach is necessary when I exercise my responsibility as a Senator to advise and consent. I believe that a moderate approach on both questions is the best hope for thwarting the Radical Right and for preserving the independence of the judiciary and the integrity of the Constitutional process.

Let me begin by reviewing the controversy itself:

Attorney General Edwin Meese, in his address before the American Bar Association last summer, offered a public critique of the recent work of the Supreme Court. For the Attorney General, the Supreme Court is expected to resist political efforts to depart from the literal provisions of the Constitution. The text of the Constitution and the original intention of those who framed it should, he said, "be the judicial standard in giving effect to the Constitution."

Applying that standard, the Attorney General then found that the Court, as he put it, "continues to roam at large in a veritable Constitutional forest." To his mind, the "founding generation" would have viewed the Court's modern interpretation of the First Amendment as "bizarre," and as a remedy for such judicial extravagance, he called for a "Jurisprudence of Original Intention," arguing that, in his words, "a Constitution that is viewed as only what the judges say it is, is no longer a Constitution in the true sense."

Associate Justice William J. Brennan, in an address at this university last month, offered an apparent public response to the Attorney General. Justice Brennan's language is too finely textured to admit of easy summary. It must be read to be understood, but his points are powerful.

For Brennan:

"(The) phrasing (of the Constitution) is broad and the limitations of its provisions are not closely marked. Its majestic generalities and ennobling pronouncements are both luminous and obscure. This ambiguity, of course, calls forth interpretation . . ."

Nevertheless, he added, "when Justice interpret the Constitution, they speak for their community, not for themselves alone. Justices are not Platonic guardians, appointed to wield authority according to their personal moral predilections."

Justice Brennan specifically rejected a judicial philosophy that was rooted in a doctrinaire "intention of the Framers." It was, for him, "arrogance cloaked as humility," whose "political underpinnings . . . should not escape notice." It reflects, he said, "a blind eye to social progress" and a presumption against "the claims of the minority . . . against the majority." And he added that,

"We current Justices read the Constitution in the only way that we can: as Twentieth-Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be what do the words of the text mean in our time?

He then illustrated his theory of judging by articulating his continuing objection, under the Constitutional prohibition against cruel and unusual punishment, to capital punishment. He expressed his "hope to embody a community striving for human dignity for all, although perhaps not yet arrived."

From the perspective of a legislator, I offer another view, differing from those of both our Attorney General and the senior Associate Justice of the Supreme Court. Far from finding the Supreme Court's interpretation of the First Amendment as circum-

scribing the powers of the national and state governments "bizarre," I find bizarre itself the notion that the original intent of the Framers of 1789 could govern all specific applications of various provisions of the Bill of Rights.

Attorney General Meese's strictures, for example, were aimed at recent decisions of the Supreme Court dealing with the delicate question of religion and the public schools. No matter how one thinks those decisions should have come out, it ought to be clear beyond serious debate that the state of mind of the men of Philadelphia of 1787 can not be used to resolve the question, for the colonists who fought the War of Independence 200 years ago and were then struggling to make a new country had, at that time, no general public school system. Burke, whose conservative credentials are unimpeachable, put it well:

". . . nothing in progression can rest on its original plan. We may as well think of rocking a grown man in the cradle of an infant."

Wrongly, the Attorney General somehow appears to believe that the Founding Fathers intended that their specific ideas rather than their general words should govern the future.

But a large majority of the delegates to the Constitutional Convention were lawyers. Good lawyers then learned in apprenticeship training, as good lawyers now learn in the first semester of law school, that words are logical universals that necessarily apply beyond the specific state of mind of those who speak them. The Founding Fathers, in fact, intended that their children would be governed, not by their specific thoughts, but by the ideals that were embodied in their words—a thought that Marshall voiced by saying that "We must not forget that it is a Constitution that we are expounding." Holmes spoke to the same point:

"(W)hen we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being, the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. (The Constitution) must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

Attorney General Meese purports to take issue with Holmes' position; and he asserts a Philosophy of Original Intentions. In fact, the Attorney General's real position, it seems clear to me, is a little-disguised social activism of the Right—in which a minority perspective is being imposed upon a majority. Far from being principled, it is an effort to re-write in his own image our most basic law.

If he thought his position through from his own perspective, would he really want to limit the law-enforcement powers of the FBI in its fight with illegal-drug traffickers by an 18-Century understanding of the administration of criminal justice? If the Attorney General really believed in a Philosophy of Original Intentions, he would be filing briefs in the Supreme Court, seeking to overturn Chief Justice Earl Warren's opinion in *Terry* v. *Ohio,* which upheld "stop and frisk" practices employed by modern urban police officers, practices which could not be justified if the Fourth Amendment's command that searches and seizures be reasonable were read in the light of 18th Century standards. In the 18th Century, no urban police force existed—policing was accomplished, if at all, by a constable system whose power to arrest was limited by probable-cause standards. The same could be said about federal organized-crime "Stings" and drug-enforcement "buy-bust" techniques—which are essential to modern law enforcement but were unknown in the 18th Century.

Assuming that the Attorney General is serious about a Philosophy of Original Intent, it is, in fact, the discredited philosophy of Chief Justice Roger Brooke Taney in the infamous *Dred Scott* decision. The Supreme Court never sank so low in the esteem of the American people as it did after Taney's *Dred Scott* decision, in which the Chief Justice offered his view that the Missouri Compromise of 1820 was unconstitutional. Since by the light of the original intent of the Framers, blacks held in slavery were property, Congress was without power to recognize their human dignity and to free them from bondage.

Taney was not himself a believer in slavery—he had, in fact, freed his own slaves—but he wrote blacks "had no rights which the white man was bound to respect." Listen to Taney in 1857 and reflect on what the Attorney General has said in 1985:

"(The Constitution) must be construed now as it was understood at the time of its adoption. It is not only the same in words, but the same in meaning . . . and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its Framers, and was voted on and adopted by the people of the United States."

That was wrong, tragically wrong, in 1857—it is both wrong and wrong-headed in 1985!

But I find that I also can not agree with Justice Brennan. His words reflect my thoughts, but his actions, at least in one area, betray another view. His choice of capital punishment to illustrate the application of his philosophy marks the crucial difference between us. Like Justice Brennan, I am opposed to capital punishment. I, too, value human life and esteem human dignity. The death of an innocent man wrongfully convicted is too high a price to pay in a free society.

As a legislator, I vote, therefore, against capital punishment—but also as a legislator, I submit my position, along with my other views, to the voters of Delaware for acceptance or rejection. If I were a judge, I would not substitute my personal judgment for that of the people's elected representatives. To do otherwise would make the Constitution, in Justice Holmes' words, "the partisan of a particular set of ethical . . . opinions . . ." In our society, capital punishment is a political, not a Constitutional question, my personal values notwithstanding. Putting aside its administration, nothing in the intent of the Framers, in the text of the Constitution, in its subsequent interpretation by the Supreme Court, or in contemporary social values warrants making the political issue of capital punishment per se a Constitutional question.

Attorney General Meese's position is clearly extreme and unacceptable. Justice Brennan's position is not extreme, but if exaggerated could represent the opposite pole. Taken together, these extremes represent two persistent tendencies in our jurisprudence. Either pole runs the risk of creating the conditions that preclude a viable constitutional law.

These two broad tendencies reflect two different philosophies of judging, which are, at their heart, philosophies of interpretation—of the Constitution, of statutes and of precedent. The first jurisprudential tendency has seen judicial interpretation as constrained by legal rules and institutional principles that compel an objectively correct reading of a legal text. The second has seen judicial interpretation as reflecting subjective value choices that may be freely poured into any legal text, whose open-textured words can always soak up the added content.

The first embodies a methodology consciously taken from a Newtonian view of natural science that makes the judicial process a matter of the deductive application of pre-existing rules within the context of fixed institutional constraints. It traces its heritage to John Austin, who sought to separate law, a positive science, from morals, which, to him, were rooted in individual preferences. Austin's view of jurisprudence helped give rise in this country, in the 19th and early 20th Centuries, to legal formalism. It found its highest judicial embodiment in such decisions by the Supreme Court as *Lockner* v. *New York,* in which the Court, on "liberty of contract" grounds, over the dissent of Mr. Justice Holmes, held that legislation that provided for a 10-hour day for bakers was prohibited by the Constitution. The legal formalism of the 19th Century, of course, is no longer openly defended. Today, the objective approach to legal interpretation is best exemplified in the less pretentious and more intellectually defensible writings of men like Professor Herbert Wechsler.

The second tendency in modern jurisprudence, which emphasizes subjective value choices and the indeterminate character of interpretation, is reflected in legal realism, which arose in reaction to legal formalism. The realists were skeptical about the process of finding and relying upon both rules and facts. For men like Karl Llewellyn, legal judgments were ultimately molded by extralegal grounds. The legal realists' Constitutional philosophy may best be summed up in the dictum of then-Governor of New York and later Chief Justice Charles Evans Hughes, although he was not a realist himself:

"We are under a Constitution, but the Constitution is what the judges say it is."

For me, the choice between the illusory objectivism of Attorney General Meese and the personal subjectivism that Justice Brennan reflects on capital punishment is a false dichotomy. Interpretation ought not to be wholly objective or wholly subjective—it must be both. Cardozo said that, try to be as objective as we please, we can never see "with any eyes except our own." But what we must see in the process of Constitutional interpretation is not our own values, but the values of our community, as expressed in its authoritative legal materials—its Constitution, its statutes and its precedents. The law must be a means of holding accountable, not only those who violate it, but also those who interpret it, not mechanically as it was mistakenly thought in the 19th Century, but through the honest process of men and women doing their best under difficult circumstances and trying times.

Justice Frankfurter, an academic liberal but a conservative judge, understood that:

"(Interpretation requires) allegiance to nothing except the effort, amid tangled

words and limited insights, to find the path through precedent, through policy, through history, to the best judgment that fallible creatures can reach in the most difficult of all tasks: the achievement of justice between man and man, between man and state, through reason called law."

Attorney General Meese appears to be mesmerized by an illusion when he seeks security in an objective philosophy of judicial interpretation. Human justice will always remain the work of human hands. Greek mythology portrayed the goddess Themis with the sword of justice in her right hand and the scales of justice in her left. We have, however, no gods to wield our sword of justice or to weigh our scales of justice. That we must do ourselves. This nation's vision of freedom under law must not be perverted by false objectivism nor distorted by an unbounded subjectivism.

As Democratic leader of the Senate Judiciary committee, I have had to keep up with the Agenda of the Radical Right, for, unfortunately, they in large measure determine what comes before the Committee. I have concluded that Attorney General Meese's new initiative—which for want of a better term, I'll call radical judicial activism—is a part of the continuing evolution of the tactics of the Right.

Early in the first term of the present Administration, the Radical Right decided to change its legislative tactics. They were losing the battle on their social agenda, because they had run head-on into disciplined constituencies organized around those issues—the women's movement, the civil rights movement and mainline religious groups. So the Radical Right shifted tactics and turned instead to a "procedural" attack. Among other things, they set out to repeal the Incorporation Doctrine, Federal Question Jurisdiction and the Exclusionary Rule.

In pursuing this course, the Radical Right was acting on a shrewed political insight—it's a lot easier to win on civil liberties issues than on civil rights issues, mainly because little active public interest is reflected in these matters, but also because few constituencies—the ACLU excepted—have organized specifically to defend our basic civil liberties.

But probably the most important reason is that the Radical Right figured out that it might be a lot easier to win the fight in the judiciary. With their friend Attorney General Meese in the Justice Department—as the author of the Administration's position in the Supreme Court through the Solicitor General's office and as the key actor in filling vacancies on the Court—they could, in effect, judicially enact an agenda that they could not get through the Congress.

None of this should come as a surprise. Like other radical groups of every political complexion, the Radical Right has spent a generation building its constituency largely by spelling out, repeatedly and in detail, what it intended to do. Now, in the classic manner of all such groups when they achieve power, they are in relentless pursuit of that well-advertised agenda, recklessly persuaded that their ends justify the use of any means.

But abuses of the Court and the legal process have not been the sole province of the Radical Right. Some of my heroes on the Left were guilty of similar abuses. Thomas Jefferson ran for office on a platform of repeal of the infamous Alien and Sedition Act as a violation of freedom of speech—and then used the statute to jail his enemies once in office. Andrew Jackson exceeded his authority when he deliberately refused to enforce an order of the Supreme Court upholding the rights of native Americans. Abraham Lincoln suspended the writ of habeas corpus and jailed those who spoke out against the draft. Theodore Roosevelt advocated popular referendums on specific judicial decisions because they were thwarting his preferred policies. And his cousin, Franklin Delano Roosevelt, undertook his infamous court-packing plan to implement the New Deal.

As the Attorney General's position in the current controversy makes unmistakably clear, the Radical Right intends to implement its revolution by creating a new establishment here in Washington, by putting their people in the key positions, in all branches of government, to continue implementing their agenda long after their President is gone.

A key element of that agenda is repeal of the 60-year-old Incorporation Doctrine that provides for the application of the bill of rights to the states. But even turning the clock back to 1925 would not take the Radical Right nearly as far as they mean to go. Their ultimate goal is to reverse the moral outcome of the Civil War and and to overturn the post-Civil War Constitutional Amendments providing for such bothersome protections for human dignity as "equal protection" and "due process." What troubles the Radical Right in particular is that in enacting these Amendments, the people changed the basic character of their Constitution—for the first time, through that constitution, they explicitly restricted not only the power of the federal government but also the power of the states. The Radical Right means, in fact, to overturn the very Constitutional basis of the modern jurisprudence that protects our basic freedoms.

I fear that the Radical Right has about it the vacant stare of the zealot and the acrid odor of burning books!

Within such a context, the advice and consent function is for me the most difficult issue of all. As a politician deeply offended by the Radical Right's agenda, I am tempted to block its enactment by any means—especially where I am in the best position to exert influence—advising and consenting on nominations.

I am certainly sobered by the recognition that by the end of the President's second term, he will probably have appointed well over half of the lower federal judiciary, and I am even more concerned about the future of the Supreme Court. Next year, at the average age of 72, the members of the Supreme Court will have attained a collective longevity that will eclipse the previous record set during the era of Franklin Delano Roosevelt—who appointed seven new justices in four years. Even two new appointments in the next couple of years could dramatically alter the makeup of the Supreme Court.

But whatever happens in the President's last term, the term of the next president will surely be crucial to the future of the Supreme court. Clearly, this President—or the next—will have the opportunity to leave an enduring mark on the nation's highest court, for better or worse. To make sure it is for the better, we must recognize that Chief Justice Hughes was wrong to suggest that the "Constitution is what the judges say it is." It is not—it is what our Constitutional process makes of it.

Here we are obliged to answer that ages-old question, "Who will keep the keepers?"

I answer, "We will—as the Constitution directs."

Judges are nominated by the President. The President reflects in his nominations what he sees as the national interest. Along with the Vice President, only he stands for election before the whole people.

But the President must secure the advice and consent of the Senate. In doing its duty to advise and consent, the Senate has traditionally—and properly—asked three questions:

1. Does the nominee have the intellectual capacity, competence and temperament to be a Supreme Court Justice?

2. Is the nominee of good moral character and free of conflicts of interest?, and

3. Will the nominee faithfully uphold the Constitution of the United States?

The President's power to appoint is not made subject to the power of the Senate to advise and consent so that individual Senators might substitute their judgments for the President's, but so that we might check abuses of the Presidential power.

Some argue that the Senate as a whole reflects the entire nation over a longer period of time than one Presidential election, and that it, therefore, should exercise a power of appointment co-equal with the President. But the Senate does not vote as a whole—it votes Senator by Senator. My vote can only reflect who I am; it can not reflect who others are. I see with my own eyes; I vote with my own voice. I am, in fact, only one Senator—from Delaware, elected by one segment of the nation's population at one particular time. No Senator is the President of the United States, elected by the people of the United States, among other things, to nominate men and women to judicial office.

The President is entitled to reflect in his nominations his view of the national interest. But Congress must act to check any president from overstepping his electoral mandate. He is not, for example, entitled to assume that a mandate to strengthen our national defense justifies an American invasion of Nicaragua. He is not entitled to assume that a mandate to eliminate wasteful federal spending justifies the dismantling of essential federal services for the poor. And he is not entitled to assume that his power to nominate federal judges justifies the selection of candidates exclusively from the ranks of the Radical Right. In 1980 and in 1984, the American people knew they were electing a conservative President, but they did not vote for a new federal judiciary composed of a pack of ideologues obediently responding to the whip of the Radical Right.

The Constitution requires a President to select nominees to the federal judiciary from the mainstream of American jurisprudence. And just as we in the Senate would check military adventurism or neglect of the needy, our role in the process of judicial nominations is to check and balance the excesses of Presidents. Nor is the President entitled to extract from any nominee, either directly or indirectly, a pledge of a vote on a specific issue. No nominee who would give such a mortgage on his or her intellectual integrity is fit to sit on the Supreme Court. We are, therefore, entitled to inquire of each nominee if such a pledge has been given, but we are not entitled to extract such a pledge ourselves. If we begin to exercise such a power, there will be then no principled place where we can draw the line.

But I must add, in the same breath, that it would be, in my judgment, a misapplication of principle to apply these three questions too narrowly, and I do not do so. I would not, for example, give my consent to

a dedicated Communist, who would read private property out of the Constitution. I would not give my consent to a racist or sexist who would read minority rights out of the Constitution. And I would not give my consent to a radical revisionist, who would read the Civil War Amendments and a century of progressive jurisprudence out of the Constitution. Such a nominee would not represent the mainstream of American thought.

But by the same token I am not going to apply a litmus test on specific contemporary issues to each nominee who comes before the Judiciary Committee—first, because I believe that Justice O'Connor was right in believing that to answer such questions would jeopardize her independence on the Court; second, because if we make every Supreme Court nominee a hostage to hotly contested political questions, we are going to shift the internecine warfare of the social agenda to the Supreme Court, where the first victim will be the judicial independence upon which the continued defense of the Constitution depends; and third, finally and perhaps most important of all, I have come to believe that taking a seat on the Supreme Court tends to be a transforming experience.

For I have such reverence for the Court that I believe that a new justice, donning those robes and walking behind that podium, must—like Thomas A. Beckett becoming Archbishop of Canterbury—discover that an old loyalty has been transformed into a newer allegiance—to the Constitution! Sitting on such a bench, joined by your fellow justices and in a line with such giants of our jurisprudence as Marshall, Holmes, Cardozo and Brandeis, can not but leave you touched and changed.

I believe that our Constitutional system ultimately relies on faith in people, checked by process. And I refuse to be part of any effort that would undermine that faith or abuse that process. I subscribe to Edmund Burke's observation that "the constituent parts of a state are obliged to hold their public faith with each other . . . otherwise, their competence and power would soon be confounded, and the law be left but the will of a previling force."

The late Alexander Bickel, who came himself to follow the teachings of Burke, reinforced that argument:

"(N)o society, certainly not a large and heterogeneous one, can fail in time to explode if it is deprived of the arts of compromise, if it knows no ways to muddle through. No good society can be unprincipled; and no viable society can be principle-ridden."

Pulled in two directions, we face the risk of destroying our Constitutional process in the effort to save it.

That we must never do.

Thank you.●

NATIONAL WOMAN'S PARTY

● Mr. DECONCINI. Mr. President, in recent weeks we have become increasingly pressed for time to meet the demands of our congressional duties. In addition to these duties, we have become involved with the rush of the holiday season, hence, we sometimes overlook the great individuals who make remarkable contributions to our society. One such individual is suffragist Alice Paul.

Being a proponent of women's rights, I would like to take this opportunity to pay tribute to the founder of the National Woman's Party, Alice Paul. Alice Paul made a significant contribution to the women's movement in this country, and I would like to invite my distinguished colleagues to join in the National Woman's Party tribute by taking part in the activities planned for the celebration of her 101st birthday next month.

I ask that a statement on Alice Paul be printed in the RECORD.

The statement follows:

TRIBUTE TO ALICE PAUL

The National Woman's Party will celebrate the 101st birthday of its founder, suffragist Alice Paul, who wrote the Equal Rights Amendment in 1923, at the historic Sewall-Belmont House, headquarters of the National Woman's Party, on Friday, January 10, 1896, from 6 p.m. to 8 p.m.

Alice Paul was the catalyst in getting the 19th Amendment, which gave women the right to vote, signed into law in 1920. To commemorate the birthday and achievements of this great American historical figure who contributed so much to the cause of equality for women, the National Woman's Party will honor The Honorable Clare Boothe Luce, writer, publisher, Congresswoman, statesperson and former Ambassador, with the third "Alice Paul Pioneer Achiever Award" for her many and varied accomplishments.

Each year the National Woman's Party celebrates the life and achievements of Alice Paul as symbolizing the best of American and democratic values—her lifelong work and devotion as one of the pioneers in the cause of eliminating discrimination against women—as an affirmation of human rights and human dignity.

In 1985 the National Woman's Party honored Dr. Sally K. Ride and Associate Supreme Court Justice, Sandra Day O'Connor with the first and second "Alice Paul Pioneer Achiever Award" at separate ceremonies at the historic Sewall-Belmont House.

Alice Paul was born January 11, 1885 in Morristown, New Jersey, and died July 9, 1977.●

NOMINATION OF JOHN T. NOONAN TO THE NINTH CIRCUIT COURT OF APPEALS

● Mr. MATHIAS. Mr. President, the nomination of John T. Noonan to the ninth circuit court of appeals presents the important question of whether an advocate of a controversial issue can put aside his personal beliefs in order to apply the law and the Constitution fairly and equally to all who may appear before him. Because Professor Noonan's history of vigorous advocacy of one side of the abortion controversy raised this issue, I discussed this difficult question with him at his confirmation hearing on November 6, 1985.

I would like to share with my colleagues, a transcript of the portion of that hearing that contained our discussion.

The transcript follows:

EXCERPT—CONFIRMATION HEARING OF JOHN T. NOONAN, SENATE JUDICIARY COMMITTEE, NOVEMBER 6, 1985

Senator MATHIAS. As a student of Dr. Samuel Johnson, you will be familiar with the career of Edmund Burke. You may remember that Edmund Burke said that "A representative owes to his constituents his industry, his knowledge, his experience, his communication, his intercourse, but most of all he owes his judgment." And if he submits his judgment to theirs, then he is depriving his constituents of the thing which is most important that he owes them.

That's a rough paraphrase, but not too far from what Burke said.

We are in a little paradox here, because Senator SIMON and I are exhorted by Burke to use our judgment, even as against the wishes of our constituents, whereas you are nominated for a judgeship in which in many matters we would expect that you would not be guided by your personal opinions and judgment but would be guided by the law, and would be applying the law as it is written and as it is understood by the superior courts.

And I am sure it is not new to you to have heard what Ms. Rogers just testified, the concern that you have very strong opinions, particularly in the field of population control, birth control, family planning, abortion, in which it would be difficult for you to apply the law, if the law were in fact contrary to strongly held personal views of your own.

How do you feel about that?

Mr. NOONAN. Senator, I feel there is a very sharp difference between the role of advocate and the role of judge. I suppose Burke is as good an example as anyone of an advocate who was wholehearted and even passionate in his advocacy, and I would have felt as doing less than I could if I had been less than wholehearted in the causes in which I have been an advocate.

But when one takes off the garb of an advocate and puts on that of a judge, it's a very different role. And I would be surprised and ashamed if I became an advocate as a judge. I feel a strong constraint to follow the law, to follow the precedents—and that is something very different from my role as advocate.

Senator MATHIAS. If a case were before you—and I want to be careful about this, because I think it's unfair to ask a judicial nominee to prejudge what he or she would do in a given case—but if a case right on the point of Roe versus Wade were before you, do you feel that you could participate objectively in such a case, or do you feel that it would be better to recuse yourself in such a case?

Mr. NOONAN. I feel, if the case was within the area of Roe against Wade, or one of the other Supreme Court precedents, of which now there are several in the abortion field, that I would not have any choice but to follow the precedent. And as someone who has spent a lot of time teaching legal ethics to students, I would feel absolutely delinquent if I couldn't follow the law.

I think that answers that question.

Senator MATHIAS. Of course, with courts, as with legislators, there is also the question of the perception of what you do as well as what you do. And there are cases in which Members of the Senate may recuse themselves from participating, even though they may be confident that they can render a conscientious decision on the subject, but because there is some perception of the in-

terest on their part, that they would, under the Senate Rules, ask to be excused from voting on that subject.

Mr. NOONAN. Well, I think that's absolutely correct, and, of course, I would take very seriously any representation that someone did not think that they could receive a fair hearing.

Now, I do think—and I've thought about this a good deal—that the American tradition is not trying to insulate judges from prior political experience or prior political stands. It's very different from the Italian tradition of the German tradition where judges make a career and are thereby pure of any partisan positions before they go on the bench.

But to think of someone from academe—and I am afraid I will have to use examples from the Supreme Court, because they are known to me and known to everyone, but I think of Felix Frankfurter who took a very strong stand on labor injunctions and criticized them very severely, and yet certainly didn't feel disqualified from deciding cases involving labor injunctions after he want on the bench. Or to take a person even more eminent in the realm of civil rights, I think of Thrugood Marshall. I do not believe that Justice Marshall felt that he was disqualifed from deciding cases involving the civil rights of minorities because he had been the whole-hearted and even passionate advocate of minorities before he went on the bench.

Senator MATHIAS. You almost stated a case for Dr. Johnson's famous observation: "Sir, a man is not upon oath in lapidary inscriptions." and I suppose "lapidary inscriptions" fall within the general rule of advocacy.

When should a judge recuse himself, as an academic matter?

Mr. NOONAN. Well, it's very clear, of course, theat where he has a financial interest, where he has a personal interest and a relationship.

Sentor MATHIAS. Clearly. That was the rock on which Judge Haynesworth's ship foundered.

Mr. NOONAN. Oh, yes. Then I think, after that, one has to look at it case by case. I do think there is a certain danger that we all realize in our common law tradition of making broad statements—and you wait till you see the case, the contours, the briefing, before you actually say, well, in this case someone is too involved to decide.

But I do believe that everyone is entitled to an impartial judge and to a judge who they feel to be impartial.

Senator MATHIAS. You have mentioned Thurgood Marshall. It is my understanding that he does in fact recuse himself in any case in which the NAACP Legal Defense Fund is a party. Is that your understanding?

Mr. NOONAN. I have actually not searched his record, but I have certainly seen his votes on a number of cases involving the civil rights to minorities.

Senator MATHIAS. I think when the NAACP Legal Defense Fund is a party, he does not participate.

Mr. NOONAN. I think that is certainly an excellent precedent which I would be quite prepared to follow.

Senator MATHIAS. Would you feel that you would follow that precedent in cases in which Americans United for Life were——

Mr. NOONAN. Right, I think that would be a very fair way to look at it, because I have been a director for a number of years, and Americans United for Life has been the legal arm of this particular cause.

Senator MATHIAS. The statute, of course, requires disqualification in any case in which a judge has a substantial interest, has been of counsel, has been a material witness, or is so related to or connected with any party—so it does seem to me that that would be a reasonable rule.

Mr. NOONAN. I think that's a good line, and I would be absolutely ready to follow it.

Senator MATHIAS. One of your seminar courses, I understand, is on being a judge, on judges.

Mr. NOONAN. That's right, Senator.

Senator MATHIAS. And that one of the topics of discussion is what makes a great judge. And if you understand the answer to that question, I think we ought to trade places.

Mr. NOONAN. Well, having looked at ten figures from English and American judicial history, nine of whom at least are generally rated as great, I have tried to form a composite image. But it's very difficult to——

Senator MATHIAS. What are the common qualities of a great judge?

Mr. NOONAN. I think one is courage, another is power of expression and clarity of expression, another is willingness to be immersed in the facts, and another is caring about the law, caring about the result. Those are four major qualities.

Senator MATHIAS. Let me urge Senator Simon to join in this at any point at which he wishes to do so.

But let me ask you this question: Where would you place responsibility to younger members of the Bar? Is one of the qualities of a great judge to set an example, to be a model, a teacher, to the oncoming members of the Bar?

Mr. NOONAN. Well, it's my conviction that a great judge is a teacher, that opinions are very much the way that people like Marshall and Brandeis, to name two absolutely preeminent ones, the way they have shaped both the law and lawyers.

And I suppose the written communication is very important, and then, of course, the way they have actually lived their lives—that's important.

Senator MATHIAS. Well, the style of life—in John Marshall's day, of course, when they were riding on circuit and the judges and the lawyers rode together, there was opportunity for a very direct impact on young lawyers. Circumstances of life are somewhat different today, and a little more difficult for a judge to have that kind of a personal relationship with young lawyers.

But I am encouraged to hear that you think that it's an important aspect of life.

Mr. NOONAN. I think I do, Senator.

Mr. MATHIAS. I want this dialog to become a part of the RECORD so that those who are troubled by Professor Noonan's nomination will be aware of the important assurances that he made to the Senate Judiciary Committee. I am satisfied with Professor Noonan's responses and plan to support his confirmation. It is readily apparent that the nominee is a thoughtful and competent expert in jurisprudence who undoubtedly has the intellectual capabilities to hold a seat on the circuit court. He is, I believe, sensitive to the importance of treating fairly every litigant who will come before him, and to the need to step aside in that limited category of cases in which his participation would cloud the atmosphere of fairness.●

THE MILITARY MEDICAL SYSTEM

● Mr. SASSER. Mr. President, during this year I have expressed concern about the problems in the military medical system. At this time I will not recount all the details about problems with licensing and credentialing of physicians, shortages of critical specialists, interservice rivalry, and an overburdened system. All of these problems have led many servicemen and servicewomen to believe they and their families are treated as second-class citizens.

Fortunately, we have seen some progress in addressing the very real problems plaguing the military medical system. I have been particularly pleased with the efforts of the Assistant Secretary for Health Affairs, Dr. William Mayer. The steps he has proposed, if implemented, should help to alleviate the current crisis of confidence that exists in the system.

My primary concern however still remains the issue of accountability in the system. Too often the reports and anecdotal stories have revealed an organization where everyone is in charge but no one is. In my desire to bring greater accountability to the system, I introduced S. 489, a bill to amend the Feres doctrine to allow active duty military personnel to sue for medical malpractice. I am encouraged that the Department of Defense has begun to consider alternatives to address the issue of accountability. As I have stated before, I am open to serious alternatives that seek to bring greater accountability to the system as well as provide our service men and women the opportunity to have their case fully reviewed.

At this time, I would like to share with my colleagues two articles discussing the problems of military medical care.

The first, by Alan Parachini, appeared in the November 10, 1985 edition of the Los Angeles Times. This article about a former Navy dentist highlights the better feelings of neglect and inadequate review felt by military personnel because the Feres doctrine prohibits lawsuits for medical malpractice.

The second story appeared in the Atlanta Constitution on November 24 written by Jim Stewart. I think this article summarizes well the current problems existing in the system. Jim Stewart has covered the military medicine issue for over 4 years. He is a knowlegeable reporter in this area and his insights into the military medical system have been on target

I ask that these articles be printed in the RECORD.

The articles follow:

[From the Los Angeles Times, Nov. 10, 1985]

EX-NAVY DENTIST BLAMES SERVICE FOR HIS AILMENTS

(By Allan Parachini)

WASHINGTON.—Dr. Ed Lampitt, a Missouri dentist who is deaf in one ear, blind in one eye and partially paralyzed on one side of his body, blames the Navy health care system for his condition. On the face of it, it would seem he has a reasonably good case for a medical malpractice suit.

But in a form-letter notification, the U.S. Supreme Court has already told Lampitt's San Diego lawyer that the suit will never be tried because Lampitt was on active duty when catastrophe struck.

Last summer, the Supreme Court sent the curt notification to James Milliken, the lawyer representing Lampitt in his battle with the San Diego Naval Hospital, saying that it refused to hear an appeal of two lower court rulings that Lampitt could not sue the Navy over his care under terms of a 1950 high court ruling. That verdict, in a case called Feres vs. U.S., established the doctrine that stripped active duty service personnel of any right to take court action against military doctors.

Only four years before, U.S. citizens had been given the right to sue the government. In the Feres case, the high court was trying to resolve questions about how the new laws applied to military personnel. The plaintiff in Feres (pronounced "fairies") was the widow of an Army enlisted man who burned to death in a barracks fire. Two companion cases involved medical care. The collective decision established what has come to be called the Feres Doctrine.

WREAK HAVOC WITH THE SYSTEM

In essence, the doctrine holds that if service personnel had the right to sue, they could play havoc with the structured system of military discipline by filing court actions against their commanders whenever they were given orders they did not like.

Lampitt's ordeal began in 1970 when, as a pilot trainee, he was washed out of flight school because there was something apparently wrong with his hearing. A flight surgeon, Lampitt recalled, told him he should simply stop listening to rock music. "Therein lies the first inkling that something was wrong," Lampitt said.

Within a year, he left the Navy but rejoined when he started dental school and applied for a Navy scholarship. He was still having hearing problems but had learned to compensate. As time went on, he noticed he was having trouble with his balance, too, but in repeated visits to Navy physicians, Lampitt was assured that nothing was seriously wrong.

It was not until 1978—eight years after the initial examination—that Lampitt learned the truth. He had a slow-growing tumor—a rare, noncancerous variety called acoustic neuroma—between his right ear and his brain. Had it been discovered in 1970, Navy doctors would testify under oath later, Lampitt's tumor could have been easily removed. But the delay had allowed the tumor to grow so big that Lampitt's life was in danger.

By then, he was stationed aboard the San Diego-based repair ship Jason. When the diagnosis was finally made, Lampitt's case came under the purview of Dr. Lance Altenau, Lampitt's San Diego Naval Hospital neurosurgeon, who called in a civilian consultant, Dr. Jerald V. Robinson, the only acoustic neuroma specialist in the city.

Court and Navy records show Altenau and Robinson agreed two operations would be necessary. Both doctors participated in the first sugery, which went uneventfully in February, 1979, and when a second surgery was scheduled in mid-March, both Lampitt and Robinson said in sworn court documents, it was their understanding Robinson would be there. He wasn't. In an affidavit, Robinson said Altenau's office didn't call to notify him until the night before the operation was scheduled. He was already committed to other operations.

In a telephone interview from San Diego, where he is now in civilian practice, Altenau told a different story. He said he was told by his secretary that Robinson would attend and that, when Robinson was not there when it was time for the surgery to begin, he assumed Robinson was en route, began the case and then had to press on alone.

On the operating table, Lampitt's condition quickly deteriorated. The tumor had grown into his brain stem and, as the surgery continued, brain tissue affecting Lampitt's hearing, vision and movement was extensively damaged. It would require a court hearing to determine fault since some acoustic neuroma surgeries have poor outcomes—no matter what—and there are disagreements among doctors involved about whether Lampitt's problems were preventable or unavoidable.

It was months before Lampitt could propel himself even in a wheelchair and he was left permanently blind and deaf on the right side. His paralyzed right eye deteriorated, Lampitt said, because nurses and corpsmen failed to keep the cornea moist.

Eventually, the Navy permitted Lampitt to have a civilian operation in which a spring was implanted in his right eyelid so he could blink but the Navy refused to permit a cornea transplant—a decision that Lampitt's ophthalmologist, Dr. Robert Levine, said in a telephone interview he found mystifying. "It really is worth a shot," Levine said. "There (still) is a reasonable chance it would succeed." Lampitt said that when he told his superiors he wanted to pay for the cornea surgery himself, they told him they would court-martial him if he had the operation.

UTTER DISBELIEF

The final straw came when a Navy medical review board ruled that Lampitt was fit to return to active duty. The decision so enraged Rear Adm. J.J. Thomas Jr., head of the Navy Dental Corps regional office, that he filed a harsh memorandum saying he viewed it with "utter disbelief." After a second hearing, the Navy reversed itself and awarded Lampitt an 80% retirement disability pension. In 1981, 11 years after his tumor should have been recognized, a Navy medical consultant testified in the second hearing, Ed Lampitt got his disability discharge.

He filed suit, knowing he would almost certainly lose the fight under the Feres Doctrine because, he said, "I realized the situation I had been through, and I realized the travesty of justice of not allowing people to do anything about this. I am trying to prevent the next 18-year-old kid (who has a medical problem in the service) from ending up in the grave. I realize this is an ongoing problem, not an occasional one."

The Pentagon, defending Feres today, has argued repeatedly in the last six months that chaos would result from granting servicemen the right to sue if they are mistreated by doctors and that letting them take such claims to court would cause morale to drop. Pentagon top officials also contend that because a serviceman who is injured by military doctors can become eligible for a disability discharge that pays modest pension benefits for life, money compensation isn't necessary.

The Defense Department position angers Ed Lampitt, whose disabilities have made it impossible for him to obtain health insurance that could pay for the cornea transplant.

Slowly, he has recovered from the effects of the paralysis so he can earn a living practicing dentistry, but any further serious health problem could ruin him financially, he said. (His Navy pension is $1,758 a month.)

Lampitt's story is not unlike those of dozens of former service personnel who say they have been victimized by military medicine. An outpouring of such tales during the last several months has already prompted the House to pass a bill that would reverse the Feres Doctrine and grant servicemen the right to sue for malpractice under certain conditions.

Under the House measure, sponsored by U.S. Rep. Dan Glickman (D-Kan.), military personnel could sue if they had suffered provable physical injuries during medical treatment. That would prevent, Glickman said in an interview here, litigation resulting, for instance, from a physical examination in which a doctor ruled a prospective pilot unfit for flight training. Also prohibited would be any litigation related to wartime treatment. Only medical care rendered in the continental United States would be covered.

PASSED OVERWHELMINGLY

Glickman held a series of hearings on the House measure before it passed overwhelmingly last month. In the Senate, a similar bill sponsored by Sen. Jim Sasser (D-Tenn.) is bottled up in committee and, according to Sasser aides, is unlikely to emerge for floor debate this year. There has been speculation that, as the Senate races to adjournment between now and Christmas, an attempt may be made to attach the Sasser bill as a rider to one of the Defense Department appropriations measures that still must come up for final action.

Glickman and Sasser dismiss Pentagon arguments against the bill as unrealistic. In an interview, Glickman noted that the spouses and children of active duty personnel already are permitted to sue, as are retired military personnel and their immediate families who are allowed to use military health facilities for all of their health care.

Sen. Pete Wilson (R-Calif.), who has also held subcommittee hearings on the general problems of military medicine, and Glickman both said they are certain President Reagan would veto the bill if it passed the Senate. Defense Secretary Caspar Weinberger—as well as top medical officials of the Pentagon and all three services—have vocally opposed it. I71[From the Atlanta Constitution, Nov. 29, 1985]

[From the Atlanta Constitution, Nov. 29, 1985]

MILITARY MEDICINE EXPECTED TO DELIVER HEALING AMID WAR, KILLING

(By Jim Stewart)

WASHINGTON.—A smiling Army nurse in Wurzburg, West Germany, carried my eldest son from the delivery room 15 years ago wrapped in a soft white cloth laundry-marked "U.S." No finer care could have accompanied him into the world.

I later met the doctor who delivered him. He was a young man who, like myself, had

been swept into the service by the Vietnam War. Like other drafted physicians I came to know, he was very unmilitary-like. He wore tennis shoes with his dress green uniform when it pleased him and frequently would neglect to pin on the silver bars that denoted his rank as a captain.

It was in Vietnam a year later that I had another close experience with Army doctors. After running out of my own hygienically sealed C-rations in the field with Vietnamese troops, I accepted an offer to share their food. My unappreciative gut was squeezing blood from itself by the time I was helicoptered to the DaNang Army Hospital a day later.

Such pain seemed inconsequential compared to the scene that greeted me in the Quonset hut that served as the emergency room. There, GI doctors were bustling over a group of grievously wounded Vietnamese civilians, some of them children. Still, I was seen to quickly and released three days later with good-humored care.

Like most people who have come under its wing, I have positive memories of military medicine. It birthed my eldest son and cared for me in distress. If the lines were long and the system impersonal, patience was rewarded with having no bill to pay in the end. It seems much the same today for most people in the armed forces with whom I have spoken.

But the current crisis of confidence in military medicine doubtless has some of its roots in patients who have not received good care. And the litany of anecdotal evidence has been depressing.

Like the stories surrounding an antiquated Army hospital in Georgia where a surgeon once looked up to discover a bird flying loose in the operating room.

Or the Air Force heart surgeon who mistakenly hooked up a patient to the heart-lung machine backward with predictable results. Or the Army doctor who gave a hemorrhaging patient in a room with no buzzer system, a bicycle horn to honk if she needed help. She was left alone and bled to death.

Discerning students of malpractice would recognize that the same things, or worse, could happen in a civilian setting. The problem is not how to come to grips with flashy headline horror stories. It goes substantially deeper than that.

Essentially three structural flaws have dangerously come of age for military medicine:

First, there are simply not enough medical specialists in the armed forces. The end of the draft has seen to that. Thanks to a generous scholarship program, there are more than enough general practitioners. But trained surgeons, anesthesiologists, radiologists and psychiatrists—to name a few—are not joining the services because they can make three times as much in civilian practice.

And the services have trouble training their own specialists because of a lack of senior experienced people. In short, who trains the trainees? At Bethesda Naval Hospital last year Navy heart surgeons were trained by a physician now ordered court-martialed for five surgical deaths. The Army surgeon borrowed to replace him quit, and Bethesda closed its heart program.

Second is inter-service hostility—not to be confused with good-spirited rivalry. Enough of these people genuinely disdain one-another to the point that health care suffers.

Few congressmen believed the technical excuses recently offered for why the Army and Air Force bickered over who would care for wounded Marines after the Beirut bombing, or why Navy ships would not allow Army helicopters to land with casualties during the Grenada invasion.

Each service's medical branch operates as if the others did not exist. Hospitals overlap and one service's personnel and equipment shortage is another's surplus. The only thing the services readily share is a distrust for civilian leaders in the Department of Defense—who once resorted to hand-delivering health-care directives because the services kept claiming they never received them.

At the height of the scandal over the surgical deaths at Bethesda Naval Hospital, one senior Army physician/administrator spoke with absolute candor when he told this reporter: "Those stiff-necked S.O.B.'s are finally getting theirs."

Third, the medical services have an almost impossible dual mission: first to be ready for war and second to care for a mixed bag of 10 million servicemen and women, their dependents and retirees. The range of cases runs from combat trauma among 19-year-olds to cancer surgery on the president of the United States.

The problem here is the same old story as elsewhere within the military: new construction, more personnel and gee-whiz machinery—those material goals that result in greater bureaucracy—have many champions. Readiness, the No. 1 priority, has virtually none.

For an example, look who the services until recently gave all responsibility for coordinating medical readiness in the European Theater: a colonel whose primary assignment was negotiating real estate contracts with local governments.

According to one former senior health official, the fundamental trouble with military medicine, and a great many other Pentagon programs, is that no one's in charge.

Assistant secretaries of defense for health usually stay around for less than two years and then leave for more money. The job pays only about $70,000.

"There's this great big body over there with no brain running it, no lasting nervous system. Those theoretically running it come and go too quickly," the official said. "The guns that can't shoot straight, the ideas that don't work; they all bide their time until there's a changing of the guard and then they're trotted out again."

At bottom it remains a system with an extraordinary mission expected to deliver compassion and healing within a machine designed for war and killing. The incongruity remains and so does the challenge to make it work properly.

WEEKLY BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report for the week of December 9, 1985, prepared by the Congressional Budget Office in response to section 5 of the first budget resolution for fiscal year 1986. This report also serves as the scorekeeping report for the purposes of section 311 of the Congressional Budget Act.

This report replaces the report printed in the RECORD yesterday which was prepared prior to receipt of estimates for House Joint Resolution 187, the Compact of Free Association.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 17, 1985.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1986. The estimated totals of budget authority, outlays, and revenues are compared to the appropriate or recommended levels contained in the most recent budget resolution, S. Con. Res. 32. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32 and is current through December 16, 1985. The report is submitted under Section 308(b) and in aid of Section 311(b) of the Congressional Budget Act.

Since my last report we have added estimates to the current level of budget authority, outlays and revenues for the Compact of Free Association, H.J. Res. 187.

With best wishes,

Sincerely,

RUDOPLH G. PENNER.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 99TH CONGRESS, 1ST SESSION, AS OF DECEMBER 6, 1985

[Fiscal year 1986—In billions of dollars]

	Budget authority	Outlays	Revenues	Debt subject to limit
Current level [1]	1,067.5	983.7	792.9	1,899.0
Budget resolution, Senate Concurrent Resolution 32	1,069.7	967.6	795.7	* 2,078.7
Current level is:				
Over resolution by		16.1		
Under resolution by	2.2		2.8	179.7

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level excludes the revenue and direct spending effects of legislation that is in earlier stages of completion, such as reported from a Senate Committee or passed by the Senate. Thus, savings from reconciliation action assumed in S. Con. Res. 32 will not be included until Congress sends the legislation to the President for his approval. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

* The current statutory debt limit is $2,078.7 billion.

FISCAL YEAR 1986, SUPPORTING DETAILS FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 1ST SESSION, AS OF DECEMBER 16, 1985

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous session:			
Revenues			792,800
Permanent appropriations and trust funds	717,617	631,009	
Other appropriations		185,348	
Offsetting receipts	−162,006	−162,006	
Total enacted in previous sessions	555,610	654,351	792,800
II. Enacted this session:			
Famine relief and recovery in Africa (Public Law 99-10)		421	
Federal supplemental compensation phaseout (Public Law 99-15)			10
Appropriations for the MX missile (Public Law 99-18)		368	
Contemporaneous recordkeeping repeal bill (Public Law 99-44)			13
United States-Israel Free Trade Act (Public Law 99-47)			−8

FISCAL YEAR 1986, SUPPORTING DETAILS FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 1ST SESSION, AS OF DECEMBER 16, 1985—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Statue of Liberty—Ellis Island Coin Act (Public Law 99-61)	−15	31	
International Security and Development Cooperation Act (Public Law 99-83)	−25	−25	
Supplemental appropriations bill (Public Law 99-88)	36	3,138	
State Department authorization (Public Law 99-93)			2
Emergency Extension Act of 1985 (Public Law 99-107)	−49	−230	210
Simplification of imputed interest rules (Public Law 99-121)		−31	
Health professions educational assistance (Public Law 99-129)		−8	
Amendments—Special Defense Acquisition Fund (Public Law 99-139)	100		
Energy and water appropriations, 1986 (Public Law 99-141)	15,252	8,245	
Department of Defense Authorization Act, 1986 (Public Law 99-145)	280	−5	
Legislative branch appropriations, 1986 (Public Law 99-151)	1,599	1,385	
Temporary debt limit increase (Public Law 99-155)	−34	−156	140
Agricultural extension, tobacco provision (Public Law 99-157)	−20	−20	
HUD-Independent Agencies appropriations, 1986 (Public Law 99-160)	56,909	36,247	
Offsetting receipts	−4,185	−4,185	
Military construction appropriations, 1986 (Public Law 99-167)	8,498	2,151	
NASA Authorization Act of 1986 (Public Law 99-170)		107	
Labor, HHS, Education appropriations, 1986 (Public Law 99-178)	94,862	811,406	
Offsetting receipts	−19,816	−19,816	
Commerce, State, Justice appropriations, 1986 (Public Law 99-180)	11,926	9,711	
Offsetting receipts	−118	−118	
Further temporary extension (Medicare) and tobacco excise tax provisions (Public Law 99-181)		−20	12
Total enacted this session	165,199	118,627	347
III. Continuing resolution authority:			
Continuing appropriations, 1986 (Public Law 99-179)	348,779	212,985	
Offsetting receipts	−4,449	−4,449	
Total continuing resolution authority	344,330	208,536	
IV. Conference agreements ratified by both Houses:			
Textile and Apparel Trade Enforcement Act, 1985 (H.R. 1562)			−200
Compact of Free Association (H.J. Res. 187)	87	71	−3
Total conference agreements	87	71	−203
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Payment to the CIA retirement fund	10	10	
Claims, defense	7	3	
Payment to the foreign service retirement trust fund [1]	(1)	(1)	
Range improvements	1		
BLM: Miscellaneous trust fund	([2])		
Payment to air carriers, DOT	18	17	
Retired pay—Coast Guard	21	19	
Maritime, operating-differential subsidies		3	
BIA: Miscellaneous trust funds	([2])	([2])	

FISCAL YEAR 1986, SUPPORTING DETAILS FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 1ST SESSION, AS OF DECEMBER 16, 1985—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Retirement pay for PHS officers	3		
Medical facilities loan guarantee	2		
Payment to health care trust funds [1]	(907)	(907)	
Child nutrition programs	250	230	
Child support enforcement	3	3	
Advances to unemployment trust fund [1]	(51)	(51)	
Federal unemployment benefits and allowances	65	64	
Black lung disability trust fund	46	46	
Special benefits (disabled coal miners)	36	36	
Assistance payments	544	544	
Supplemental security income	52	52	
Veterans readjustments benefits	180	137	
Veterans pensions	10		
Payment to civil service retirement [1]	(214)	(214)	
National wildlife refuge fund	([2])	([2])	
Defense pay raise—military	925	897	
Compact of Free Association	92	92	
Total entitlements	2,267	2,154	
Total current level as of December 16, 1985	1,067,494	983,738	792,944
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution		16,138	
Under budget resolution	2,206		2,756

[1] Interfund transaction do not add to budget totals.
[2] Less than $500 thousands.

Note.—Numbers may not add due to rounding.●

RESTRICTIONS ON JEWISH CULTURE IN THE SOVIET UNION

● Mr. RIEGLE. Mr. President, the National Conference on Soviet Jewry's most recent leadership report focuses on the important issue of government-imposed restrictions on Jewish cultural activities in the Soviet Union.

The report notes that, while it is official Soviet policy to encourage the development of various national cultures within its borders, in practice, the long-range policy of that Government is to "throttle the growth or development of Jewish culture."

While not surprising, the revelations of the NCSJ report are all the more disturbing in light of the continuing low level of Soviet Jewish emigration.

Soviet violations of the rights of its 2½ million Jewish citizens, in defiance of its international commitments, must not go unnoticed. The National Conference on Soviet Jewry makes an important contribution to that effort by highlighting the ongoing abuses in its leadership report, which I commend to the attention of my colleagues. I ask that the text of the report be printed in the RECORD.

The text follows:

RESTRICTIONS ON JEWISH CULTURE

The Soviet Union is a multi-national state, with over 100 recognized nations and nationalities. It is Soviet policy to encourage the development of the various national cultures as stated in its own law. The 1977 Constitution grants equal rights to citizens of different nationalities including, specifically, "cultural life." Moreover, the "Violation of Equality of Rights of Nationalities and Races" is regarded as a special crime.

International obligations the USSR has assumed under the International Covenant on Civil and Political Rights also commit it to facilitate the maintenance and development of national cultures. The Covenant specifically requires signatories to ensure that "ethnic, religious or linguistic minorities" shall be permitted "to enjoy their own culture, to profess and practise their own religion, or to use their language."

The 1975 Helsinki Final Act reinforces obligations, not only by a general undertaking of the participating States in Principle VII to "fulfill their obligations as set forth in the international declarations and agreements in this field. . . ." (an undertaking subsequently incorporated into the USSR Constitution), but also by specific references to national minorities, and by declaring that the participating States "will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere."

The Act also asks participating States to recognize "the contribution that national minorities or regional cultures can make to cooperation among them in various fields of culture, . . . (and) . . . when such minorities or cultures exist within the territory, to facilitate this contribution, taking into account the legitimate interest of their members."

The Jews are one of the recognized nationalities in the Soviet Union; in fact, they are a major one, ranking sixteenth in size among more than 100 Soviet nationalities. How far, then, are international obligations implemented in regard to Soviet Jewry? What is the state of the Jewish minority culture in the Soviet Union today?

There are still no Jewish schools in the USSR, not even in the so-called Jewish Autonomous *Oblast* (Region) of Birobidzhan. There exist only two press organs: The *Birobidzhaner Shtern*, a Yiddish newspaper of four pages which appears five times a week in Birobidzhan in 1,000 copies; and the monthly Yiddish literary journal *Sovetish Heymland*, published in Moscow in 7,000 copies, of which apparently half are sent abroad. Not a single one is permitted in the Russian language, spoken by 97.03% of Soviet Jews.

In the years 1977-1979 there was a slight improvement in the publication of Yiddish books. An average of six were published annually as against the annual average of three books during the preceding nine years. But this is still only a minuscule contribution to maintaining Jewish culture. It is worth comparing the average of six books published annually for two million Jews with the corresponding figures (for the year 1978) relating to some other Soviet nationalities: 46 books for 622,00 Maris, 70 for 542,000 Ossetinians and 166 for 1,371,000 Bashkirs.

On the other hand, the number of Russian translations of Yiddish books (which would be more important since, according to the 1979 census, 80.41 percent of Soviet Jewry no longer speaks Yiddish) has radically declined: in the years 1959 to 1970 an annual average of 25 translated volumes were published (in no year less than 20); in 1971 to 1975 an annual average of 14; while

in the years 1976, 1977 and 1978 their number was 7, 10 and 9 respectively. Similarly, translated items of Jewish literature and literary criticism are also gradually disappearing from non-Jewish Soviet journals; in 1959 to 1968 their annual average was 51, in 1969 to 1975 it was 50, but in the years 1976 to 1978 such items dropped to an average of 14 per annum.

In 1977 there was only one professional Jewish theater, the Moscow Jewish Dramatic Ensemble which, however, is a travelling company without a building of its own. In 1978 permission was given to form a Jewish Chamber Musical Theater. This was undoubtedly a concession a Jewish demands in the USSR and abroad, but approved under peculiar conditions: though the theater could travel within the country, it had to be legally based in remote Birobidzhan, where, according to the 1979 census, only 10,166 Jews (or half-a-percent) of Soviet Jewry live. Birobidzhan is also far from the traditional Jewish population centers of the Western regions in the USSR.

The sporadic performances by both theaters have been enthusiastically welcomed by Jews, but their activities are extremely restricted. For instance, the Moscow Ensemble could not perform in Moscow from the summer of 1974 until December 1978; no Jewish theatre could visit Minsk until 1978; and Leningrad, Kiev and Kharkov are still out-of-bounds.

There still does not exist any other Jewish cultural institution, lecture course, publishing house, artistic establishment, etc., with the sole exception of the Sholem Aleichem Library in Birobidyhan. In 1979, a memorial museum to Sholem Aleichem was established in his birthplace, Pereyaslav-Khmelnitsky.

Under these circumstances Soviet Jews, anxious to preserve a national cultural heritage, hope to obtain the necessary tools from abroad. Such efforts are legitimate and encouraged in the Helsinki Final Act, notably in Basket Three, which aims at facilitating "freer and wider dissemination of all kinds"; and in the section on Cooperation and Exchanges in the field of Culture, which seeks "to develop contacts and cooperation among persons active in the field of culture," "to encourage contact and communications among persons engaged in cultural activities," "to promote access by all to respective cultural achievements," etc. Moreover, the contribution of national minority cultures to cooperation in the cultural field is especially emphasized.

In spite of this, attempts to send Soviet Jews books or teaching manuals on subjects like Jewish religion, law or ethics, history, art, literature, the Holocaust, or belles-lettres, children's books, song books, dictionaries and language books for the teaching of Hebrew, have been thwarted by the authorities. Such books are either confiscated or simply disappear. Among the books barred were those of the Nobel laureates Isaac Bashevis Singer and Saul Bellow, the UNESCO publication *Social Life and Social Values of the Jewish People*, the Holocaust novel *Le Dernier des Justes* by Andre Schwarz-Bart, and studies on Jewish history by such distinguished historians as Shmuel Ettinger and Cecil Roth. The confiscation of materials and the disappearance of letters indicate interference with the privacy of mail and communication, which is guaranteed under international agreements and in the Soviet Constitution.

The long-range policy of the Soviet Union is, therefore, to throttle the growth or development of Jewish culture. This can only accelerate general assimilationist trends and, simultaneously, intensify the religious and cultural resistance of Jewish activitists. Either course will generate new tensions for Soviet Jews.●

RETAINING THE DEDUCTION FOR STATE AND LOCAL TAXES

● Mr. BOSCHWITZ. Mr. President, on December 3, 1985, the House Ways and Means Committee introduced H.R. 3838, "The Tax Reform Act of 1985," which would make comprehensive changes to our current tax law. The thrust of H.R. 3838 is to apply lower marginal rates to a greater amount of income. In considering what deductions, credits, and exclusions could be eliminated to allow rates to be lowered, the Ways and Means Committee considered eliminating the deduction for State and local taxes. The committee eventually decided to retain the full amount of the deduction.

Because the deductibility of State and local taxes may again be debated, I would like to bring attention to an article written by Dr. Martin Feldstein which appeared in the November 20, 1985, issue of the Wall Street Journal. Dr. Feldstein—a past chairman of the President's Council of Economic Advisers and a man known and respected by a great many people—suggests that eliminating the deduction for State and local taxes may lead to a decrease in tax revenues, not an increase in tax revenues. The reason is that if the deduction is eliminated, States and cities would increase their reliance on business taxes and fees, which are generally deducted more frequently and at higher rates than State and local taxes.

Dr. Feldstein's article, "A Tax-Reform Mirage," deserves careful study by each of us. In addition to questioning the presumption that eliminating the deduction for State and local taxes will raise revenue, the article illustrates a point I have been making for some time: changes in our Tax Code can cause unintended and unexpected consequences and thus should be made only after a careful and studied process. I ask that Dr. Feldstein's article be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Nov. 20, 1985]

A TAX-REFORM MIRAGE

(By Martin Feldstein)

The administration's case for eliminating the deductibility of state and local taxes is based on a fiscal illusion. The Treasury claims that eliminating deductibility would yield a substantial increase in tax revenue that could be used to finance a reduction in personal tax rates. In fact, the likely increase would be far smaller that the Treasury predicts and could actually turn out to be a net loss of revenue.

How is this possible? The reason is quite simple. If the deductibility of personal income, sales and property taxes were eliminated, states and cities would increase their reliance on business taxes and on fees. Deductible personal taxes now account for less than two-thirds of the revenue raised by state and local governments. If deductibility were eliminated or substantially reduced, this share would decline in favor of more business taxes and fees.

A SHIFT TO BUSINESS LEVIES

Businesses must, of course, be allowed to include state and local taxes with the other costs that they deduct in calculating their federal tax liabilities. In addition, many of the fees collected by state and local governments are paid by corporations and are also deductible business expenses. The significance of this is that while all businesses deduct their payments to state and local governments, most individuals do not itemize their deductions. Moreover, even those individuals who do itemize their deductions have tax rates that are generally lower than the 46% tax rate at which corporations take their deductions.

The net effect of eliminating deductibility therefore would be to shift a portion of the finance of state and local governments from individuals—where each dollar of state and local tax payment has a relatively small impact on federal tax receipts—to corporations where those same state and local tax payments have a much larger impact on federal tax revenue. If eliminating deductibility causes a large enough shift from personal taxes to business levies, the Treasury actually would lose money by eliminating deductibility.

An example will indicate how this could occur. Consider a state that, together with local governments within that state, now collects $10 billion a year in taxes, of which $6 billion comes from personal income, sales and property taxes. The national experience indicates that about 50% of these potentially deductible state and local personal taxes do get deducted and that the marginal tax rates at which these deductions are taken average 27%. Applying these national averages to the $6 billion implies that $3 billion of taxes is deducted and that these deductions reduce federal income tax liabilities by $810 million.

Eliminating deductibility would make reliance on personal taxes less attractive to the state and local governments relative to business taxes and various fees. If the state and its local governments shift $1 billion of the $6 billion now paid by individuals to taxes and fees paid by business, their tax deductions would rise by $1 billion. Since businesses pay federal tax at a 46% rate, this would reduce federal tax collections by $460 million, offsetting more than half of the Treasury's gain from increased personal taxes. And if state and local governments were instead to shift $2 billion of the $6 billion now paid by individuals, business tax payments to the federal government would fall by $920 million and the Treasury would actually have less revenue than under the present system.

The prediction that a change in deductibility would cause state and local governments to increase their use of other revenue sources is not only common sense but is supported by statistical evidence. I recently completed a study at the National Bureau of Economic Research that indicates that the current differences among states in the proportion of taxpayers who itemize and in

the average tax rate of itemizers has an important effect on the way that states and local governments finance their spending. The statistical estimates imply that eliminating deductibility would cause enough of a shift in the mix of state and local revenue sources to cut the Treasury's propective revenue gain by more than half. Although there are, of course, many complexities in interpreting the statistical evidence, the clear implication is that the federal revenue effect of eliminating the deductibility of state and local taxes is uncertain at best.

Eliminating deductibility of state and local personal taxes is critical to the administration's tax plan because the projected revenue gain from the elimination of deductibility is the largest single source of increased revenue in the administration's plan. The Treasury predicts this change in tax rules would raise amounts that increase from $33 billion in fiscal year 1987 to $40 billion in 1990. Indeed, in 1990 it accounts for more than 85% of all additional revenue raised from individuals by broadening the tax base. The Treasury projects that this increased revenue would finance 55% of the personal rate reductions, with most of the remainder financed by the increased taxes on corporations.

OTHER ISSUES INFLUENCE DECISION

There are, of course, other issues that must influence the decision about whether to change the current deductibility of state and local taxes. Some argue that the deduction should be retained to avoid double taxation of income. Others argue that it should be eliminated to avoid the distorting effect of deductibility on spending by state and local governments. But I suspect that the principal reason it is being considered is that it looks like the only way to raise substantial tax revenues with which to finance reductions in personal tax rates. Unfortunately, that is a fiscal illusion on which it would be reckless to rely.●

S. 1950—TOBACCO ADVERTISING

● Mr. BRADLEY. Mr. President, I introduced S. 1950, Disallowance of Deduction for Tobacco Advertising Expenses, on December 16, 1985. The bill was not included with my remarks in the CONGRESSIONAL RECORD at that time.

I ask that the text of my bill be printed in today's RECORD.

The text of the bill follows:

S. 1950

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

SECTION 1. DISALLOWANCE OF DEDUCTION FOR TOBACCO ADVERTISING EXPENSES.

(a) DEDUCTION DISALLOWED.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1954 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 200H. DISALLOWANCE OF DEDUCTION FOR TOBACCO ADVERTISING EXPENSES.

"(a) IN GENERAL.—No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred to advertise any tobacco products.

"(b) DEFINITIONS.—For purposes of this section—

"(1) IN GENERAL.—The term "tobacco products' means cigarettes, cigars, smokeless tobacco, pipe tobacco, or any similar tobacco products.

"(2) SMOKELESS TOBACCO.—

"(A) IN GENERAL.—The term 'smokeless tobacco' means any snuff or chewing tobacco.

"(B) SNUFF.—The term 'snuff' means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

"(C) CHEWING TOBACCO.—The term 'chewing tobacco' means any leaf tobacco that is not intended to be smoked.".

(b) CONFORMING AMENDMENT.—The table of section for part IX is amended by adding after the item relating to section 280G the following new item:

"Sec. 280H. Disallowance of deduction for tobacco advertising expenses."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 1986, for taxable years ending after such date.●

CONGRESSIONAL CALL TO CONSCIENCE

● Mr. GRAMM. Mr. President, I rise today once again to join my colleagues in speaking out against the increasingly brutal and inhumane treatment imposed on religious dissidents and refuseniks in the Soviet Union. I am happy to participate in the Congressional Call to Conscience for Soviet Jews and Christians organized so ably by my good friend and colleague from Minnesota, RUDY BOSCHWITZ. It is ironic that Secretary Gorbachev, in responding to inquiries about the treatment of Jews and religious minorities in the Soviet Union, had the effrontery to claim that Jews are treated as well or better in the Soviet Union than anywhere else in the world. The facts speak differently. Sadly, we are hearing more and more accounts of harassment, intimidation, and brutality against those wanting to emigrate and those wanting only to practice their religion freely and without hindrance. Even though the Soviets have allowed Yelena Bonner to leave temporarily for medical treatment—and thus only barely meeting the minimum requirements demanded by humanity—their continuing maltreatment of Andrei Sakharov stands in clear contrast to this thinly veiled propaganda stunt.

Mr. President, we all know only too well the stories of Sakharov, Nudel, Bonner and other famous dissidents. I am here today to speak out once again on behalf of a family not so famous and not so well known to the West. It may be accurate to say that this family is more deserving of our attention because their story is not well known, because the Soviets don't have to face world opinion every day on their behalf, because they are not regularly called upon to answer for what is a regular policy of civil and human rights abuses in their country.

Mr. President, today I wish to speak about Alexander (Sasha) Wainer, his wife Marina, their daughter Yana, and Marina's parents. In what has become an almost stereotypical story, the Wainers applied for exit visas in January 1979; soon thereafter Sasha was fired from his job as a chemical engineer. A pattern of regular harassment followed. Sasha has not been able to gain employment in his profession, even though he is fluent in English and obviously of great value because of his technical expertise. Sasha has been forced to hold lesser jobs such as a night guard and elevator operator, and even these have been only on a temporary, occasional basis. Marina Wainer is a trained biologist and we can only guess what intimidation the Soviets have used against her. Typically, the Soviets have also refused on five or six separate occasions exit visas for Marina's parents. The Wainers have a daughter, Yana, born in 1981 and are expecting a second child soon. Should the Wainers not be allowed to exit in the next few years, what kind of life can they expect for their children, the children of refuseniks, the children of Jews? History does not bode well for them.

It is well known, Mr. President, that peak emigration over the past 20 years came in 1979, when some 51,000 Jews were allowed to leave the Soviet Union. That number was reduced by more than half the following year and reduced to fewer than 900 in 1984; this year looks no better. We have heard that Secretary Gorbachev is a different kind of leader, one who knows how to play to the Western press and how to make grandstand plays to benefit the Soviet Union. I say here today that no matter what propaganda ploys Mr. Gorbachev utilizes, this Senator and this body will never believe that he personally or the Soviet regime collectively is serious about peace and working constructively with the West until the treatment of Soviet Jews changes for the better, until emigration statistics increase and until human rights for all religious minorities—Christian and Jewish—are guaranteed and protected.

Mr. President, at this time of thanksgiving and celebration, it is difficult and perhaps unpleasant to think about people and circumstances halfway around the world. We are truly lucky to live in a country governed by democratic principles and protected by the rules of law, and for that reason I think it is valuable to focus on a part of the world where those simple freedoms are unheard of, where mockery is made of law, where something as ordinary as religious worship can be a crime. Jews, Pentecostals, Lutherans, Catholics—all are treated with equal contempt and disregard by the Soviet police state. We talk about the sovereignty of nations but that does not relieve us of the burden of responsibility of working for fundamental human rights in all countries. We are under the obligation of our founders to

speak out on behalf of the oppressed and disenfranchised people of the world. Mr. President, I stand proudly today for all those in the world who cannot speak freely, pray freely or live free of constant repression, and I encourage my colleagues to join me in this worthy call to conscience.●

HERBERT LIEBENSON RETIRES AS PRESIDENT OF THE NATIONAL SMALL BUSINESS ASSOCIATION

● Mr. DIXON. Mr. President, as a member of the Senate Small Business Committee, I invite the attention of the Senate to the retirement of Herbert Liebenson as president of the National Small Business Association [NSB]. I am pleased to point out that Herb Liebenson is a native of Chicago, and was educated at two Illinois institutions: Roosevelt University and the University of Chicago. He came to Washington and worked for the United Mine Workers Union and the U.S. Chamber of Commerce before settling in at NSB, the first organization devoted exclusively to small business to establish a Washington office.

A long-time legislative mainstay at that association, and its president since 1980, Herb Liebenson has been a leading advocate of small business for 25 years. I know that he is widely respected personally for his ability and character. Further, the NSB, under his leadership, is broadly respected on the Hill for its consistently responsible and constructive positions in support of legislation serving the best interest of the small business community.

One example of this constructive role is the creation of the Small Business Legislative Council [SBLC] in 1976. This organization is a coalition which has now grown to nearly 90 national associations having predominately small business membership. Mr. Liebenson was instrumental in the founding of SBLC, and served as its executive director until September 1, 1985, when SBLC became an independent small business organization.

Because of his experience in labor relations, pensions, Social Security and small business matters, as well as his personal qualities, Mr. Liebenson has frequently been selected to serve on such bodies as the SBA Advisory Committee and the Advisory Committee to the Executive Director of the 1986 White House Conference on Small Business.

He will continue to be active as a consultant to NSB and will be chairman of "Technology for New Products and Jobs," a foundation formed to transfer technology to small and medium-sized enterprises.

We thank Herbert Liebenson for his many contributions to the legislative process, and regret that we will be working less with him in the future than in the past. However, his retirement has been richly earned. He leaves an organization which is financially strong, growing in membership and great in potential for the good of small business enterprise. We are also pleased to see that Jerry Gulan, who has long been NSB's able executive vice president, will be functioning as the association's chief executive officer.●

SOVIET ATTACKS UPON AFGHAN CHILDREN

● Mr. HUMPHREY. Mr. President, the brutal war in Afghanistan will be entering its seventh year on December 27. The most tragic victims of this war are the thousands of children who have been murdered, tortured, crippled, or driven into neighboring refugee camps. An entire generation of Afghan children is growing up in a land ravaged by human rights violations and continued violence. The Afghan children are not innocent bystanders in this war, accidentally harmed by the conflict around them. The Soviet Union has singled out children, by dropping boobytrap toys. This savage behavior has been thoroughly documented by the report of the special rapporteur to the United Nations.

An article in the New York Times, on December 10, 1985, entitled "Soviet Toys of Death" poignantly describes the ruthlessness with which the Soviet Union has conducted the war in Afghanistan. I ask that the full text of this article be printed in the RECORD.

The article follows:

[From the New York Times, Dec. 10, 1985]

SOVIET TOYS OF DEATH

A powerful antiwar poster that Americans saw everywhere in 1970 showed bodies heaped in the Vietnamese village of My Lai. The caption was terse, taken from an inquiry into the massacre perpetrated by Americans: "Q. And babies? A. And babies."

No such posters draw attention to the ghastly, deliberate crippling of children by Soviet invaders in Afghanistan. Indeed, having grown skeptical of Presidential anecdotes, some Americans may wonder if Ronald Reagan was talking through his evil empire hat when he accused Russians of sowing insurgent areas with bombs disguised as toys. The evidence isn't anecdotal. The evil is real.

It lies exposed in a report to the United Nations Commission on Human Rights. This inquiry, the first ever by the U.N. into abuses charged against a Communist state, seems to have been scrupulously conducted by an Austrian legal expert, Felix Ermacora. Barred from Afghanistan, he gathered incontrovertible testimony of the slaughter of civilians from Afghans who fled to Pakistan.

The report asserts: "The most horrible type of incident was that caused by the explosion of antipersonnel mines and especially of children's 'toys.' Many witnesses testified that children had been very seriously wounded, having their hands or feet blown off, either by handling booby-trap toys they had picked up along the roadway, or by stepping on them. . . .

"The types of booby-trap toys encountered include those resembling pens, harmonicas, radios or matchboxes, and little bombs shaped like a bird. This type of bomb, consisting of two wings, one flexible and the other rigid, in the shape and colors of a bird, explodes when the flexible wing is touched.

"The Special Rapporteur was also able to obtain a number of photographs, especially those of children between 8 and 15 years of age, with hands or legs blown off, either by handling boody-trap toys or during the explosion of mines."

The generalized horror of a war that has claimed 500,000 lives since 1979, there is thus added the special horror of toys of death. No wonder the Soviet bloc tries to defame the messenger. It contends that Mr. Ermacora is pro-Nazi because he served Hitler's army, as a private. Tellingly, the Soviet Union found nothing wrong with his credentials when he presented reports about human rights abuses in Chile and South Africa.

The issue isn't Mr. Ermacora, but the validity of his charges. If they are false or exaggerated, why not open Afghanistan to independent observers? As long as this dirty war is sealed from sight, someone should photograph those maimed youngsters and plaster posters everywhere, with the capton: "Q. And children? A. Yes especially children."●

YOUNG ASTRONAUT PROGRAM

● Mr. GLENN. Mr. President, I am extremely pleased to have introduced, along with my colleague from Utah [Mr. GARN], a bill which would provide for the striking of medals to commemorate the Young Astronaut Program. The bill was introduced earlier this year in the House and currently has over 88 cosponsors.

Many Senators know that the Young Astronaut Program was created as a National Education Program for elementary and junior high school students designed to promote the study of math and science to increase awareness about high technology and aerospace education. I am particularly pleased to be an honorary co-vice chairman with Senator GARN of this worthwhile program.

The Young Astronaut Program is a nonprofit, private sector initiative dependent on the sponsorship and support of individuals, associations, and corporations for financing. The striking of a medal would allow the Young Astronaut Council to sell the medals and use the income to sponsor extracurricular activities in schools throughout the United States and provide new curriculums for teachers to teach.

The striking of this medal will not be done at any expense to the U.S. Government. All costs incurred by the Secretary of the Treasury will be covered by the Young Astronauts Council.

51-059 O-87-35 (Pt. 26)

I have had the pleasure of meeting with some "Young Astronauts." It was gratifying to listen to them speak so intelligently about space and other scientific matters. Their faces lit up when they told me about the various programs they had participated in because they were "Young Astronauts." These young people have been inspired to learn more about something that too many of us tend to take for granted—the opportunities that exist through utilization of space. The striking of this medal will help ensure that these types of experiences and opportunities for young people continue.

I am doubly pleased that my State of Ohio is leading the Nation in the number of chapters which have been established.

Mr. President, I understand this bill was entered in the RECORD yesterday, and I hope my colleagues consider cosponsoring it.●

SOVIET HUMAN RIGHTS

● Mr. BINGAMAN. Mr. President, yesterday Senator MATHIAS came to the floor to praise the courageous action by five rabbis who have accepted 15 days' imprisonment in a Federal penitentiary as a means of dramatizing the plight of Soviet Jews. I want to associate myself with those remarks.

The rabbis' action is serving as a powerful message to Soviet leaders of the depth of concern in this country for the mistreatment of those in the Soviet Union who merely want to practice their faith. People like Roald Zelichonok, a Leningrad refusenik, are suffering in Soviet labor camps for simply trying to preserve Hebrew culture and pass it on to the younger generation. The Soviet Government will neither grant these people the right to practice their religion without interference nor allow them to emigrate to a country which guarantees such rights.

By demonstrating at the Soviet Embassy, the rabbis carried out an act of civil disobedience consistent with an honored tradition in this country. Daily similar actions take place at the South African Embassy to protest apartheid in that country. Few, if any, of those demonstrators have faced prosecution, and I personally find it troubling that prosecution was as vigorously pursued and such a stiff punishment has been administered in this case. I, therefore, join Senator MATHIAS in urging the President to consider exercising his power to commute the sentences the rabbis are now serving. Such an act would show compassion, while still allowing such legal issues as selective prosecution to be adjudicated in the courts through appropriate appeals.

Let me conclude by expressing my deep respect for the decision which these rabbis have made to accept imprisonment in this instance. They have once again focused national attention on the need for improvement in Soviet human rights policy if our relations with that country are ever to take a marked turn for the better.●

ANTI-ARAB ATTACKS ARE DESPICABLE

● Mr. LEVIN. Mr. President, in recent months there has been a rising crescendo of violence directly or indirectly affecting officials and facilities of the American-Arab Anti-Discrimination Committee:

In August, a pipe bomb exploded in front of the committee's Boston regional office, and two police officers were injured.

In October, a wire bomb placed at the committee's regional office in Santa Ana, CA, was tripped by the office director when he came to work in the morning. It killed him and left his wife a widow and his three young children fatherless.

In November, fire erupted in a building here in Washington which housed the committee's national office, causing substantial damage.

In addition to these attacks, there have been over the past several months numerous verbal assaults on the committee by telegram, telephone, and letter.

Such attacks—especially those that destroy and injure life and property—are despicable. I have asked the FBI for a full and prompt investigation of the violence that has occurred. Our Government must make clear that it intends to root out such terrorism.

Mr. President, in addition to doing what we can in our official capacities to combat attacks against such organizations, it is important for us to reaffirm personally to our American-Arab friends and neighbors our revulsion at the attacks upon them, and our commitment to preserving their right to organize and speak out on their own behalf. This right belongs to every American, and when an effort is made to violently intimidate any of us into silence, the rest of us must rise up in protest.

At this season it is particuarly appropriate—indeed urgent—for those of us who embrace the Biblical imperatives to pursue peace, and to demonstrate good will to all, to say to our fellow Americans of Arabic origin: We wish salaam aleikum. We will not tolerate violence against you.●

TOM McINTYRE'S BARGAIN HOUSES

● Mr. KENNEDY. Mr. President, I would like to share the story of an entrepeneurial Massachusetts resident with my colleagues in the Senate. TOM McINTYRE's determination has turned an idea into a reality. I ask to have printed in the CONGRESSIONAL RECORD a copy of the article, "Bargain Houses—no speculators need apply", which appeared in the Boston Globe.

The article follows:

BARGAIN HOUSES—NO SPECULATORS NEED APPLY

(By David B. Wilson)

(South Boston. New, archtct-dsgn, brick-frnt, 2br town houses, pkng, off Xway 6 mins to Park Street, walk to beach, $68,900. Bricklayers & Laborers Non-Profit Housing Co. Inc.)

No such ad will appear in the Globe because, by spring, when the BLNPHC is ready to sell these 18, sunny, special places, the word will be around and they will all be taken.

And if you don't live in the neighborhood—that's the key word—of Andrew Square, forget it. Tom McIntyre didn't lay up all that brick for yuppie speculators. He did it for what he calls "the two-dollar bettors."

You do not mess with TOM MCINTYRE. He is international vice president of Local No. 3 of the Bricklayers Union. You do not get to be that and stay that by avoiding or losing fights. He is Mission Hill Irish, silver-haired, black-browed, tough, decisive, the kind of man other men will follow. He also is an idealist with a creative imagination, language to which he would no doubt object.

Like the wheel, great ideas are simple. MCINTYRE's was, is, this: Boston is desperately short of housing. Housing costs too much because land costs too much. People can't afford to live where they grew up, formed families. The city owns a lot of land, abandoned schools, burn-outs, tax-title takings, vacant lots strewn with rubble and broken glass, going to waste.

The way to produce housing that neighborhood people can afford is to build it on city land conveyed for $1 to a nonprofit developer. A bank that enjoyed the union's pension business ought to be interested in financing. Union craftsmen, paid scale, working for a unionbacked outfit, could do the work. And the buyers would get a double discount—the land cost and the developer's profit.

This is pretty radical stuff, you know. No federal funds. No limited partnerships. No sales commissions. No syndicated tax shelters. No complex gimmickry, publicity campaign, extended planning procedures, environmentalist tedium, hearings, seminars, workshops, committees, reviews. Just do it. But you need an architect.

Bill Rawn is an architect. Matter of fact, he is The Architect in Tracy Kidder's best seller, "House." Through Ed Lashman, a mutual friend, McIntyre found Rawn. One night last January they had dinner at Amrhein's on West Broadway and discovered that they liked each other's style and ideas.

It helped—a lot—that McIntyre had been with Ray Flynn early in the 1983 election. It helped that Arthur Cola and Pat Walsh of the Laborers Union were willing to get aboard. It helped that Billy Bulger had gone to the Andrew School. It helped that Dave Mirabassi was willing to take charge as general contractor and that attorney Valerie Swett was fascinated by the legal issues.

Bill Rawn delivered plans a month after the Amrhein's dinner. A month later, McIntyre had cost estimates from Mirabassi. In May, the city issued requests for proposals for the old Andrew School site. In June, to the surprise of almost no one, the BLNPHC

was chosen. It took title in August and broke ground Sept. 9. In May, people will be living in the houses.

Boston is not supposed to work that way. In Boston, people love to fight, brood upon ancient wrongs, to chew over issues, to debate important principles, to punish and reward old foes and friends, to convene and consult and pick nits. Instead, Tom McIntyre, the Mission Hill Kid, and Bill Rawn, the post-modern 1st Yalle, Harvard Law Graduate and oncoming national celebrity, and their friends, went out and built 18 houses.

You can see them today, framed in and rough-plumbed, their bay windows shining out on Dorchester street, with the fine, clean smell of new lumber blending with the sour scent of mortar. It is the fragrance of progress and growth. Thousands of empty lots in this city could use a little of it.

Valerie Sweet has written deed restrictions designed to prevent speculation, and she thinks they will work. The houses, of course are worth on the open market two to three times their expected price.

Tom McIntyre may have discovered a no-lose game. The union gets work and jobs for apprentices and badly needed public relations. The neighborhood gets some protection against gentrification. A development model has been established. Ray Flynn looks great. The city gets taxes and neighborhood stability Bill Rawn gets an exciting commmission. Valerle Swett breaks new ground in her profession. And people get places to live. Each new unit, just about, creates a corresponding vacancy.

If it all does not work out exactly as planned, well, somebody tried. Right away. Now, Tom McIntyre's way.●

CANCER PATIENCE

● Mr. McCONNELL. Mr. President, I want to bring to the attention of my colleagues an editorial which appeared in the Wall Street Journal on December 16, 1985 entitled "Cancer Patience." It refers to the recent breakthrough in cancer treatment known as interleukin-2 and asks the question "What is wrong with letting dying or seriously ill patients gain physician-supervised access to promising therapies even before the very last "i" is dotted years hence by the Food and Drug Administration's official approvers?" It might be well for the Senate to consider such changes to benefit the terminally ill.

Mr. President, I ask that the text of the editorial be printed in the RECORD.

The editorial follows:

[From the Wall Street Journal, Dec. 16, 1985]

CANCER PATIENCE

In its Dec. 5 issue, The New England Journal of Medicine published an article officially confirming reports that a government researcher had achieved remarkable results treating patients with a new procedure involving the drug interleukin-2. What happend next was predictable. Thousands of calls poured into the National Cancer Institute from the usual, desperate people—cancer victims facing death. Very quickly they learned that would have to swallow a familiar, bitter pill: General availability of the procedure is probably five years away. Though made by 11 companies, IL-2 is available only to researchers. There is practically no way to get this treatment if you merely want to take a flyer on saving your life.

Dr. Steven Rosenberg's technique is called LAK-cell therapy. It involves extracting white "killer" cells from a patient's blood and mixing those cells with interleukin-2, a biological substance that stimulates one's disease-fighting immune system. This admixture creates lymphokine-activated killer (LAK) cells, which are then reinfused several times into the patient, along with yet more IL-2. Dr. Rosenberg's 25 terminally ill patients had advanced cancer that had spread and was no longer responding to radiation or chemotherapy. Tumors in 11 shrunk by at least 50%, and there was one complete regression. One director of cancer trials told us that by treating virtually hopeless cases, Dr. Rosenbert is "going after the hardest model imaginable. Eleven out of 25 responses is astonishing.You usually do 19 patients with these trials and if you get four, that's significant. . . . That's why NCI got so excited."

Accordingly, the Cancer Institute late last week convened representatives of cancer-research centers to discuss an expansion of Dr. Rosenberg's experiment. Most likely, the institute will have to reprogram some of its $1.3 billion budget to support this work. Dr. Rosenberg's approach is going to receive a fair test. Proponents of other promising techniques might argue that the Cancer Institute is using its muscle to reroute the flow of research funding on behalf of a favorite son, but that's how the federal-subsidy game gets played. Incidentally, the expansion of the Rosenberg protocol to other NCI-funded centers will bring it to more cancer patients.

But in this and other research protocols, the more interesting but less attractive game is, "Who gets treated?" If you want the most advanced treatment, the trick clearly is to get yourself into a research protocol.

People magazine, in an interview with Hamilton Jordan, Jimmy Carter's chief of staff, has just given us a glimpse of how this is often done. Mr. Jordan has just announced that he suffered from lymph cancer, presumably with a less serious case than those treated by Dr. Rosenberg, but that treatment at the National Cancer Institute has almost completely eliminated the tumor.

"I have a lot of doctor friends," Mr. Jordan said, "and in 24 hours I had called seven or eight major medical centers around the country. a majority of people I talked with said, 'If I had what you have, I'd go to the National Cancer Institute.' NCI has two protocols on my type of lymphoma that they are testing against each other. NCI said it would accept me in the program not because I used to be somebody important, but because I had the disease they were studying. I told them I would be there the next morning. They offered to have someone pick me up at the airport, but I declined. 'I just want to be treated like Joe Smith,' I told them."

Is there no humane alternative to this approval process? Almost without exception, the research community will say, no, that this is the tough but inavoidable dilemma of their system. One prominent dissenter is Dr. Robert Oldham, a former NCI official now trying to create a private-sector alternative for giving cancer patients access to sophisticated experimental therapies. By stepping outside the system, Dr. Oldham has made himself a fairly controversial figure in the research community. He says the research community should be "worrying less about the toxicity for patients who are faced with a few months of life, and placing more emphasis on the application of new technology to clinical problems. Already, there are reasonable approaches that could be instituted in the clinic to bring new technology more rapidly to the patient."

To this end, Dr. Oldham has founded a for-profit corporation, Biotherapeutics, in Franklin, Tenn. The idea is to bring experimental therapies to cancer patients, and have them foot the bill. Cancer patients themselves—not tax revenues for philanthropy or industry R&D—become both the funders and the direct, immediate recipients of whatever benefits such research may offer.

Through Cetus Corp., a supplier of Interleukin-2, Dr. Oldham has already succeeded in obtaining formal government approval to treat patients with essentially the same LAK-cell therapy used at the National Cancer Institute by Steven Rosenberg. If resources permit however Dr. Oldham should be able to expand the treatment availability beyond the traditional limits of a formal clinical trial, as well as tailor the treatment to a patient's particular requirements. Two have already started, and one more patient will be added this month, and Biotherapeutics hopes to take on two or three weekly next year. Treatment is administered by Biotherapeutics' physicians at Baptist Hospital in Memphis, and the cost of the patients' contract is $19,400.

Biotherapeutics will, of course, also have to reject many applicants, just as the federal or university research centers do, since all have finite resources. But, "If we see some responses of the order reported at NCI," says Dr. Oldham, "we'll do our level best to double capacity." In turn, expansion should bring cost economies.

"Whether the responses last or derive real clinical benefit," says Dr. Oldham, "will be seen over time." Clearly, the patients paying for treatment at Biotherapeutics are assuming a personal and financial risk; some cancers haven't responded at all to LAK-cell therapy. But surely there are informed cancer patients in this country who want nothing more than the chance to assume that risk.

We continue to wonder why the medical research and regulatory establishment is so adamantly opposed to serving this population of patients. What is wrong with letting dying or seriously ill patients gain physician-supervised access to promising therapies even before the very last "i" is dotted years hence by the Food and Drug Administration's official approvers? Our strong sense, from discussions and correspondence with defenders of the status quo, is that largely they don't want to invest the time and effort that would be required to change the protocols of a delivery system that in fact operates satisfactorily—for the researchers.

In the past 18 months, however, we have seen AIDS patients mount a revolt against that status quo, largely by bootlegging unapproved drugs into the country and bringing intense pressure on public officials, newspapers and local TV stations. The Food and Drug Administration is now proud of its fast-track system for giving "compassionate-use" permissions to experimental AIDS therapies. Would this have happened if the dying had kept quiet?

Cancer patients are not unique. Earlier this year, a multicenter test of a blood-clot dissolver (tissue-type plasminogen activator) was suspended after the evidence overwhelmingly demonstrated the drug's benefits. It is a drug that could be administered to heart-attack victims by rescue squads, thereby reducing the long-term damage done to the victim's heart. Blue Shield of California recently announced that the use of TTPA should be made acceptable medical practice. The potentially life-saving drug, however, is far from FDA approval. It isn't available, though in 1983 there were $676,000 hospital admissions for acute myocardial infarction. We asked one of the most prominent members of the U.S. medical establishment if he would want someone to inject him with TTPA if he fell down in his office with a heart atack that day. "Well, I guess I would" he replied.

The current, rapid pace of biomedical discovery suggests this issue is going to come up repeatedly over the near term. Monoclonal antibodies, tumor necrosis factor, colony-stimulating factor—there and other odd-sounding cancer therapies are now or soon going to be tested in humans. And while companies creating these products give unusual praise to the people running the FDA's biologics bureau, there is no reason to believe the approval system will accommodate the immediate needs of the nation's terminally ill cancer victims.

It remains to be seen whether the presumed beneficiaries of modern medical research will continue to sit still for this depressing status quo. Congress, under no pressure, shows no interest. But those thousands of calls that streamed into the National Cancer Institute within hours of Steven Rosenburg's good news suggest the existence of a real and well-motivated constituency. If the research and regulatory community doesn't consider some way of adapting itself to speed up patient-access to promising therapies, then cancer's curators shouldn't be surprised if sick people soon start assaulting a system that for all its achievements, prescribes little more than patience.●

1986: PROMISES DONE; PROGRAMS TO COME

● Mr. LEVIN. Mr. President, as we approach the end of the year, it's appropriate to take a look at a few of the issues that have dominated 1985 and are likely to remain major concerns in 1986.

First, there is our economic well-being, symbolized by the need to reduce Federal deficits. And second, there is our physical survival, symbolized by our need to achieve a mutual and verifiable agreement with the Soviet Union to reverse the nuclear arms race.

In 1985, we made progress in both areas. But that progress did not produce a product—it did not implement a policy. Instead, our progress took the form of a promise: 1985 produced a solemn pledge that specific action will be taken in 1986.

On the economic front, Members of Congress realized that they could no longer be content with giving speeches—or listening to the President give his speeches—denouncing the Federal deficit while watching that deficit grow year after year. Eveyone knows that a growing deficit threatens the economy. This year, Congress initiated action to deal with the threat. We created a system which promises that the deficit will be reduced. The balanced budget act we just adopted is a solemn, legally binding commitment; it guarantees that action will be taken to reduce the deficit and achieve a balanced budget by 1991. In a sense, it is the "Truth or Consequences Act of 1985"—we either face up to the truth that we can't go on endlessly borrowing against the future to pay for what we are buying now, and take decisive action to deal with that reality, or we will have to face up to the consequences of across-the-board spending cuts.

Most people have focused on those so-called automatic across the cuts. But those cuts are not really automatic. They only occur if the President and the Congress can't agree on a better way to reduce the deficit by the specified mandatory amounts. And there are better ways.

Although we're willing to have every program automatically cut across the board if the only alternative is a growing deficit, we would rather reduce spending by voluntarily and selectively cutting the budget, making cuts that will still preserve those defense programs we really need and still protect domestic programs that improve the quality of life in our society. And cutting spending isn't the only way to cut the deficit. I know that the President says he is against a tax increase—but we can raise more revenues without resorting to a general tax increase. Just one example: Why can't we strengthen the minimum tax on those profitable corporations and wealthy individuals who now aren't paying anything in taxes? That could raise about $10 billion a year, and that money could go toward balancing the budget.

Look at it this way: Deficits are a kind of Gordian knot tied around our economy. We have to escape that knot. We will cut it, if we have to, with automatic across-the-board reductions in spending. But we'd be better off if we could agree to untie it with a balanced plan that better protects our national interests and better preserves our national values. One way or the other though, deficits will be reduced. The promise has been made; only the specific program for achieving the promise has yet to be hammered out.

The same sort of "promise-done; program-to-come" situation exists when we look at the second major issue of 1985: putting the brakes on the ever-accelerating nuclear arms race.

Over the past few years, the Congress has done what it can to persuade the President to negotiate an arms control agreement. And this year, we made progress. The President finally sat down and talked with the Soviet leader, Mr. Gorbachev, and they are scheduled to meet again next year.

Their summit this year was promising; but it yielded no specific results—no agreements, no reduction in nuclear weapons. Next year, promising will not be good enough. Next year, we'll need specific action.

We will begin to find out what kind of action we will get in January, when the President must decide what to do about the SALT II Treaty. The President can declare the treaty null and void—pushing us toward the greatest void of all—or he can continue to observe the terms of the treaty. If he sticks with the SALT II Treaty, we will be well served. After all, it is that treaty—and its restriction on nuclear warheads—which keeps the Soviets from adding over 6,000 nuclear warheads to their existing missiles. With the SALT II Treaty in place, we can make progress in other efforts to curb the arms race. As the Congress has urged, the President should declare his strong support for the Anti-ballistic Missile (ABM) Treaty which has prevented a defensive arms race for almost 25 years. He should also resume negotiations for a Nuclear Test Ban Treaty, and initiate talks to ban the deployment of weapons that can destroy satellites in space.

These, then, were the two big issues of 1985; economic security at home, security from nuclear annihilation worldwide.

In 1985, the American people may have been satisfied with promises. In 1986, nothing less than performance will do.●

PATENT FEES FOR SMALL BUSINESS

● Mr. WEICKER. Mr. President, I would like to discuss briefly legislation that is of vital concern to small businesses, independent inventors, and nonprofit entities in this Nation.

Mr. President, Public Law 97-247, established at the Patent and Trademark Office in the Department of Commerce a two-tiered fee schedule to allow small businesses, independent inventors, and nonprofit entities to pay 50 percent, rather than 100 percent, of the cost of patent user fees. Under the law small firms pay $400 in filing and issuance fees and $1,200 in maintenance fees. The maintenance fees are paid 3½, 7½, and 11½ years into the life of the patent, thereby representing costs to the patent holder of $200, $400, and $600, respectively. This fee schedule is set forth by statute and requires one consumer price indexing adjustment every 3 years. Congress enacted the legislation, Mr. President, to ensure that the exhorbitant costs associated with the actual processing of patent applications would not preclude

small businesses, independent inventors, and nonprofit organizations from applying for U.S. patents.

I have a particular reason for calling the Senate's attention to Public Law 97-247, Mr. President. The "small inventor subsidy," as it is commonly referred to, expired on September 30, 1985, and the measure that will reauthorize this two-tiered fee schedule for fiscal year 1986 has not come before the Senate. Because House Report No. 97-542 provides that funds made available by fiscal years 1983, 1984, and 1985 appropriations are to be used for the small entity fee reduction without fiscal year limitation, the Patent and Trademark Office [PTO] has been using unexpended appropriated funds to continue the 50-percent reduction in fees for small entities. While approximately $3.9 million were carried over from the previous year, these funds will be depleted by the December recess. Therefore, small businesses, independent inventors, and nonprofit entities will be required to pay the full costs of patent user fees in 1986, unless the small inventor subsidy is approved by the Senate.

Mr. President, there is a bill, H.R. 2434, the Patent and Trademark Office authorization bill, that was passed by the House of Representatives and referred to the Judiciary Committee's Subcommittee on Patents, Trademarks and Copyrights, which would reauthorize the small inventor subsidy for fiscal year 1986. H.R. 2434 specifically provides that funds made available under this act would be used to reduce by 50 percent the payment of fees under sections 41 (A) and (B) of the United States Code, by independent inventors and nonprofit organizations, as defined in regulations established by the Commissioner of Patents and Trademarks and by small business concerns in section 3 of the Small Business Act. This measure is still pending before the subcommittee because there are issues to be resolved regarding, both PTO expenditures and funding. These unresolved issues, Mr. President, do not involve the reauthorization of the small inventor subsidy.

Mr. President, the record is clear that small innovative firms and independent inventors cannot afford to pay the full costs of patent user fees without this subsidized fee schedule. Accordingly, it is imperative H.R. 2434, which would continue this two-tiered fee schedule, be reported out of committee. Therefore, I urge the Subcommittee on Patents, Trademarks and Copyright to act immediately on this measure so that the high costs associated with the actual processing of patent applications will not preclude small businesses, independent inventors, and nonprofit organizations from applying for U.S. patents.●

WALT DUNLEVY

● Mr. McCONNELL. Mr. President, earlier this week, one of northern Kentucky's favorite citizens, Walt Dunlevy, passed away. Hundreds of Kentuckians gathered today at St. Thomas' Catholic Church in Fort Thomas, KY, to eulogize Walt's life.

Mr. President, I cannot begin, in this context, to adequately communicate the loss this represents to the people of my State. Walt was the kind of person who had a positive influence on so many. His contribution to family, community, and State can only be described as remarkable.

For the past 14 years, Walt served the Northern Kentucky Chamber of Commerce as its president. Among the many innovative measures supported by Walt was the TANK blue ribbon committee which, from 1976 to 1977, worked for the passage of a local tax initiative. It was because of this effort that the Transit Authority of Northern Kentucky was able to remain fiscally sound.

Walt was also instrumental in forming the Northern Kentucky Port Authority and the Northern Kentucky Convention and Visitors Bureau. And it was largely because of Walt's leadership that the northern Kentucky chambers were consolidated.

You can also see Walt's innovative spirit in the establishment of the Eggs 'n Issues monthly breakfast and Threshold 21 Program. This latter program helped to fund much of the chamber's work.

Recently, Walt completed a 2-year term as a member of the U.S. Chamber of Commerce Committee and served as a member of the U.S. Department of Commerce District Export Council. He was also past president of the Kentucky Association of Chamber of Commerce Executives and a member of the national chamber's public affairs committee.

Mr. President, Walt's professional accomplishments are impressive but perhaps the following piece, which Walt wrote in 1975, tells us more about Walt Dunlevy as a person than any catalog of achievements:

AMERICA'S ANATOMY

AMERICA IS PEOPLE . . .

What we are not, what we say we are:

Not so much what we visualize, but what we acutalize;

Not only our willingness to acknowledge shortcomings, but a mature appreciation of our accomplishments;

Not what we are in public, but what we practice in the mirror of our most private forum:

The strength of the weak, because of their bond with the strong.

AMERICA IS FAITH . . .

Not what we profess to believe, but what we believe by profession;

Not the weakness of the poor, nor the strength of the rich, but the opportunity of each to reach higher;

Not so much for social and racial policies, but our tolerance, understanding, faith in God and in the dignity of man.

AMERICA IS ITS GOVERNMENT . . .

Not a government that shares its wealth with the common man, but a system of self government that guarantees individual freedom, and through incentive, holds out the "keys of economic opportunity" to every citizen;

Not just for what is right, but for wrongs that are righted.

AMERICA IS ITS SYSTEM OF ENTERPRISE . . .

Not simply its benchmark of productivity, but the products of that productivity shared in response to the challenges of our changing society;

Not only for our economic gains, but for the gifts of social benefit these have given us and the peoples of the world.

AMERICA'S FLAME OF FREEDOM . . .

Is not eternal, is not guaranteed. Its flame is lashed by the winds of intolerance, selfishness, and greed. Its light is dimmed by our misguided shame to be patriots.

We must know that freedom's greatest test is yet to come, and America's greatest horizon yet to be explored—Let us be proud to be called Americans; but let us cherish forever the rights we possess as free men.

Mr. President, the people of Kentucky will miss Walter Richard Dunlevy, but we will enjoy the benefits of his extraordinary life for decades.●

WALT DAVIS RETIRES: THE END OF AN ERA

● Mr. LAUTENBERG. Mr. President, this month Walter J. Davis will retire from AT&T after working for the company for close to half a century. Walt was the New Jersey manager for Government relations for AT&T.

Mr. President, the breakup of AT&T has wrought a great many changes. While there are promises of increased efficiency and increased innovation, the breakup has wrought a great deal of confusion. It was Walt's job to help explain the most complicated business transformation in American industrial history. It was Walt's job to convey to policymakers the interests of the company that gave the United States the best telecommunications service in the world. Walt did his job well. He was available and well informed. He was a loyal and staunch advocate for the company he represented.

Walt Davis started his career with the Bell System back in 1937, as a messenger for New Jersey Bell. He has been an installer, repairman, line foreman, and plant service supervisor. He knew the telephone company from the line to the office.

Except for service in the Navy during World War II, he spent his entire career with the Bell System and AT&T. Mr. President, that kind of loyalty to a company is something that AT&T promoted over the years and for which it was well-known. It is

something that will be increasingly difficult to foster in this new era.

I do not think I betray any confidences by saying that Walt, like many Bell System employees, was no advocate of divestiture. Watching a company he knew and loved undergo such a momentous and painful transition, watching the people who made that company great experience even more profound changes and dislocations, was a difficult thing. But, throughout the transition, Walt continued to represent well the new AT&T.

Mr. President, Walt Davis combined his career with AT&T with a commitment to public service. He served as mayor of Bloomfield from 1966 to 1971. During that time, he served as first vice president of the New Jersey Council of Mayors. He has served as chairman of the Bloomfield Heart Fund, and general chairman of the United States Way of Bloomfield.

Walt Davis' retirement marks the end of an era. I wish him well in his future endeavors.●

RAILROAD REHABILITATION

● Mr. ABDNOR. Mr. President, I placed language in the Transportation appropriations earmarking $5.5 million under the 505 program for rail lines in South and North Dakota. I want to clarify that the directive in the conference report that $5.5 million in section 505 funds be spent in rehabilitating the lines from Pierre to Rapid City and from Aberdeen to Oakes is to be construed as permitted the Federal Railroad Administration flexibility to allow all or part of the $5.5 million to be expended on rehabilitating other portions of the larger rail system from Rapid City to Winona, including branch lines to Onida, Mansfield, and Watertown, SD, Oakes, ND, and Plainview, MN.

Mr. President, I thank you for allowing me this time to make my intent clear.●

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me first announce that there will be no more rollcall votes tonight.

I asked Senator THURMOND about a piece of legislation. But that cannot be cleared, as I understand it, until the distinguished minority leader has consulted with Senator NUNN.

It relates to the housing allowances to families of the servicemen who were killed in the tragic airplane crash in Gander, Newfoundland. Perhaps we can dispose of that legislation tomorrow.

I know of no other matter that we can do. We can do the wrapup tomorrow morning, if it is all right with the distinguished minority leader.

Mr. BYRD. Yes. Will the distinguished majority leader yield?

Mr. DOLE. I yield.

Mr. BYRD. I am confident that there will be no problem in clearing the subject matter to which the distinguished majority leader has addressed his remarks.

I support the resolution which Mr. THURMOND is pressing. I am sure there will be no objection from this side.

I feel, out of respect for the ranking member of the Armed Services Committee, that I should at least talk with him about it. So I think there will be no problem in the morning.

Mr. DOLE. Mr. President, I certainly understand the distinguished minority leader's concern, I think as long as we do it. I know Senator KENNEDY has an interest, Senator NUNN has an interest, and I am certain all Senators have an interest in this.

It is a question of working out whether it is 2 months, 3 months, or more.

ORDERS FOR WEDNESDAY

ORDER FOR RECESS UNTIL 10 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate completes its business today it stand in recess until 10 a.m. on Wednesday, December 18, 1985.

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

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, following the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond the hour of 10:30 a.m., with statements limited therein to 5 minutes.

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

PROGRAM

Mr. DOLE. Mr. President, following routine morning business, the Senate can be expected to turn to any of the following items: The conference report to accompany the reconciliation bill, the conference report to accompany the farm bill, the conference report to accompany the continuing resolution, and, again, there are other resolutions pending which can be taken up if time agreements can be reached. The distinguished Senator from Missouri [Mr. DANFORTH] is trying to bring up a trade bill but I have indicated to him that without time agreements it would be most difficult.

Mr. President, I would expect one or two votes tomorrow and, as far as this Senator is concerned, I see no reason why we cannot complete our action and adjourn tomorrow evening sine die.

ANNOUNCEMENT OF INTENTION TO OFFER LEGISLATION RELATING TO GANDER AIR TRAGEDY

Mr. WILSON. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. WILSON. Mr. President, I would like to signal my intention to offer legislation tomorrow which is very much in the spirit of that which the distinguished Senator from South Carolina has proposed, concerning the families of the crash victims at Gander.

Specifically, to take 1 moment, what Senator THURMOND is offering is legislation that will ease the difficulty of those families, the survivors of the crash victims, by affording them sufficient time to relocate, to determine what they are going to do with their lives and specifically where they are going to do it. The legislation that he is going to offer, and he has in fact introduced it with several cosponsors, cures a serious deficiency in law.

Mr. President, I believe what the law now provides is rather heartless. There should be no dislocation of those survivors if they are in military housing and they could continue to pay fair housing rental.

Mr. President, I think a grateful Nation needs to go further than that. What these young families need, in addition to the kind of housing assistance that Senator THURMOND's bill will provide, is the flexibility that can come only from having adequate cash on hand. These are not wealthy families, certainly not if they have been dependent upon the military income of the victim members of the armed services.

What I will be proposing, Mr. President, and what I would seek cosponsors for at this time prior to introduction, is a bill that will in fact increase the face value of the servicemen's group life insurance policy so as to provide not $35,000 in cash payment but $50,000.

It is also my intention, Mr. President, to seek to make that change in law retroactive so that it will extend back in time in a way as to provide a benefit not only to the families of the current Gander crash victims but all of the families who have suffered similar bereavement since the time of the tragic bombing in Beirut.

In other words, Mr. President, it is my purpose to include families who were bereaved by the loss of the marines killed in the Beirut bombing.

My purpose, Mr. President, in announcing that now is to invite as many colleagues as wish to do so to be cosponsors of that legislation. I would think, frankly, that both Senator THURMOND's measure and that which I will introduce will be measures that virtually every Member of this Senate will wish to embrace.

I thank the Chair. I thank the distinguished majority leader.

BILL HELD AT DESK—S. 1956

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, this has been cleared with the distinguished minority leader. I ask unanimous consent that S. 1956 be held at the desk until tomorrow. This is the military dependents proposal offered by Senator THURMOND and others.

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

RECESS UNTIL 10 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 10 a.m. tomorrow morning.

The motion was agreed to and, at 7:24 p.m., the Senate recessed, in executive session, until tomorrow, Wednesday, December 18, 1985, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 17, 1985:

CONSUMER PRODUCT SAFETY COMMISSION

Anne Graham, of Virginia, to be a commissioner of the Consumer Product Safety Commission for a term of 7 years from October 27, 1984.

DEPARTMENT OF THE INTERIOR

J. Steven Griles, of Virginia, to be an Assistant Secretary of the Interior.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

THE JUDICIARY

James L. Buckley, of Connecticut, to be U.S. circuit judge for the District of Columbia Circuit.